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REPORT

1. on the proposal for a directive of the European Parliament and of the Council re-casting Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions
(COM(2004)0486 – C6-0141/2004 – 2004/0155(COD))

and

2. on the proposal for a directive of the European Parliament and of the Council recasting Council Directive 93/6/EEC of 15 March 1993 on the capital adequacy of investment firms and credit institutions.
(COM(2004)0486 – C6-0144/2004 – 2004/0159(COD))

Committee on Economic and Monetary Affairs

Rapporteur: Alexander Radwan

Symbols for procedures

*	Consultation procedure *majority of the votes cast*
**I	Cooperation procedure (first reading) *majority of the votes cast*
**II	Cooperation procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***	Assent procedure *majority of Parliament's component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty*
***I	Codecision procedure (first reading) *majority of the votes cast*
***II	Codecision procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***III	Codecision procedure (third reading) *majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

CONTENTS

Page

1. DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a directive of the European Parliament and of the Council re-casting Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions (COM(2004)0486 – C6-0141/2004 – 2004/0155(COD))

(Codecision procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to the European Parliament and the Council (COM(2004)0486)[1],

– having regard to Article 251(2) and Article 47(2) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0141/2004),

– having regard to Rule 51 of its Rules of Procedure,

– having regard to the report of the Committee on Economic and Monetary Affairs and the opinion of the Committee on Legal Affairs (A6-0257/2005),

1. Approves the Commission proposal as amended;

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 and Commission.

Text proposed by the Commission	Amendments by Parliament
	Amendment 1 Recital 3 a (new)
	(3a) The Commission Communication of 11 May 1999 entitled 'Implementing the framework for financial markets: Action plan' sets out a range of objectives which must be attained if the internal market in financial services is to be completed. The Lisbon European Council of 23 and 24 March 2000 set the goal of implementing the action plan by 2005. The recast provisions on own funds are a

[1] Not yet published in OJ.

significant element of the action plan.

Justification

The rapporteur considers that there should be a reference to the action plan for the financial sector, since the recast provisions on own funds are regarded as a significant element in this connection.

Amendment 2
Recital 9

(9) The principles of mutual recognition and home Member State supervision require that Member States' competent authorities should not grant or should withdraw an authorisation where factors such as the content of the activities programmes, the geographical distribution of activities or the activities actually carried on indicate clearly that a credit institution has opted for the legal system of one Member State for the purpose of evading the stricter standards in force in another Member State within whose territory it carries on or intends to carry on the greater part of its activities. ***A credit institution which is a legal person should be authorised in the Member State in which it has its registered office.*** A credit institution which is not a legal person should have its head office in the Member State in which it has been authorised. In addition, Member States should require that a credit institution's head office always be situated in its home Member State and that it actually operates there.	(9) The principles of mutual recognition and home Member State supervision require that Member States' competent authorities should not grant or should withdraw an authorisation where factors such as the content of the activities programmes, the geographical distribution of activities or the activities actually carried on indicate clearly that a credit institution has opted for the legal system of one Member State for the purpose of evading the stricter standards in force in another Member State within whose territory it carries on or intends to carry on the greater part of its activities. ***Where there is no such clear indication, but the majority of the total assets of the entities in a banking group are located in another Member State the competent authorities of which are responsible for exercising supervision on a consolidated basis, in the context of Articles 125 and 126 responsibility for exercising supervision on a consolidated basis should be changed only with the agreement of those competent authorities.*** A credit institution which is a legal person should be authorised in the Member State in which it has its registered office. A credit institution which is not a legal person should have its head office in the Member State in which it has been authorised. In addition, Member States should require that a credit institution's head office always be situated in its home Member State and that it actually operates there.

Justification

The rapporteur endorses this Council amendment, which is intended to prevent 'supervisory shopping', i.e. a registered office should not be relocated solely with the aim of ensuring supervision by a different supervisor.

Amendment 3
Recital 11 a (new)

(11a) The Directive should aim at requiring Member States to enable competent authorities to apply capital requirements on a consolidated basis and, where they deem this appropriate, cross-border and additionally on a solo basis. This is without prejudice to the wider review, as highlighted in the Commission's Green Paper on Financial Services Policy (2005 - 2010), concerning the way that credit institutions operating cross-border through branches or subsidiaries should be supervised in the future.

Amendment 4
Recital 12 a (new)

(12a) The Member States may also establish stricter rules than those laid down in Article 9(1), first indent, Article 9(2) and Articles 12, 19 to 21, 44 to 52, 75 and 120 to 122 for establishments authorised by their competent authorities. The Member States may also require that Article 123 be complied with on an individual or other basis, and that the sub-consolidation described in Article 73(2) be applied to other levels within a group.

Justification

In order to avoid any misunderstanding, this recital (which reinstates the Council's position) specifies that this directive aims at minimum harmonisation, as did Directive 2000/12/EC. Consequently the Member States remain free to enact stricter rules than those laid down in the Directive.

Amendment 5
Recital 33 a (new)

(33a) On this point, on 26 June 2004 the Basel Committee on Banking Supervision adopted a framework agreement on the international convergence of capital measurement and capital requirements. The provisions in this Directive on the minimum capital requirements of credit institutions, and the minimum capital provisions in Directive 93/6/EEC for investment firms and credit institutions, form an equivalent to the provisions of the Basel framework agreement.

Justification

This recital makes it clear that the EU directive represents the practical transposition of the Basel framework agreement and its content is an equivalent to the Basel settlement. A passage of this kind would be important to prevent 'dual accounting' or the establishment of a 'transitional bridge' for Basel purposes for institutions operating internationally (the Basel banks).

Amendment 6
Recital 34

(34) It is essential to take account of the diversity of credit institutions in the Community by providing alternative approaches to the calculation of minimum capital requirements for credit risk incorporating different levels of risk-sensitivity and requiring different degrees of sophistication. Use of external ratings and credit institutions' own estimates of individual credit risk parameters represents a significant enhancement in the risk-sensitivity and prudential soundness of the credit risk rules. There should be appropriate incentives for credit institutions to move towards the more risk-sensitive approaches.	(34) It is essential to take account of the diversity of credit institutions in the Community by providing alternative approaches to the calculation of minimum capital requirements for credit risk incorporating different levels of risk-sensitivity and requiring different degrees of sophistication. Use of external ratings and credit institutions' own estimates of individual credit risk parameters represents a significant enhancement in the risk-sensitivity and prudential soundness of the credit risk rules. There should be appropriate incentives for credit institutions to move towards the more risk-sensitive approaches. ***In producing the estimates needed to apply the approaches to credit risk of this Directive, credit institutions will have to adjust their data processing needs to their clients' legitimate data protection interests as governed by the existing Community legislation on data protection, while***

enhancing credit risk measurement and management processes of credit institutions to make methods for determining credit institutions' regulatory own funds requirements available that reflect the sophistication of individual credit institutions' processes. The processing of data should be in accordance with the rules on transfer of personal data laid down in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the movement of such data[1]. In this regard, the processing of data in connection with the incurring and management of exposures to customers should be considered to include the development and validation of credit risk management and measurement systems. That serves not only to fulfil the legitimate interest of credit institutions but also the purpose of the Directive, to use better methods for risk measurement and management and also use them for regulatory own funds purposes. The Commission is called upon to draw up a communication on the extent to which data protection requirements will hamper the implementation of the Directive.

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[1] OJ L 281, 23.11.1995, p. 31.

Justification

Clarifies the recital to show that the collection and storage of personal data for developing and validating internal risk management instruments and for risk management itself is admissible and compatible with EU data protection law.

Amendment 7
Recital 34 a (new)

(34a) With regard to the use of both external and an institution's own estimates or internal ratings account must be taken of the fact that, at present, only the latter are drawn up by an entity - the financial institution itself - which is subject to a European supervisory obligation. In the case of external ratings use is made of the products of what are known as recognised ratings agencies, which in Europe are not currently subject to ongoing supervision. In view of the high status of external ratings in connection with the calculation of capital requirements under this Directive, the future authorisation and supervisory process needs to be structured more clearly.

Justification

The rapporteur considers that there should be an indication that the significant role that the Directive accords external ratings in connection with the calculation of the capital required for supervisory purposes is problematical, to the extent that these are provided by private firms which are currently not subject to any (European) supervisory obligation.

Amendment 8
Recital 35 a (new)

(35a) The provisions of this Directive respect the principle of proportionality, having regard, in particular, to the diversity in size and scale of operations and to the range of activities of credit institutions. Respect of the principle of proportionality also means that the simplest possible rating procedures, even in the IRB Approach, are recognised for retail exposures.

Justification

The committee welcomes and follows the Council amendment. When the directive is implemented there is a need to ensure that smaller institutions are not disproportionately burdened in their business activity by prudential requirements.

There is also a need to prevent the advantages for consumers and SMUs of reducing own funds for retail exposures from being offset by the excessive complexity of rating processes and hence the rating cost. The proposal is in line with the Union's general policy aim of simplifying SMUs' access to financial resources (e.g. European Council 2005 Spring

summit).

Amendment 9
Recital 35 b (new)

(35b) The European Parliament welcomes the evolutionary nature of this Directive, i.e. that institutions can choose from three approaches of varying complexity. In order to allow especially small credit institutions to opt for the more risk-sensitive IRB Approach, competent authorities shall implement the provisions of Article 89, paragraph 1, points (a) and (b) whenever appropriate. The provisions should be read in such a way that the exposure classes referred to in Article 86 , paragraph 1, points (a) and (b) include all exposures that are - directly or indirectly - put on a par with them throughout this Directive. As a general rule, the competent authorities shall not discriminate between the three approaches with regard to the Supervisory Review Process, i.e. banks operating on the provisions of the Standardised Approach shall not be regulated on a stricter basis.

Amendment 10
Recital 36

(36) Increased recognition should be given to techniques of credit risk mitigation within a framework of rules designed to ensure that solvency is not undermined by undue recognition.	(36) Increased recognition should be given to techniques of credit risk mitigation within a framework of rules designed to ensure that solvency is not undermined by undue recognition. ***The relevant Member States' current customary banking collateral for mitigating credit risks should wherever possible be recognised in the Standardised Approach, but also in the other approaches.***

Justification

It is important to ensure that the existing security techniques are still recognised in future, such as exposure assignment.

Amendment 11
Recital 38

(38) Operational risk is a significant risk faced by credit institutions requiring coverage by own funds. It is essential to take account of the diversity of credit institutions in the Community by providing alternative approaches to the calculation of operational risk requirements incorporating different levels of risk-sensitivity and requiring different degrees of sophistication. There should be appropriate incentives for credit institutions to move towards the more risk-sensitive approaches. In view of the emerging state of the art for the measurement and management of operational risk the rules should be kept under review and updated as appropriate including in relation to the charges for different business lines and the recognition of risk mitigation techniques.	(38) Operational risk is a significant risk faced by credit institutions requiring coverage by own funds. It is essential to take account of the diversity of credit institutions in the Community by providing alternative approaches to the calculation of operational risk requirements incorporating different levels of risk-sensitivity and requiring different degrees of sophistication. There should be appropriate incentives for credit institutions to move towards the more risk-sensitive approaches. In view of the emerging state of the art for the measurement and management of operational risk the rules should be kept under review and updated as appropriate including in relation to the charges for different business lines and the recognition of risk mitigation techniques. ***Particular attention should be paid in this regard to taking insurance into account in the simple approaches to calculating capital requirements for operational risk.***

Justification

The rapporteur welcomes the proposed regular review and possible updating of the methods for dealing with operational risk, parts of which have hitherto been too crude. This is particularly true of the possibility of taking insurance into account in the simple approaches to calculating capital requirements for operational risk.

Amendment 12
Recital 48

(48) In order for the internal market in banking to operate effectively the Committee of European Banking Supervisors should contribute to the	(48) In order for the internal market in banking to operate effectively the Committee of European Banking Supervisors should contribute to the

consistent application of this *directive* and to the convergence of supervisory practices throughout the Community.	consistent application of this *Directive* and to the convergence of supervisory practices throughout the Community. ***The Committee of European Banking Supervisors should report to the European Banking Committee and the European Parliament on a yearly basis on the progress made with regard to the convergence of supervisory practices and the exercise of national discretion.***

Justification

The rapporteur welcomes the Council's call for the Committee of European Banking Supervisors to present annual progress reports on the convergence of supervisory practices. However, it should report not only to the European Banking Committee but also to the European Parliament. This will enable both institutions to keep a close eye on the goal of convergence of supervisory practices and also on the exercise of national discretion.

Amendment 13
Recital 48 a (new)

	(48a) The Commission and the Committee of European Banking Supervisors must ensure parliamentary and political scrutiny of their work, in order to obviate the risk of regulations being made without democratic legitimacy where both the European adoption thereof and, in parallel, national transposition are concerned.

Justification

The rapporteur considers that it is essential to ensure that the work of the Committee of European Banking Supervisors is subject to democratic scrutiny

Amendment 14
Recital 57 a (new)

	(57a) The adoption of the necessary implementing measures and the use of the powers delegated to the Commission under this Directive shall be subject to the full respect by all European institutions of the existing political agreement based on

the European Parliament resolution of 5 February 2002 on the implementation of financial services legislation[1], on the solemn declaration made before Parliament on the same day by the Commission and on Mr. Bolkestein's letter of 2 October 2001[2] with regard to the safeguards for Parliament's role in this process. It is important to ensure the rights of Parliament as provided for in Article I-36 of the Treaty establishing a Constitution for Europe. Therefore the provisions conferring implementing powers on the Commission should not enter into force until an inter-institutional agreement codifies this existing agreement.

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[1] OJ C 284 E, 21.11.2002, p. 115.

[2] OJ C 284 E, 21.11.2002, p. 83.

Amendment 15
Article 1, paragraph 3

3. The institutions permanently excluded pursuant to ***Article 5***, with the exception, however, of the central banks of the Member States, shall be treated as financial institutions for the purposes of Article 39 and Title V, Chapter 4, Section 1.	3. The institutions permanently excluded pursuant to ***Article 2***, with the exception, however, of the central banks of the Member States, shall be treated as financial institutions for the purposes of Article 39 and Title V, Chapter 4, Section 1.

Justification

Cross reference / Typographical error.

Amendment 16
Article 3, paragraph 1, subparagraph 3

In the case of credit institutions other than those which are set up in areas newly reclaimed from the sea or have resulted from scission or mergers of existing institutions dependent or answerable to the central body, the Commission, pursuant to the procedure set out in ***Article 150*** may lay down additional rules for the application of the second subparagraph including the repeal of exemptions provided for in the first	In the case of credit institutions other than those which are set up in areas newly reclaimed from the sea or have resulted from scission or mergers of existing institutions dependent or answerable to the central body, the Commission, pursuant to the procedure set out in ***Article 151*** may lay down additional rules for the application of the second subparagraph including the repeal of exemptions provided for in the first

subparagraph, where it is of the opinion that the affiliation of new institutions benefiting from the arrangements laid down in the second subparagraph might have an adverse effect on competition.	subparagraph, where it is of the opinion that the affiliation of new institutions benefiting from the arrangements laid down in the second subparagraph might have an adverse effect on competition.

Justification

Cross reference / Typographical error.

Amendment 17
Article 4, point 6

(6) «institutions», for the purposes of Sections 2 and 3 of Title V, Chapter 2, means institutions as defined in [***Article 2(3)*** of Council Directive 96/3/EEC];	(6) «institutions», for the purposes of Sections 2 and 3 of Title V, Chapter 2, means institutions as defined in [***Article 3(1)(c)*** of Council Directive 96/3/EEC];

Justification

Cross reference / Typographical error.

Amendment 18
Article 4, point 6 a (new)

	(6a) "small or medium-sized undertaking" means an undertaking belonging to a group with consolidated annual turnover of less than EUR 50 million. When justified, the consolidated annual turnover may exceed EUR 50 million.

Justification

A definition of the concept of small or medium-sized undertaking is needed for the classification relating to the retail portfolio. It should match the corresponding definition in the undertaking portfolio (Annex VII, Part 1, point 4)

Amendment 19
Article 4, point 10

(10) «participation» for the purposes of points (o) and (p) of ***Articles 57 (2)***, 71 to 73	(10) «participation» for the purposes of points (o) and (p) of ***Articles 57***, 71 to 73

and Title V, Chapter 4 means participation within the meaning of the first sentence of Article 17 of Council Directive 78/660/EEC[1], or the ownership, direct or indirect, of 20 % or more of the voting rights or capital of an undertaking;	and Title V, Chapter 4 means participation within the meaning of the first sentence of Article 17 of Council Directive 78/660/EEC[1], or the ownership, direct or indirect, of 20 % or more of the voting rights or capital of an undertaking;

Justification

Cross reference / Typographical error.

Amendment 20
Article 4, point 14

(14) "parent credit institution in a Member State" means a credit institution which has a credit institution or a financial institution as a subsidiary or which holds a participation in such an institution, and which is not itself a subsidiary of another credit institution authorised in the same Member State, or of a financial holding company set up in the same Member State***, and in which no other credit institution authorised in the same Member State holds a participation***;	(14) "parent credit institution in a Member State" means a credit institution which has a credit institution or a financial institution as a subsidiary or which holds a participation in such an institution, and which is not itself a subsidiary of another credit institution authorised in the same Member State, or of a financial holding company set up in the same Member State;

Justification

The Council amendment, which clarifies and improves the definition, is hereby endorsed.

Amendment 21
Article 4, point 16

(16) "EU parent credit institution" means a parent credit institution in a Member State which is not a subsidiary of another credit institution authorised in any Member State, or of a financial holding company set up in any Member State***, and in which no other credit institution authorised in any Member State holds a participation***;	(16) "EU parent credit institution" means a parent credit institution in a Member State which is not a subsidiary of another credit institution authorised in any Member State, or of a financial holding company set up in any Member State;

Justification

The Council amendment is hereby endorsed.

Amendment 22
Article 4, point 17

(17)”EU parent financial holding company” mean a parent financial holding company in a Member State which is not a subsidiary of a credit institution authorised in any Member State;	(17)”EU parent financial holding company” mean a parent financial holding company in a Member State which is not a subsidiary of a credit institution authorised in any Member State ***or of another financial holding company set up in any Member State;***

Justification

Alignment with Council proposal. Replaces amendment 14 of the Radwan draft report.

Amendment 23
Article 4, point 18

(18) “public sector entities” means non-commercial administrative bodies responsible to central governments, regional governments or local authorities, or authorities that in the view of the competent authorities exercise the same responsibilities as regional and local authorities;	(18) “public sector entities” means non-commercial administrative bodies responsible to central governments, regional governments or local authorities, or authorities that in the view of the competent authorities exercise the same responsibilities as regional and local authorities***, or non-commercial undertakings owned by central governments that have specific arrangements (guarantees),*** or ***self administrative bodies governed by law that are under public supervision, like Chambers and social insurance institutions;***

Justification

Follows from amendment 111 of the Radwan draft report.

Amendment 24
Article 4, point 26

(26) "loss" means economic loss, including material discount effects, and material	(26) "loss"***, for the purposes of Title V, Chapter 2, Section 3,*** means economic

direct and indirect costs associated with collecting on the instrument;	loss, including material discount effects, and material direct and indirect costs associated with collecting on the instrument;

Justification

The Council amendment is hereby endorsed.

Amendment 25
Article 4, point 28

(28) “conversion factor” means the ratio***, to the currently undrawn amount of the commitment,*** of the currently undrawn amount of a commitment ***subject to an advised or unadvised limit*** that will be drawn and outstanding at default;	(28) “conversion factor” means the ratio of the currently undrawn amount of a commitment that will be drawn and outstanding at default ***to the currently undrawn amount of the commitment, the extent of the commitment shall be determined by the advised limit, unless the unadvised limit is higher***;

Justification

Alignment with Council proposal. Substitution of amendment 16 of Radwan report.

Amendment 26
Article 4, point 29

(29) "expected loss (EL)" shall mean the ratio of the amount expected to be lost on an exposure from a potential default of a counterparty or dilution over a one year period to the amount outstanding at default;	(29) "expected loss (EL)"***, for the purposes of Title V, Chapter 2, Section 3,*** shall mean the ratio of the amount expected to be lost on an exposure from a potential default of a counterparty or dilution over a one year period to the amount outstanding at default;

Justification

The Council amendment is hereby endorsed.

Amendment 27
Article 4, point 33

(33) “repurchase transaction” means any transaction governed by an agreement	(33) “repurchase transaction” means any transaction governed by an agreement

falling within the definition of 'repurchase agreement' or 'reverse repurchase agreement' as defined in [***Article 3*** point (m) of Directive 93/6/EEC];	falling within the definition of 'repurchase agreement' or 'reverse repurchase agreement' as defined in [***Article 3(1)*** point (m) of Directive 93/6/EEC];

Justification

Cross reference / Typographical error.

Amendment 28
Article 4, point 34

(34) "securities or commodities lending or borrowing transaction" means any transaction falling within the definition of 'securities or commodities lending' or 'securities or commodities borrowing' as defined in [***Article 3*** point (n) of Directive 93/6/EEC];	(34) "securities or commodities lending or borrowing transaction" means any transaction falling within the definition of 'securities or commodities lending' or 'securities or commodities borrowing' as defined in [***Article 3(1)*** point (n) of Directive 93/6/EEC];

Justification

Cross reference / Typographical error.

Amendment 29
Article 4, point 45, point (b)

(b) two or more natural or legal persons between whom there is no relationship of control as set out in ***the first indent*** but who are to be regarded as constituting a single risk because they are so interconnected that, if one of them were to experience financial problems, the other or all of the others would be likely to encounter repayment difficulties;	(b) two or more natural or legal persons between whom there is no relationship of control as set out ***in point (a)*** but who are to be regarded as constituting a single risk because they are so interconnected that, if one of them were to experience financial problems, the other or all of the others would be likely to encounter repayment difficulties;

Justification

Cross reference / Typographical error.

Amendment 30
Article 4, point 47 a (new)

	(47a) "Purchased receivables" means receivables purchased by a credit institution, which may be treated under a distinct approach based on the default risk of the obligors under the receivables and on dilution risk, instead of as exposures to the receivables' sellers to whom it has

recourse.

Justification

The Basel Committee did not intend to capture Factoring and Invoice Discounting business within the Purchased Receivables approach. These changes are required to enable firms to adopt the more appropriate corporate secured lending approaches for such product groups. If the Directive remains unchanged and is applied literally by member states, it would pose a significant risk to SME liquidity.

Amendment 31
Article 6

Member States shall require credit institutions to obtain authorisation before commencing their activities. Without prejudice to Articles 7 to ***9, 11 and*** 12 they shall lay down the requirements for such authorisation and notify them to the Commission.	Member States shall require credit institutions to obtain authorisation before commencing their activities. Without prejudice to Articles 7 to 12 they shall lay down the requirements for such authorisation and notify them to the Commission.

Justification

Cross reference / Typographical error.

Amendment 32
Article 24, paragraph 1, point (e)

(e) the financial institution must be effectively included, for the activities in question in particular, in the consolidated supervision of the parent undertaking, or of each of the parent undertakings, in accordance with Title V, Chapter 4, Section 1, in particular for the ***calculation of the solvency ratio***, for the control of large exposures and for purposes of the limitation of holdings provided for in Article 120.	(e) the financial institution must be effectively included, for the activities in question in particular, in the consolidated supervision of the parent undertaking, or of each of the parent undertakings, in accordance with Title V, Chapter 4, Section 1, in particular for the ***purposes of the minimum own funds requirements set out in Article 75*** for the control of large exposures and for purposes of the limitation of holdings provided for in Article 120 ***to 122***.

Justification

Cross reference / Typographical error.

Amendment 33
Article 26, paragraph 4

4. Branches which have commenced their	4. Branches which have commenced their

activities, in accordance with the provisions in force in their host Member States, before 1 January 1993, shall be presumed to have been subject to the procedure laid down in Article 25 and in paragraphs 1 and 2 of this Article. They shall be governed, from that date, by paragraph 3 of this Article, and by Article 23, Sections 2 and 5 ***and Article 43***.	activities, in accordance with the provisions in force in their host Member States, before 1 January 1993, shall be presumed to have been subject to the procedure laid down in Article 25 and in paragraphs 1 and 2 of this Article. They shall be governed, from that date, by paragraph 3 of this Article, and by Article 23 ***and Article 43*** Sections 2 and 5.

Justification

Cross reference / Typographical error.

Amendment 34
Article 36

The Member States shall inform the Commission of the number and type of cases in which there has been a refusal pursuant to Article 25 and 26 or in which measures have been taken in accordance with Article 30(3).	The Member States shall inform the Commission of the number and type of cases in which there has been a refusal pursuant to Article 25 and 26***(1) to (3)*** or in which measures have been taken in accordance with Article 30(3).

Justification

Cross reference / Typographical error.

Amendment 35
Article 46, paragraph 1

Member States may conclude cooperation agreements, providing for exchanges of information, with the competent authorities of third countries or with authorities or bodies of third countries as defined in Articles 47 and 48(1) only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those referred to in ***this*** Article. Such exchange of information must be for the purpose of performing the supervisory task of the authorities or bodies mentioned.	Member States may conclude cooperation agreements, providing for exchanges of information, with the competent authorities of third countries or with authorities or bodies of third countries as defined in Articles 47 and 48(1) only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those referred to in Article ***44(1)***. Such exchange of information must be for the purpose of performing the supervisory task of the authorities or bodies mentioned.

Justification

Cross reference / Typographical error.

Amendment 36
Article 57, point (o), point (i)

(i) insurance undertakings within the meaning of Article 6 of First Council Directive 73/239/EEC, ***Article 6*** of ***First Council*** Directive ***79/267/EEC***[2] or Article 1(b) of Directive 98/78/EC of the European Parliament and of the Council;	(i) insurance undertakings within the meaning of Article 6 of First Council Directive 73/239/EEC, ***Article 4*** of Directive ***2002/83/EC***[2] or Article 1(b) of Directive 98/78/EC of the European Parliament and of the Council[3];
[2] OJ L 63, 13.3. 1979, p. 1	***[2] OJ L 345, 19.12.2002, p. 1***

Justification

Cross reference / Typographical error.

Amendment 37
Article 57, point (p), point (ii)

(ii) instruments referred to in ***Article 18(3)*** of Directive ***79/267/EEC***.	(ii) instruments referred to in Article ***27(3)*** of Directive ***2002/83/EC***.

Justification

Cross reference / Typographical error.

Amendment 38
Article 58

Where shares in another credit institution, financial institution, insurance or reinsurance undertaking or insurance holding company are held temporarily for the purposes of a financial assistance operation designed to reorganise and save that entity, the competent authority may waive the provisions on deduction referred to in points (l) to (p).	Where shares in another credit institution, financial institution, insurance or reinsurance undertaking or insurance holding company are held temporarily for the purposes of a financial assistance operation designed to reorganise and save that entity, the competent authority may waive the provisions on deduction referred to in points (l) to (p) ***of Article 57***.

Justification

Cross reference / Typographical error.

Amendment 39
Article 59

As an alternative to the deduction of the items referred to in points (o) to (p), Member States may allow their credit	As an alternative to the deduction of the items referred to in points (o) to (p) ***of Article 57***, Member States may allow their

institutions to apply mutatis mutandis methods 1, 2, or 3 of Annex I to Directive 2002/87/EC. Method 1 (Accounting consolidation) may be applied only if the competent authority is confident about the level of integrated management and internal control regarding the entities which would be included in the scope of consolidation. The method chosen shall be applied in a consistent manner over time.	credit institutions to apply mutatis mutandis methods 1, 2, or 3 of Annex I to Directive 2002/87/EC. Method 1 (Accounting consolidation) may be applied only if the competent authority is confident about the level of integrated management and internal control regarding the entities which would be included in the scope of consolidation. The method chosen shall be applied in a consistent manner over time.

Justification

Cross reference / Typographical error.

Amendment 40
Article 60, paragraph 1

Member States ***may*** provide that for the calculation of own funds on a stand-alone basis, credit institutions subject to supervision on a consolidated basis in accordance with Chapter 4, Section 1 or to supplementary supervision in accordance with Directive 2002/87/EC, ***need*** not deduct the items referred to in points (l) to (p) which are held in credit institutions, financial institutions, insurance or reinsurance undertakings or insurance holding companies, which are included in the scope of consolidated or supplementary supervision.	Member States ***shall*** provide that for the calculation of own funds on a stand-alone basis, credit institutions subject to supervision on a consolidated basis in accordance with Chapter 4, Section 1, or ***which are associated to a central institution and as a group fulfil the requirements of the minimum level of own funds on a consolidated basis, or*** to supplementary supervision in accordance with Directive 2002/87/EC, ***shall*** not deduct the items referred to in points (l) to (p) ***of Article 57*** which are held in credit institutions, financial institutions, insurance or reinsurance undertakings or insurance holding companies, which are included in the scope of consolidated or supplementary supervision.

Justification

The existing Article introduces a national discretion which will result in different approaches across the EU, leading to significant competitive distortions in respect of capital requirements for identical underlying business. The proposed change provides an important levelling of the playing field.

Amendment 41
Article 62

Member States will report to the Commission on the progress achieved in convergence with a view to a common definition of own funds. On the basis of these reports the Commission shall, if appropriate, by 1 January 2009 at the latest, submit a proposal to the European Parliament and to the Council for amendment of ***this Article and*** Articles ***35 to 39***.	Member States will report to the Commission on the progress achieved in convergence with a view to a common definition of own funds. On the basis of these reports the Commission shall, if appropriate, by 1 January 2009 at the latest, submit a proposal to the European Parliament and to the Council for amendment of ***the*** articles ***in this Section***.

Justification

The Council's proposed change to the cross-reference is hereby endorsed.

Amendment 42
Article 63, paragraph 2, subparagraph 2

To these may be added cumulative preferential shares other than those referred to in point (h) of ***Article 57 (2)***.	To these may be added cumulative preferential shares other than those referred to in point (h) of ***Article 57***.

Justification

Cross reference / Typographical error.

Amendment 43
Article 63, paragraph 3

3. For credit institutions calculating risk-weighted exposure amounts under Section 3, Subsection 2, positive amounts resulting from the calculation in Annex VII, part 1, paragraph 34, may, up to 0.6% of risk weighted exposure amounts calculated under Subsection 2, be accepted as other items. For these credit institutions value adjustments and provisions included in the calculation referred to in Annex VII, ***Section 3,*** part 1, paragraph 34 and value adjustments and provisions for exposures referred to in point (e) of Article 57 shall not be included in own funds other than in accordance with this provision. For these purposes, risk-weighted exposure amounts shall not include those calculated in respect of securitisation positions which have a risk weight of 1250%.	3. For credit institutions calculating risk-weighted exposure amounts under Section 3, Subsection 2, positive amounts resulting from the calculation in Annex VII, part 1, paragraph 34, may, up to 0.6% of risk weighted exposure amounts calculated under Subsection 2, be accepted as other items. For these credit institutions value adjustments and provisions included in the calculation referred to in Annex VII, part 1, paragraph 34 and value adjustments and provisions for exposures referred to in point (e) of Article 57 shall not be included in own funds other than in accordance with this provision. For these purposes, risk-weighted exposure amounts shall not include those calculated in respect of securitisation positions which have a risk weight of 1250%.

Justification

Cross reference / Typographical error.

Amendment 44
Article 65, paragraph 1, introductory part

1. Where the calculation is to be made on a consolidated basis, the consolidated amounts relating to the items listed under ***Article 57 (2)*** shall be used in accordance with the rules laid down in Chapter 4, Section 1. Moreover, the following may, when they are credit («negative») items, be regarded as consolidated reserves for the calculation of own funds:	1. Where the calculation is to be made on a consolidated basis, the consolidated amounts relating to the items listed under ***Article 57*** shall be used in accordance with the rules laid down in Chapter 4, Section 1. Moreover, the following may, when they are credit («negative») items, be regarded as consolidated reserves for the calculation of own funds:

Justification

Cross reference / Typographical error.

Amendment 45
Article 66, paragraph 1, point (a)

(a) the total of the items in points (d) to (h) may not exceed a maximum of 100% of the items in points (a) plus (b) and (c) minus (i) to (k) ***and 50% of the amounts in item (q)***;	(a) the total of the items in points (d) to (h) may not exceed a maximum of 100% of the items in points (a) plus (b) and (c) minus (i) to (k);

Justification

The Council amendment is hereby endorsed. After the third consultation paper the Basel Committee recalibrated the risk weightings for claims under the IRB Approach and, in doing so, followed the 'unexpected losses' (UL) concept, i.e. regulatory capital must be reserved only for unexpected deviations from expected losses (unexpected losses - UL). Expected losses (EL) are covered by value adjustments and interest margins. It was not possible to take all of the requisite adjustments in the Basel framework agreement into account in the Commission's draft Directive.

Amendment 46
Article 66, paragraph 1, point (b)

(b) the total of the items in points (g) to	(b) the total of the items in points (g) to

(h) may not exceed a maximum of 50% of the items in points (a) plus (b) and (c) minus (i) to (k) ***and 50% of the amounts in item (q)***;	(h) may not exceed a maximum of 50% of the items in points (a) plus (b) and (c) minus (i) to (k);

Justification

See amendment relating to Article 66(1)(a).

Amendment 47
Article 66, paragraph 1, point (c)

(c) the total of the items in points (l) to (q) shall be deducted from the total of the items.	***deleted***

Justification

See amendment relating to Article 66(1)(a).

Amendment 48
Article 66, paragraph 2

2. The items ***referred to*** in ***point*** (r) of Article 57 shall be deducted from the total of the items ***specified in points (a) to (h) of that Article, unless the credit institution includes the former items in its*** calculation of risk-weighted exposure amounts for the purposes of Article 75 as specified in Annex IX, Part 4.	2. The ***total of the*** items in ***points (l) to*** (r) of Article 57 shall be deducted ***half*** from the total of the items ***(a) to (c) minus (i) to (k), and half from the total of the items (d) to (h) of Article 57, after application of the limits laid down in paragraph 1. To the extent that half of the total of the items (l) to (r) exceeds the total of the items (d) to (h), the excess shall be deducted from the total of the items (a) to (c) minus (i) to (k). Items in point (r) shall not be deducted if they have been included in the*** calculation of risk-weighted exposure amounts for the purposes of Article 75 as specified in Annex IX, Part 4.

Justification

See justification to the amendment relating to Article 4(14).

Amendment 49

Article 66, paragraph 2 a (new)

	2a. For the purposes of Sections 5 and 6, the provisions laid down in this Section shall be read without taking into account the items referred to in points (q) and (r) of Article 57 and Article 63(3).

Justification

See justification to the amendment relating to Article 4(14).

Amendment 50
Article 69, paragraph 1, point (b)

(b) ***its*** parent undertaking ***is committed to an unconditional, explicit and irrevocable obligation to transfer own funds to the subsidiary and meet its liabilities,*** or the risks in the subsidiaries are of negligible interest;	(b) ***either the*** parent undertaking ***satisfies the competent authority regarding the prudential management of the subsidiary and has declared, with the consent of the competent authority, that it guarantees the commitments entered into by the subsidiary***, or the risks in the subsidiaries are of negligible interest;

Amendment 51
Article 69, paragraph 1, point (d)

(d) the parent undertaking has the right to appoint or remove a majority the members of the management body of the subsidiary.	(d) the parent undertaking has the right to appoint or remove a majority the members of the management body***, in so far as is admissible in company law, or of the supervisory body*** of the subsidiary***.***

Justification

This provision contravenes share law in Member States where appointing and removing members of the management body is by law the formal responsibility of the supervisory

board.

Amendment 52
Article 69, paragraph 2a (new)

2a. The Member States may choose not to apply Article 68(1) to a parent credit institution in a Member State where that credit institution is subject to authorisation and supervision by the Member State concerned, and it is included in the supervision on a consolidated basis, and both the following conditions are satisfied, in order to ensure that own funds are distributed adequately among the parent undertaking and the subsidiaries:

(a) there are no current or foreseen material or legal impediments to the prompt transfer of own funds or repayment of liabilities to the parent credit institution in a Member State;

(b) the risk evaluation, measurement and control procedures relevant for consolidated supervision cover the parent credit institution in a Member State;.

(c) the A competent authority which makes use of this paragraph shall inform the competent authorities of all other Member States.

Amendment 53
Article 69, paragraph 2 b (new)

2b Without prejudice to the generality of Article 144, the competent authoritiesy of athe Member States which makesing use of the option in paragraph 2a shall publicly disclose, in the manner indicated in Article 144:

(a) the criteria it applies to determine that there is no current or foreseen material, practical or legal impediment to the prompt transfer of own funds or

repayment of liabilities;

(b) the number of parent credit institutions which benefit from the provisions of make use of paragraph 2a and the number of these which incorporate subsidiaries in a third country;

(c) on an aggregate basis for the Member State:
(i) the total amount of own funds on the a consolidated basis of the parent credit institution in a Member State, which benefits from the provisions of make use of paragraph 2a, which are held inby subsidiaries in a third country;
(ii) the percentage of total own funds on thea consolidated basis of parent credit institutions in that Member State which make benefit from the provisions of use of paragraph 2a, represented by own funds which are held inby subsidiaries in a third country;
(iii) the percentage of such total minimum own funds as are required under Article 75 on thea consolidated basis of parent credit institutions in a that Member State, which benefit from the provisions of make use of paragraph 2a, represented by own funds which are held inby subsidiaries in a third country.

Amendment 54
Article 70, paragraph 1

The competent authorities may allow on a case by case basis parent credit institutions ***in a Member State*** to incorporate in the calculation of their requirement under Article 68(1) subsidiaries ***in the Community***	***1. Subject to paragraphs 1a to 1c, the*** competent authorities may allow on a case by case basis parent credit institutions to incorporate in the calculation of their requirement under Article 68(1) subsidiaries

which meet the conditions laid down in the points ***(a)***, (c) and (d) of Article 69(1), and whose material exposures or material liabilities are to that parent credit institution ***in a Member State***.	which meet the conditions laid down in the points (c) and (d) of Article 69(1), and whose material exposures or material liabilities are to that parent credit institution.

Justification

Alignment with Council proposal + editorial error. Substitution of am 25 of Radwan draft report.

Amendment 55
Article 70, paragraph 1 a (new)

	1a. The treatment in paragraph 1 shall be allowed only where the parent credit institution demonstrates fully to the competent authorities the circumstances and arrangements, including legal arrangements, by virtue of which there are no material practical or legal impediments, and none are foreseen, to the prompt transfer of own funds, or repayment of liabilities when due by the subsidiary to its parent undertaking.

Justification

Credit institutions, including those that typically service small retail consumers and SMEs, often hold mortgages or leased assets within subsidiaries. The amendment to Article 70 seeks to ensure that competent authorities can take full and appropriate account of the prudential risk posed by subsidiaries to credit institutions at an individual level. To avoid incurring prohibitive costs, the requirement of subsidiaries should be the ability to repay liabilities when due.

Amendment 56
Article 70, paragraph 1 b (new)

	1b. Where a competent authority exercises its discretion in accordance with paragraph 1, it shall on a regular basis and not less than once a year inform the competent authorities of all the other Member States of the use made of paragraph 1 and of the circumstances and

arrangements referred to in paragraph 1a. Where the subsidiary is in a third country, the competent authorities shall provide the same information to the competent authorities of that third country, as well.

Justification

See amendment relating to Article 70(1).

Amendment 57
Article 70, paragraph 1 c (new)

1c. Without prejudice to the generality of Article 144 a competent authority which makes use of paragraph 1 shall publicly disclose, in the manner indicated in Article 144:

(a) the criteria it applies to determine that there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities;

(b) the number of parent credit institutions which make use of paragraph 1 and the number of these which incorporate subsidiaries in a third country;

(c) on an aggregate basis for the Member State:

(i) the total amount of own funds of parent credit institutions which make use of paragraph 1 which are held in subsidiaries in a third country;

(ii) the percentage of total own funds of parent credit institutions which make use of paragraph 1 represented by own funds which are held in subsidiaries in a third country;

(iii) the percentage of total minimum own funds required under Article 75 of parent credit institutions which make use of paragraph 1 represented by own funds

	which are held in subsidiaries in a third country.

Justification

See amendment relating to Article 70(1).

Amendment 58
Article 72, paragraph 1, subparagraph 2

However, in respect of their significant subsidiaries, ***they*** shall disclose the information specified in Annex XII, Part 1, paragraph 5, on an individual or sub-consolidated basis.	Significant subsidiaries ***of EU parent credit institutions*** shall disclose the information specified in Annex XII, Part 1, paragraph 5, on an individual or sub-consolidated basis. ***The competent authorities of the parent credit institution will classify significant subsidiaries.***

Justification

The Council amendment is hereby endorsed.

Amendment 59
Article 72, paragraph 2, subparagraph 2

However, in respect of their significant subsidiaries, ***they*** shall disclose the information specified in Annex XII, Part 1, paragraph 5, on an individual or sub-consolidated basis.	Significant subsidiaries ***of EU parent financial holding companies*** shall disclose the information specified in Annex XII, Part 1, paragraph 5, on an individual or sub-consolidated basis. ***The competent authorities of the parent credit institution will classify significant subsidiaries.***

Justification

The Council amendment is hereby endorsed.

Amendment 60
Article 72, paragraph 3

3. The competent authorities responsible for exercising supervision on a consolidated basis pursuant to Articles 125 ***to 131*** may	3. The competent authorities responsible for exercising supervision on a consolidated basis pursuant to Articles 125 ***and 126*** may

decide not to apply in full or in part paragraphs 1 and 2 to the credit institutions which are included within comparable disclosures provided on a consolidated basis by a parent undertaking established in a third country.	decide not to apply in full or in part paragraphs 1 and 2 to the credit institutions which are included within comparable disclosures provided on a consolidated basis by a parent undertaking established in a third country.

Justification

Cross reference / Typographical error.

Amendment 61
Article 73, paragraph 1, introductory part

1. The Member States or the competent authorities responsible for exercising supervision on a consolidated basis pursuant to ***Article*** 125 ***to 131*** may decide in the following cases that a credit institution, financial institution or ancillary services undertaking which is a subsidiary or in which a participation is held need not be included in the consolidation:	1. The Member States or the competent authorities responsible for exercising supervision on a consolidated basis pursuant to ***Articles*** 125 ***and 126*** may decide in the following cases that a credit institution, financial institution or ancillary services undertaking which is a subsidiary or in which a participation is held need not be included in the consolidation:

Justification

Cross reference / Typographical error.

Amendment 62
Article 74, paragraph 2, subparagraph 1

2. Notwithstanding the requirements laid down in Articles 68 to 72, ***the competent authorities shall ensure that*** the calculations to verify the compliance of credit institutions with the obligations laid down in Article 75 ***are*** carried out not less than twice each year.	2. Notwithstanding the requirements laid down in Articles 68 to 72, the calculations to verify the compliance of credit institutions with the obligations laid down in Article 75 ***shall be*** carried out not less than twice each year.

Justification

The Council proposal to switch responsibility for calculating the data to the institutions is hereby endorsed.

Amendment 63
Article 74, paragraph 2, subparagraph 2

The ***calculations shall be carried out either by the*** credit institutions ***themselves, in which case they*** shall communicate the results and any component data required to the competent authorities***, or by the competent authorities, using data supplied by the credit institutions***.	The credit institutions shall communicate the results and any component data required to the competent authorities.

Justification

See amendment relating to Article 74(2).

Amendment 64
Article 75, point (b)

(b) in respect of their trading-book business, for position risk, settlement and counter-party risk and, in so far as the limits laid down in Articles 111 to 117 are authorised to be exceeded, for large exposures exceeding such limits, the capital requirements determined in accordance with [Directive 93/6/EEC**,** Chapter V, Section 4];	(b) in respect of their trading-book business, for position risk, settlement and counter-party risk and, in so far as the limits laid down in Articles 111 to 117 are authorised to be exceeded, for large exposures exceeding such limits, the capital requirements determined in accordance with [Directive 93/6/EEC ***Article 18 and*** Chapter V, Section 4 ***of that directive***];

Justification

Cross reference / Typographical error.

Amendment 65
Article 79, paragraph 2, point (b)

(b) the exposure must be one of a significant number of exposures with similar characteristics such that the risks associated with such lending are substantially reduced;	(b) the exposure must be one of a significant number of exposures with similar characteristics such that the risks associated with such lending are substantially reduced; ***however, requirements with regard to the degree of diversification shall not disproportionately restrict smaller credit institutions ;***

Justification

Overly stringent requirements with regard to the degree of diversification might result in business opportunities for smaller institutions being greatly restricted.

Amendment 66

Article 79, paragraph 2, point (c)

(c) the total amount owed to the credit institution and ***any*** parent ***undertaking*** and its subsidiaries, including any past due exposure, by the obligor client or group of connected clients, must not, to the knowledge of the credit institution, exceed EUR 1 million. The credit institution must take reasonable steps to acquire this knowledge.	(c) the total amount owed to the credit institution and parent ***undertakings*** and its subsidiaries, including any past due exposure, by the obligor client or group of connected clients, ***but excluding claims or contingent claims secured on real estate collateral***, must not, to the knowledge of the credit institution, exceed EUR 1 million. The credit institution must take reasonable steps to acquire this knowledge.

Amendment 67
Article 79, paragraph 2 a (new)

	(2a) The present value of retail minimum lease payments is eligible for the retail exposure class.

Amendment 68
Article 80, paragraph 3

3. For the purposes of calculating risk-weighted exposure amounts for exposures to institutions, competent authorities shall decide whether to adopt the method based on the credit quality of the central government of the jurisdiction in which the ***credit*** institution is incorporated or the method based on the credit quality of the counterparty institution in accordance with Annex VI.	3. For the purposes of calculating risk-weighted exposure amounts for exposures to institutions, competent authorities shall decide whether to adopt the method based on the credit quality of the central government of the jurisdiction in which the institution is incorporated or the method based on the credit quality of the counterparty institution in accordance with Annex VI.

Justification

Cross reference / Typographical error.

Amendment 69
Article 80, paragraph 7, introductory part

7. With the exception of exposures giving	7. With the exception of exposures giving

rise to liabilities in the form of the items referred to in points ***(1)*** to ***(8)*** of Article 57***(1)***, competent authorities may exempt from the requirements of paragraph 1 of this Article the exposures of a credit institution to a counterparty which is its parent undertaking, its subsidiary or a subsidiary of its parent undertaking, provided that the following conditions are met:

rise to liabilities in the form of the items referred to in points ***(a)*** to ***(h)*** of Article 57, competent authorities may exempt from the requirements of paragraph 1 of this Article the exposures of a credit institution to a counterparty which is its parent undertaking, its subsidiary or a subsidiary of its parent undertaking ***or an undertaking linked by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC***, provided that the following conditions are met:

Amendment 70
Article 80, paragraph 7 a (new)

7a. Competent authorities may also apply a risk weight of 0 % to exposures of credit institutions which meet the following conditions:

(a) the requirements set out in points (a), (d) and (e) of paragraph 7;

(b) the credit institution and the obligors are participants in the same institutional protection scheme which meets the requirements of Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit guarantee schemes[1] or which belongs to a joint liability scheme equal or similar to that under Article 3 point (a) of this Directive;

(c) the exposures between the members of the institutional protection scheme referred to in point (b) are guaranteed, without any limit, by the members as a whole;

(d) participants in the scheme referred to in point (b) are obliged to give advance notice of at least 24 months if they wish to leave the institutional protection scheme;

(e) the multiple use of elements eligible for the calculation of own funds ("multiple gearing") as well as any inappropriate creation of own funds between the members of the institutional

protection scheme referred to in point (b) is shall be eliminated;

(f) the institutional protection scheme referred to in point (b) disposes of suitable and uniformly stipulated systems for the monitoring and classification of risk (which gives a complete overview of the risk situation of the individual member) with corresponding possibilities of to taking influence;

(g) the institutional protection scheme referred to in point (b) conducts its own risk review which is communicated to the individual members;

(h) the adequacy of the systems referred to i point (f) has to be is approved and monitored at regular intervals by the relevant competent authorityies;

(fi) Furthermore, the institutional protection scheme referred to in point (b) publishes a report, at least once in a year, comprising an aggregated balance sheet, an aggregated profit and loss account, a situation report and a risk report of the institutional protection scheme as a whole. As part of Within the scope of the compliance with the provisions of laid down in Article 80 paragraph 7a point (f)*, *the exposures past due within the institutional protection scheme referred to in point (b) have to be are monitored in accordance ing towith Annex VII, part 4, paragraph 44(a).

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[1] OJ L 135, 31.5.1994, p. 5.

Amendment 71
Article 84, paragraph 2, subparagraph 2

Where an EU parent credit institution and its subsidiaries or an EU parent financial ***institution*** and its subsidiaries use the IRB Approach on a unified basis ***for the parent and its subsidiaries***, the competent authorities may allow minimum requirements of Annex VII, Part 4 to be met by the parent and its subsidiaries considered together.	Where an EU parent credit institution and its subsidiaries or an EU parent financial ***holding company*** and its subsidiaries use the IRB Approach on a unified basis, the competent authorities may allow minimum requirements of Annex VII, Part 4 to be met by the parent and its subsidiaries considered together.

Justification

The clarifications proposed by the Council are hereby endorsed.

Amendment 72
Article 84, paragraph 3

3. A credit institution applying for the use of the IRB Approach shall demonstrate that it has been using for the IRB exposure classes in question rating systems that were broadly in line with the minimum requirements set out in ***this*** Annex for internal risk measurement and management purposes for at least ***three*** years prior to its qualification to use the IRB Approach. ***This requirement shall apply from*** *the* ***31 December 2010 onwards.***	3. A credit institution applying for the use of the IRB Approach shall demonstrate that it has been using for the IRB exposure classes in question rating systems that were broadly in line with the minimum requirements set out in Annex ***VII, Part 4*** for internal risk measurement and management purposes for at least ***two*** years prior to its qualification to use the IRB Approach.

Justification

The Council amendment is hereby endorsed.

Amendment 73
Article 84, paragraph 4

4. A credit institution applying for the use of own estimates of LGDs and/or conversion factors shall demonstrate that it has been estimating and employing own estimates of LGDs and/or conversion factors in a manner that was broadly consistent with the minimum requirements for use of own estimates of those	4. A credit institution applying for the use of own estimates of LGDs and/or conversion factors shall demonstrate that it has been estimating and employing own estimates of LGDs and/or conversion factors in a manner that was broadly consistent with the minimum requirements for use of own estimates of those

parameters set out in ***this*** Annex for at least three years prior to qualification to use own estimates of LGDs and/or conversion factors. ***This requirement shall apply from*** *the* ***31 December 2010 onwards.***	parameters set out in Annex ***VII, Part 4*** for at least three years prior to qualification to use own estimates of LGDs and/or conversion factors.

Justification

The Council amendment is hereby endorsed.

Amendment 74
Article 86, paragraph 2, point (a)

(a) exposures to regional governments ***and*** local authorities which are treated as exposures to central governments under Subsection 1;	(a) exposures to regional governments, local authorities ***or public sector entities*** which are treated as exposures to central governments under Subsection 1;

Justification

Follows from amendment 111 of the Radwan draft report.

Amendment 75
Article 86, paragraph 4, point (a)

a) they shall be either to an individual person or persons, or to a small or medium sized entity, provided in the latter case that the total amount owed to the credit institution and to ***any*** parent ***undertaking*** and its subsidiaries by the obligor client or group of connected clients, does not, to the knowledge of the credit institution, which must have taken reasonable steps to confirm the situation, exceed EUR 1 million;	(a) they shall be either to an individual person or persons, or to a small or medium sized entity, provided in the latter case that the total amount owed to the credit institution and to parent ***undertakings*** and its subsidiaries by the obligor client or group of connected clients, ***but excluding claims or contingent claims secured on real estate collateral***, does not, to the knowledge of the credit institution, which must have taken reasonable steps to confirm the situation, exceed EUR 1 million;

Amendment 76
Article 86, paragraph 4, point (c)

(c) they are not managed individually ***in a way comparable to*** exposures in the	(c) they are not managed ***just as*** individually ***as*** exposures in the corporate

corporate exposure class;	exposure class;

Justification

Requirement (c) may not in any circumstances result in a deterioration in the quality of management of lending to small and medium-sized undertakings.

Amendment 77
Article 86, paragraph 4, point (d)

(d) they each represent one of a significant number of similarly managed exposures.	(d) they each represent one of a significant number of similarly managed exposures; ***however, requirements with regard to the degree of diversification shall not disproportionately restrict smaller credit institutions***.

Amendment 78
Article 86, paragraph 4, subparagraph 1 a (new)

	The present value of retail minimum lease payments is eligible for the retail exposure class.

Justification

The present value of retail minimum lease payments should be considered as belonging to the retail claims or contingent retail claims class in order to guarantee consistency.

Amendment 79
Article 86, paragraph 8

8. The exposure class referred to in point (g) of paragraph 1 shall include the residual value of leased properties, ***if not covered elsewhere in this Directive.***	8. The exposure class referred to in point (g) of paragraph 1 shall include the residual value of leased properties ***when the risk on this residual value is not transferred to the lessee. Conversely, when this risk is transferred to the lessee, it is a credit obligation of the lessee which must be treated accordingly.***

Justification

By definition and according to the international accounting rules, a financial lease is a financing contract whereby the risk of the residual value is transferred to the lessee. Hence, the residual value must be treated exactly as the other instalments, i.e. with a credit risk weighting and not an "other asset" risk weight. The Basel Accord clearly identifies the risk on residual value, which is a credit obligation when this risk is transferred to the lessee or belongs to the "other asset" category when the risk is kept by the lender. Unfortunately, probably by oversight, this distinction has been dropped in the Directive and must be reinserted.

Amendment 80
Article 87, paragraph 2

2. The risk-weighted exposure amounts for dilution risk for purchased receivables shall be calculated according to Annex VII, part 1, paragraph 26.	2. The risk-weighted exposure amounts for dilution risk for purchased receivables shall be calculated according to Annex VII, part 1, paragraph 26. ***However, firms may treat Invoice Discounting and Factoring as secured lending, in which case the provisions of Articles 87 and 88 relating to purchased receivables shall not apply.***

Justification

The Basel Committee did not intend to capture Factoring and Invoice Discounting business within the Purchased Receivables approach. These changes are required to enable firms to adopt the more appropriate corporate secured lending approaches for such product groups. If the Directive remains unchanged and is applied literally by member states, it would pose a significant risk to SME liquidity.

Amendment 81
Article 87, paragraph 4

4. Notwithstanding paragraph 3, the calculation of risk-weighted exposure amounts for credit risk for all exposures belonging to the exposure class referred to in point (e) of Article 86(1) shall be calculated in accordance with Annex VII, part 1, paragraphs 15 to 24 subject to approval of competent authorities. Competent authorities shall only allow a credit institution to use the approach set out in Annex VII, part 1, ***paragraphs 24 to 25***, if the credit institution	4. Notwithstanding paragraph 3, the calculation of risk-weighted exposure amounts for credit risk for all exposures belonging to the exposure class referred to in point (e) of Article 86(1) shall be calculated in accordance with Annex VII, part 1, paragraphs 15 to 24 subject to approval of competent authorities. Competent authorities shall only allow a credit institution to use the approach set out in Annex VII, part 1, ***paragraphs 23 and*** 24, if the credit

meets the minimum requirements Annex VII, part 4, paragraphs 114 to 122.	institution meets the minimum requirements Annex VII, part 4, paragraphs 114 to 122.

Justification

Cross reference / Typographical error.

Amendment 82
Article 87, paragraph 5

5. Notwithstanding paragraph 3, the calculation of risk weighted exposure amounts for credit risk for specialised lending exposures may be calculated in accordance with Annex VII, part 1, paragraph 5. Competent authorities shall publish guidance on how institutions should assign risk weights to specialised lending exposures under Annex VII, part 1, paragraph 5 and shall approve institutions assignment methodologies.	5. Notwithstanding paragraph 3, the calculation of risk weighted exposure amounts for credit risk for specialised lending exposures may be calculated in accordance with Annex VII, part 1, paragraph 5. Competent authorities shall publish guidance on how ***credit*** institutions should assign risk weights to specialised lending exposures under Annex VII, part 1, paragraph 5 and shall approve institutions assignment methodologies.

Justification
Cross reference / Typographical error.

Amendment 83
Article 87, paragraph 11, subparagraph 1

11. Where exposures ***to*** a collective investment undertaking (CIU) meet the criteria set out in Annex VI, part 1, paragraphs 74 to 75 and the credit institution is aware of all of the underlying exposures of the CIU, the credit institution shall look through to those underlying exposures in order to calculate risk-weighted exposure amounts and expected loss amounts in accordance with the methods set out in this Subsection.	11. Where exposures ***in the form of*** a collective investment undertaking (CIU) meet the criteria set out in Annex VI, part 1, paragraphs 74 to 75 and the credit institution is aware of all of the underlying exposures of the CIU, the credit institution shall look through to those underlying exposures in order to calculate risk-weighted exposure amounts and expected loss amounts in accordance with the methods set out in this Subsection.

Justification

The CIU treatment should refer to a situation in which a bank holds a stake in a CIU; this is evidenced by the fact that the CIU approach approximates the equity approach. However, the wording "exposures to CIU" can be interpreted as including exposures that banks have to CIUs (mainly derivatives).

Amendment 84
Article 87, paragraph 12, subparagraph 1 and subparagraph 2, introductory part

12. Where exposures ***to*** a CIU do not meet the criteria set out in Annex VI, Part 1, paragraphs 74 to 75, or the credit institution is not aware of all of the underlying exposures of the CIU, the credit institution shall look through to the underlying exposures and calculate risk-weighted exposure amounts and expected loss amounts in accordance with the approach set out in Annex VII, Part 1, paragraphs 17 to 19. If, for those purposes, the credit institution is unable to differentiate between private equity, exchange-traded and other equity exposures, it shall treat the exposures concerned as other equity exposures. For these purposes, non-equity exposures are assigned to one of the classes (private equity, exchange traded equity or other equity) set out in Annex VII, Part 1, paragraph 17 and unknown exposures are assigned to other equity class.	12. Where exposures ***in the form of*** a CIU do not meet the criteria set out in Annex VI, part 1, paragraphs 74 and 75, or the credit institution is not aware of all of the underlying exposures of the CIU, the credit institution shall look through to the underlying exposures and calculate risk-weighted exposure amounts and expected loss amounts in accordance with the approach set out in Annex VII, part 1, paragraphs 17 to 19. If, for those purposes, the credit institution is unable to differentiate between private equity, exchange-traded and other equity exposures, it shall treat the exposures concerned as other equity exposures. For these purposes, non equity exposures are assigned to one of the classes (private equity, exchange traded equity or other equity) set out in Annex VII, part 1, paragraph 17 and unknown exposures are assigned to other equity class.
Alternatively to the method described above, credit institutions may rely on a third party to calculate and report the average risk weighted exposure amounts based on the CIUs underling exposures ***and calculated*** in accordance with the following approaches, provided that the correctness of the calculation and the report is adequately ensured:	Alternatively to the method described above, credit institutions ***may calculate themselves or*** may rely on a third party to calculate and report the average risk weighted exposure amounts based on the CIU's underlying exposures in accordance with the following approaches, provided that the correctness of the calculation and the report is adequately ensured:

Amendment 85
Article 88, paragraph 2

2. The calculation of expected loss amounts in accordance with Annex VII, Part 1, paragraphs 27 to 33 shall be based on the same input figures of PD, LGD and the exposure value for each exposure as being used for the calculation of risk-weighted exposure amounts in accordance	2. The calculation of expected loss amounts in accordance with Annex VII, Part 1, paragraphs 27 to 33 shall be based on the same input figures of PD, LGD and the exposure value for each exposure as being used for the calculation of risk-weighted exposure amounts in accordance with Article 87. ***For defaulted exposures,***

with Article 87.	***where credit institutions use own estimates of LGDs, EL shall be EL_{BE}, the credit institution's best estimate of expected loss for the defaulted exposure according to Annex VII, Part 4, paragraph 79.***

Justification

The Council amendment is hereby endorsed. This is an adjustment to the EL/UL Approach (see amendment relating to Article 66 for explanation).

Amendment 86
Article 89, paragraph 1, point (d), point (ii)

(ii) exposures to the central government are associated with ***credit quality assessment step 1*** under Subsection 1.	(ii) exposures to the central government are associated with ***a 0% risk weight*** under Subsection 1.

Justification

The rewording proposed by the Council is hereby endorsed.

Amendment 87
Article 89, paragraph 1, point (e)

e) exposures of a credit institution to a counterparty which is its parent undertaking, its subsidiary or a subsidiary of its parent undertaking provided that the counterparty is an institution or a financial holding company, financial institution, asset management company or ancillary services undertaking subject to appropriate prudential requirements	(e) exposures of a credit institution to a counterparty which is its parent undertaking, its subsidiary or a subsidiary of its parent undertaking provided that the counterparty is an institution or a financial holding company, financial institution, asset management company or ancillary services undertaking subject to appropriate prudential requirements ***or an undertaking linked by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC*** and ***exposures between credit institutions which meet the requirements set out in Article 80(7a) and also exposures between credit institutions which are organised within a recognised joint liability scheme which provides cover for credit institutions***.

Justification

Hour-glass structured banking groups (cf justification to amendment 3) and non-

consolidating banking groups which comply with solvency guarantees as stipulated in amendment (20) should be eligible for IRB approaches.

Amendment 88
Article 89, paragraph 1, point (f)

f) equity exposures to entities whose credit obligations qualify for a zero risk weight under Subsection 1 (including those publicly sponsored entities where a zero weight can be applied).	(f) equity exposures to entities whose credit obligations qualify for a zero risk weight under Subsection 1 (including those publicly sponsored entities where a zero ***risk*** weight can be applied).

Justification

Cross reference / Typographical error.

Amendment 89
Article 89, paragraph 1, point (g a) (new)

	(ga) the exposures identified in Annex VI, Part 1, paragraph 38a meeting the conditions specified therein;

Justification

The Council amendment, whereby reserves held outside the institution may be taken into account, is hereby endorsed.

Amendment 90
Article 89, paragraph 1, point (g b) (new)

	(gb) State and State-reinsured guarantees pursuant to Annex VIII, part 2, paragraph 18.

Justification

Cross reference error. Substitution of am 44 of the Radwan draft report.

Amendment 91
Article 92, paragraph 4

4. In the case of funded credit protection, the lending credit institution shall have the right to liquidate or retain, in a timely manner, the assets from which the protection derives in the event of the default, insolvency or	4. In the case of funded credit protection, the lending credit institution shall have the right to liquidate or retain, in a timely manner, the assets from which the protection derives in the event of the default, insolvency or

bankruptcy - or other credit event set out in the transaction documentation - and, where applicable, of the custodian holding the collateral. The degree of correlation between the value of the assets relied upon for protection and the credit quality of the ***borrower*** must not be undue.	bankruptcy ***of the obligor*** – or other credit event set out in the transaction documentation – and, where applicable, of the custodian holding the collateral. The degree of correlation between the value of the assets relied upon for protection and the credit quality of the ***obligor*** must not be undue.

Justification

Cross reference / Typographical error.

Amendment 92
Article 93, paragraph 3

3. Where the risk-weighted exposure amount already takes account of credit protection under Articles 78 to 83 or Articles 84 to ***93***, as relevant, the calculation of the credit protection shall not be further recognised under this Subsection.	3. Where the risk-weighted exposure amount already takes account of credit protection under Articles 78 to 83 or Articles 84 to ***89***, as relevant, the calculation of the credit protection shall not be further recognised under this Subsection.

Justification

Correction of the cross-reference.

Amendment 93
Article 93 a (new)

	Article 93a
	When a credit institution functions as a provider of security, the consequent capital requirement shall comply with the following principles:
	(a) Where risk cover is provided without a security guarantee, the security provider shall determine his capital requirement as if the credit risk taken on derived from a direct commitment.
	(b) Where risk cover is provided with a security guarantee, and in so far as the

credit institution in such an arrangement carries not only the risk of default of the secured credit but also the risk of a possible default of the recipient of security and/or of the security guarantee, the institution shall proceed as follows:

(i) if there is an external rating by a recognised rating agency for the risk cover arrangement, taking account of all relevant risks of default from the security provider's point of view, the risk weights laid down in Articles 78 to 83 shall be applied;

(ii) if there is no rating by a recognised rating agency for the product, the risk weights for the secured credit relationship, the recipient of security and the security guarantee shall be aggregated and multiplied by the nominal amount of the security guarantee to determine the amount of the risk-weighted exposure;

(iii) aggregation of the risk weight of the security guarantee shall not apply if the credit institution is already taking this into account as an allowable position;

(iv) if as a result of the legal form of the risk cover with security provision a loss by the security provider is excluded in the event of the default of the recipient of security (e.g. by providing the security to a special purpose vehicle (SPV)), the risk weight for the security recipient may be ignored. If the legal form leads to new risks of default (e.g. creation of a cash deposit through a SPV for securities) these shall be taken into account in the aggregation;

(v) the risk weighting set by the protection provider as a result of the aggregation shall be limited to 1250 %.

Justification

The proposal contains (analogous to the Basel framework text) with two minor exceptions no provisions on the capital requirements for security providers. To ensure equal competition a harmonised arrangement is proposed, on the lines of the system of credit guarantee for a basket of exposures.

Amendment 94
Article 94, paragraph 1

Where a credit institution uses the Standardised Approach set out in ***Subsection 1*** for the calculation of risk-weighted exposure amounts for the exposure class to which the securitised exposures would be assigned under Article 79, it shall calculate the risk-weighted exposure amount for a securitisation position in accordance with Annex IX, part 4, ***paragraphs 6 to 35***.	Where a credit institution uses the Standardised Approach set out in ***Articles 78 to 83*** for the calculation of risk-weighted exposure amounts for the exposure class to which the securitised exposures would be assigned under Article 79, it shall calculate the risk-weighted exposure amount for a securitisation position in accordance with Annex IX, part 4, ***paragraphs 1 to 35***.

Justification

Cross reference / Typographical error.

Amendment 95
Article 94, paragraph 2

In all other cases, it shall calculate the risk-weighted exposure amount in accordance with Annex IX, part 4, paragraphs 36 to 74.	In all other cases, it shall calculate the risk-weighted exposure amount in accordance with Annex IX, part 4, paragraphs ***1 to 5 and*** 36 to 74.

Justification

Cross reference / Typographical error.

Amendment 96
Article 100, paragraph 1

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

Justification

The Council amendment is hereby endorsed.

Amendment 97
Article 100, paragraph 2

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

Justification

The current wording could imply that revolving exposures includes mortgages where customers can draw amounts up to an agreed limit. The proposed amendment also ensures consistency with the definition of revolving exposures in Annex VII, part 1 and paragraph 11.

Amendment 98
Article 100, paragraph 3

3. In the case of securitisations subject to an early amortisation provision of retail exposures which are uncommitted and unconditionally cancellable without prior notice, where the early amortisation is triggered by a quantitative value in respect of something other than the three months average excess spread, the competent authorities may apply a treatment which approximates closely to that prescribed in Annex IX, Part 4, paragraphs 27 to 30 for determining the conversion figure indicated.	***deleted***

Justification

The Council amendment is hereby endorsed. Paragraph 3 was moved to Annex IX, Part 4, paragraph 30a.

Amendment 99
Article 100, paragraph 4

4. Where a competent authority intends to apply a treatment in accordance with paragraph 3 in respect of a particular securitisation, it shall first of all inform the relevant competent authorities of all the other Member States. Before the application of such a treatment becomes part of the general policy approach of the competent authority to securitisations containing early amortisation clauses of the type in question, the competent authority shall consult the relevant competent authorities of all the other member States and take into consideration the views expressed. The views expressed in such consultation and the treatment adopted shall be publicly disclosed by the competent authority in question.	***deleted***

Justification

The Council amendment is hereby endorsed. Paragraph 4 was moved to Annex IX, Part 4, paragraph 30b.

Amendment 100
Article 101, paragraph 1

1. An originator credit institution or sponsor credit institution shall not, with a view to reducing potential or actual losses to investors, provide support to the securitisation beyond its contractual obligations.	1. An originator credit institution ***which, in respect of a securitisation, has made use of Article 95 in the calculation of risk-weighted exposure amounts,*** or ***a*** sponsor credit institution, shall not, with a view to reducing potential or actual losses to investors, provide support to the securitisation beyond its contractual obligations.

Justification

The Council amendment, which increases the flexibility of securitisations which are not designed to ease the burden on capital, is welcomed because it improves the opportunities to improve balance sheets.

Amendment 101
Article 101, paragraph 2

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

Justification

See Amendment to Article 101, paragraph 1 of Mr García-Margallo y Marfil

Amendment 102
Article 104, paragraph 3

3. For certain business lines, the competent authorities may under certain conditions authorise a credit institution to use an alternative indicator for determining its capital requirement for operational risk.	(3) For certain business lines, the competent authorities may under certain conditions authorise a credit institution to use an alternative indicator for determining its capital requirement for operational risk ***as set out in Annex X, Part 2, paragraphs 9 to 16***.

Justification

Missing cross-reference (Council proposal).

Amendment 103
Article 105, paragraph 1

1. Credit institutions may use Advanced Measurement Approaches based on their own ***internal*** risk measurement systems, provided that the competent authority expressly approves the use of the models concerned for calculating the own funds requirement.	1. Credit institutions may use Advanced Measurement Approaches based on their own ***operational*** risk measurement systems, provided that the competent authority expressly approves the use of the models concerned for calculating the own funds requirement.

Justification

Improved linguistic consistency (Council proposal).

Amendment 104
Article 105, paragraph 3

3. When an Advanced Measurement Approach is intended to be used by an EU parent credit institution and its subsidiaries or by the subsidiaries of an EU parent financial holding company, the competent authorities of the different legal entities shall cooperate closely as provided for in Articles ***128*** to 132. The application shall include the elements listed in Annex X, Part 3.	3. When an Advanced Measurement Approach is intended to be used by an EU parent credit institution and its subsidiaries or by the subsidiaries of an EU parent financial holding company, the competent authorities of the different legal entities shall cooperate closely as provided for in Articles ***129*** to 132. The application shall include the elements listed in Annex X, Part 3.

Justification

Corrected cross-reference (Council proposal).

Amendment 105
Article 105, paragraph 4

4. Where an EU parent credit institution and its subsidiaries or an EU parent financial ***institution and its subsidiaries*** use an Advanced Measurement Approach on a unified basis ***for the parent and its subsidiaries***, the competent authorities may allow the qualifying criteria set out in Annex X, Part 3 to be met by the parent and its subsidiaries considered together.	(4) Where an EU parent credit institution and its subsidiaries or ***the subsidiaries of*** an EU parent financial ***holding company*** use an Advanced Measurement Approach on a unified basis, the competent authorities may allow the qualifying criteria set out in Annex X, Part 3 to be met by the parent and its subsidiaries considered together.

Justification

Improved linguistic consistency (Council proposal).

Amendment 106
Article 108

A credit institution's exposure to a client or group of connected clients shall be considered a large exposure where its value is equal to or exceeds 10% of its own funds.	A credit institution's exposure to a client or group of connected clients shall be considered a large exposure where its value is equal to or exceeds 10% of its own funds.
For those purposes, Section 1 may be read without the inclusion of point (q) of	

Article 57 and Article 63(3) and shall be read without the inclusion of Article 66(2).

Justification

The Council amendment is hereby endorsed. The provision intended to prevent a lowering of the limits on large loans as a result of the EL/UL Approach was moved in accordance with Article 66(2a) (new).

Amendment 107
Article 110, paragraph 2, subparagraph 1

2. Except in the case of credit institutions relying on Article 114 for the recognition of collateral in calculating the value of exposures for the purposes of paragraphs 1, 2 and 3 of Article 111, Exposures exempted under ***Article 111*** (3) (a), (b), (c), (d), (f), (g) and (h) need not be reported as laid down in paragraph 1 and the reporting frequency laid down in point (b) of paragraph 1 may be reduced to twice a year for the exposures referred to in ***Article 111*** (3) (e) and (i), and in Articles 115 and 116.	2. Except in the case of credit institutions relying on Article 114 for the recognition of collateral in calculating the value of exposures for the purposes of paragraphs 1, 2 and 3 of Article 111, Exposures exempted under ***Article 113*** (3) (a), (b), (c), (d), (f), (g) and (h) need not be reported as laid down in paragraph 1 and the reporting frequency laid down in point (b) of paragraph 1 may be reduced to twice a year for the exposures referred to in ***Article 113*** (3) (e) and (i), and in Articles 115 and 116.

Justification

Cross reference / Typographical error.

Amendment 108
Article 110, paragraph 3

3. Member States may require the reporting of concentrated exposures to the issuers of collateral taken by the credit institution.	***deleted***

Justification

Banks normally track (concentrations in) unfunded credit protection providers by adding guarantees and credit derivatives issued by a counterparty to this counterparty's overall exposure level and by managing this overall exposure level. For netting and funded credit protection, it is irrelevant who has provided the collateral (the bank is basically only interested in having a legally effective pledge on the collateral). Also, in 99% of the cases the collateral will be provided by the client itself (exceptionally its parent). There is one important exception: receivables as collateral. There can indeed be concentrations in the underlying parties on whom a bank's client has a claim. It is however impossible for an international bank consisting of many different legal entities with different source systems to combine the data of these different receivable issuers so that these concentrations can be identified. Already, matching counterparty identifiers is impossible The operational burden

for banks would be enormous. This requirement would only be relevant for specialised banks active in limited industry sectors.

Amendment 109
Article 111, paragraph 1

1. A credit institution may not incur an exposure to a client or group of connected clients the value of which exceed 25% of its own funds. ***For these purposes and the purposes of the other provisions of this Article, Section 1 may be read without taking into account point (q) of Article 57 and Article 63(3) and shall be read without the inclusion of Article 66(2).***	1. A credit institution may not incur an exposure to a client or group of connected clients the value of which exceed 25% of its own funds.

Justification

The Council amendment is hereby endorsed. The provision intended to prevent a lowering of the limits on large loans as a result of the EL/UL Approach was moved in accordance with Article 66(2a) (new).

Amendment 110
Article 113, paragraph 3, introductory part

3. Member States ***may*** fully or partially exempt the following exposures from the application of Article 111:	3. ***For exposures incurred other than those mentioned in paragraph 2,*** Member States ***shall*** fully or partially exempt ***only*** the following exposures from the application of Article 111:

Justification

Paragraph 2 should allow exemption of intra-group exposures irrespective of maturity and not be constrained by the distinction between under and over 1 year maturities in paragraph 3(i),(j) and (k).

Where groups manage intra-group exposure and liquidity risk on an integrated basis, the imposition of an artificial maturity constraint on intra-group exposure would serve to inhibit the prudent management of liquidity risk, by forcing subsidiaries' longer term assets to be funded by the parent bank on a short term basis, and impair unjustifiably banks' ability to compete through subsidiaries in each Member State.

Amendment 111
Article 113, paragraph 3, point (c)

c) asset items constituting claims carrying the explicit guarantees of central governments, central banks, international organisations or multilateral development	(c) asset items constituting claims carrying the explicit guarantees of central governments, central banks, international organisations, multilateral development

banks, where unsecured claims on the entity providing the guarantee would achieve a 0% risk weight under Articles 78 to 83;	banks ***or public sector entities,*** where unsecured claims on the entity providing the guarantee would achieve a 0% risk weight under Articles 78 to 83;

Justification

Follows from amendment 111 of the Radwan draft report.

Amendment 112
Article 113, paragraph 3, point (d)

d) other exposures attributable to, or guaranteed by, central governments, central banks, international organisations, or multilateral development banks where unsecured claims on the entity to which the exposure is attributable or by which it is guaranteed would receive a 0% risk weight under Articles 78 to 83;	(d) other exposures attributable to, or guaranteed by, central governments, central banks, international organisations, multilateral development banks ***or public sector entities,*** where unsecured claims on the entity to which the exposure is attributable or by which it is guaranteed would receive a 0% risk weight under Articles 78 to 83;

Justification

Follows from amendment 111 of the Radwan draft report.

Amendment 113
Article 113, paragraph 3, point (f)

f) asset items and other exposures secured, to the satisfaction of the competent authorities, by collateral in the form of debt securities issued by central governments or central banks, international organisations, multilateral development banks or Member States' regional governments ***or*** local authorities, which securities constitute claims on their issuer which would receive a 0% risk weighting under Articles 78 to 83;	(f) asset items and other exposures secured, to the satisfaction of the competent authorities, by collateral in the form of debt securities issued by central governments or central banks, ***,*** international organisations, multilateral development banks, Member States' regional governments or local authorities ***or public sector entities***, which securities constitute claims on their issuer which would receive a 0% risk weighting under Articles 78 to 83;

Justification

Follows from amendment 111 of the Radwan draft report.

Amendment 114
Article 113, paragraph 3, point (l)

(l) covered bonds falling within the terms	(l) covered bonds falling within the terms

of ***Articles 78 to 83***;	of ***Annex VI, Part 1, paragraphs 65 to 67***;

Justification

Improved linguistic consistency.

Amendment 115
Article 114, paragraph 2, subparagraph 1

2. Subject to paragraph 3, a credit institution permitted to use own estimates of LGDs and conversion factors for an exposure class under Articles 84 to 89 may be permitted, where it is able to the satisfaction of the competent authorities to estimate the effects of financial collateral on their exposures separately from other LGD-relevant aspects, to recognise such effects in calculating the value of exposures for the purposes of ***Article 113(3)***.	2. Subject to paragraph 3, a credit institution permitted to use own estimates of LGDs and conversion factors for an exposure class under Articles 84 to 89 may be permitted, where it is able to the satisfaction of the competent authorities to estimate the effects of financial collateral on their exposures separately from other LGD-relevant aspects, to recognise such effects in calculating the value of exposures for the purposes of ***Article 111 (1) to (3)***.

Justification

Cross reference / Typographical error.

Amendment 116
Article 114, paragraph 2, subparagraph 3

Where a credit institution is permitted to use its own estimates of the effects of financial collateral, it must do so on a consistent basis ***to the satisfaction of the competent authorities. In particular, this approach must be adopted for all large exposures.***	Where a credit institution is permitted to use its own estimates of the effects of financial collateral, it must do so on a consistent basis ***with the approach to capital.***

Justification

These changes are required to harmonise treatment of large exposures with capital requirements. The maturity mismatch aspect will particularly affect small banks using the standardised approach to credit risk mitigation.

Amendment 117
Article 114, paragraph 2, subparagraph 4

Credit institutions permitted to use own estimates of LGDs and conversion factors for an exposure class under Articles 84 to 89 which does not calculate the value of their	Credit institutions permitted to use own estimates of LGDs and conversion factors for an exposure class under Articles 84 to 89 which does not calculate the value of their

exposures using the method referred to in the first subparagraph, may be permitted to use the approach set out in ***paragraph 9(1)*** above or the approach set out in point (o) of Article 113(3) above for calculating the value of exposures. A credit institution shall use only one of these two methods.	exposures using the method referred to in the first subparagraph, may be permitted to use the approach set out in ***paragraph 1*** above or the approach set out in point (o) of Article 113(3) above for calculating the value of exposures. A credit institution shall use only one of these two methods.

Justification

Cross reference / Typographical error.

Amendment 118
Article 114, paragraph 3, subparagraph 4

In the event that such a stress test indicates a lower realisable value of collateral taken than would be permitted to be taken into account under ***paragraphs 2 and 3*** as appropriate, ***the value of collateral permitted to be recognised in calculating the value of exposures for the purposes of Article 111(1) to (3) shall be reduced accordingly.***	In the event that such a stress test indicates a lower realisable value of collateral taken than would be permitted to be taken into account under ***paragraphs 1 and 2*** as appropriate ***the firm shall take this scenario into account under its pillar 2 capital assessment.***

Justification

Stress testing collateral is essential for robust risk management of concentration risk and it is appropriate to make such tests obligatory.

If the results of the stress tests feed into Pillar 1, however, it will create an incentive for weak stress testing. Smaller banks would be most affected as they may have to, reduce exposures to small business customers. Costs to trading firms would also increase.

Therefore the stress test should be taken into account in firms' Pillar 2 assessments and reviewed by regulators.

Amendment 119
Article 114, paragraph 3, subparagraph 5, point (a a) (new)

	(aa) policies and procedures in the event that a stress test indicates a lower realisable value of collateral than taken into account under paragraphs 2 and 3;

Justification

The appropriate response to the risk of lower realisable value of collateral is not more capital; in practice firms should request more collateral and/or diversity of collateral.

Amendment 120
Article 116

By way of derogation from Article 113(3)(i) and Article 115(2), Member States may apply a weighting of 20% to asset items constituting claims on and other exposures to ***credit*** institutions, regardless of their maturity.	By way of derogation from Article 113(3)(i) and Article 115(2), Member States may apply a weighting of 20% to asset items constituting claims on and other exposures to institutions, regardless of their maturity.

Justification

Cross reference / Typographical error.

Amendment 121
Article 121

Shares held temporarily during a financial reconstruction or rescue operation or during the normal course of underwriting or in an institution's own name on behalf of others shall not be counted as qualifying holdings for the purpose of calculating the limits laid down in ***paragraphs 1 and 2***. Shares which are not financial fixed assets as defined in Article 35(2) of Directive 86/635/EEC shall not be included.	Shares held temporarily during a financial reconstruction or rescue operation or during the normal course of underwriting or in an institution's own name on behalf of others shall not be counted as qualifying holdings for the purpose of calculating the limits laid down in ***Articles 120(1) and (2)***. Shares which are not financial fixed assets as defined in Article 35(2) of Directive 86/635/EEC shall not be included.

Justification

Cross reference / Typographical error.

Amendment 122
Article 122, paragraph 1

1. The Member States need not apply the limits laid down in ***paragraphs 1 and 2*** to holdings in insurance companies as defined in Directive 73/239/EEC and Directive ***79/267/EEC***, or in reinsurance companies as defined in Directive 98/78/EC.	1. The Member States need not apply the limits laid down in ***Articles 120(1) and (2)*** to holdings in insurance companies as defined in Directive 73/239/EEC and Directive ***2002/83/EC***, or in reinsurance companies as defined in Directive 98/78/EC.

Justification

Cross reference / Typographical error.

Amendment 123
Article 124, paragraph 4

4. Competent authorities shall establish the	4. Competent authorities shall establish the

frequency and intensity of the review and evaluation referred to in paragraph 1 having regard to the systemic importance, nature, scale and complexity of the activities of the credit institution concerned. The review and evaluation shall be updated at least on an annual basis.	frequency and intensity of the review and evaluation referred to in paragraph 1 having regard to the ***size,*** systemic importance, nature, scale and complexity of the activities of the credit institution concerned ***and taking into account the principle of proportionality***. The review and evaluation shall be updated at least on an annual basis.

Justification

In view of the small and medium-sized credit institutions present in many Member States it is essential to highlight the idea of proportional application explicitly. The rapporteur has taken up the proposal by the Council working groups in Amendment 5 and proposes a new Recital 35a. But in our view this idea should also be explicitly included in Article 124 of the directive.

Amendment 124
Article 129, paragraph 1, introductory part

1. The competent authority responsible for the exercise of supervision on a consolidated basis of EU parent credit institutions and credit institutions controlled by EU parent financial holding companies shall carry out the following tasks:	1. ***In addition to the obligations imposed by the provisions of this Directive,*** the competent authority responsible for the exercise of supervision on a consolidated basis of EU parent credit institutions and credit institutions controlled by EU parent financial holding companies shall carry out the following tasks:

Justification

The Council amendment is hereby endorsed.

Amendment 125
Article 129, paragraph 1, point (a)

(a) supervisory overview and assessment of compliance with the requirements laid down in Articles 71, 72(1), 72(2) and 73(3);	***deleted***

Justification

The deletion of paragraph 1, point (a) proposed by the Council is endorsed, because it will enable misunderstandings regarding the responsibilities of the supervisor responsible for consolidation to be avoided.

Amendment 126
Article 129, paragraph 1, point (c)

(c) planning and coordination of supervisory activities in going concern as well as in emergency situations, including in relation to the activities in Article 124, in cooperation with the competent authorities involved, ***and in relation to Articles 43 and 141.***	(c) planning and coordination of supervisory activities in going concern as well as in emergency situations, including in relation to the activities in Article 124, in cooperation with the competent authorities involved.

Justification

See justification to Amendment to Article 129, paragraph 1, introductory part by J. Purvis.

Amendment 127
Article 129 paragraph 2

2. In the case of applications for the permissions referred to in Articles 84(1), 87(9) and 105, respectively, submitted by an EU parent credit institution and its subsidiaries, or jointly by the subsidiaries of an EU parent financial holding company, the competent authorities shall ***work together, in full consultation,*** to ***determine whether or not to grant*** the ***permission sought*** and to determine the terms and conditions, if any, to which such permission should be subject.	2. In the case of applications for the permissions referred to in Articles 84(1), 87(9) and 105, respectively, submitted ***to the competent authority referred to in paragraph 1*** by an EU parent credit institution and its subsidiaries, or jointly by the subsidiaries of an EU parent financial holding company, the competent authorities shall ***do everything within their power*** to ***reach a joint decision on*** the ***application within six months*** and to determine the terms and conditions, if any, to which such permission should be subject.
An application as referred to in the first subparagraph shall ***be submitted only to*** the competent authority referred to in paragraph 1.	***The period*** referred to in the first subparagraph shall ***begin on the date of receipt of the complete application by*** the competent authority referred to in paragraph 1***, which shall forward the complete application to the other competent authorities without delay. In the absence of a joint decision between the competent authorities within six months, the competent authority referred to in paragraph 1 shall make its own decision on the application, taking into account the views and reservations of the other competent authorities expressed during the six-month period.***

The competent authorities shall in a single document agree together, within no more than six months, their determination on the application. This document shall be provided to the applicant. In the absence of a determination within six months, the competent authority referred to in paragraph 1 shall make its own determination on the application.		
		A joint decision pursuant to the first subparagraph and a decision pursuant to the second subparagraph shall be drawn up, together with a full statement of reasons, by the competent authority referred to in paragraph 1 and furnished to the applicant and to the other competent authorities. Any applicant may appeal against a decision concerning itself. Save where otherwise provided by this Directive, applications submitted pursuant to the first subparagraph shall follow the legal provisions and procedures of the Member State in which the competent authority referred to in paragraph 1 is located. A decision taken pursuant to the first and second subparagraphs shall take unlimited effect, without further formalities, as soon it takes effect in the Member State whose authority has taken the decision.

Justification

The proposed changes are intended to clarify the parties to the procedure and their legal position, as well as the legal provisions under which the procedure is carried out, in the interests of legal certainty and consistency in transposition into the respective national legislative provisions.

Amendment 128

Article 130, paragraph 1

1. Where an emergency situation arises, which potentially jeopardises the stability***, including the integrity,*** of the financial system, the competent ***authorities*** responsible for the exercise of supervision on a consolidated basis shall alert as soon as is practicable, subject to Title V, Chapter 1, Section 2, the authorities referred to in Article 49(a) and Article 50. This obligation shall apply to all competent authorities identified under Articles 125 and 126 in relation to a particular group, and to the competent authority identified under paragraph 1 of Article 129.	1. Where an emergency situation arises ***within a banking group***, which potentially jeopardises the stability of the financial system ***in any of the Member States where entities of a group have been authorised***, the competent ***authority*** responsible for the exercise of supervision on a consolidated basis shall alert as soon as is practicable, subject to Title V, Chapter 1, Section 2, the authorities referred to in Article 49(a) and Article 50. This obligation shall apply to all competent authorities identified under Articles 125 and 126 in relation to a particular group, and to the competent authority identified under paragraph 1 of Article 129. ***Where possible, existing defined channels of communication shall be used.***

Justification

The Council amendment clarifying the procedure and channels of communication in emergency situations is hereby endorsed.

Amendment 129
Article 131, paragraph 2 a (new)

	The results subsequently obtained by the credit institutions shall, however, be subject to mutual recognition by the supervisory authorities in question. This shall apply not only to calculations on a consolidated level but also to individual closing accounts.

Justification

In view of the number of rights of choice, pan-European credit institutions will have to face differing national provisions. To avoid the administrative costs associated with dual accounting, the mutual recognition of national provisions must be introduced.

Amendment 130
Article 131, paragraph 3

The competent authorities responsible for authorising the subsidiary of a parent undertaking which is a credit institution may, by bilateral agreement, delegate their responsibility for supervision to the	The competent authorities responsible for authorising the subsidiary of a parent undertaking which is a credit institution may, by bilateral agreement, delegate their responsibility for supervision to the

competent authorities which authorised and supervise the parent undertaking so that they assume responsibility for supervising the subsidiary in accordance with this Directive. The Commission must be kept informed of the existence and content of such agreements. It shall forward such information to the competent authorities of the other Member States and to the ***Banking Advisory*** Committee.	competent authorities which authorised and supervise the parent undertaking so that they assume responsibility for supervising the subsidiary in accordance with this Directive. The Commission must be kept informed of the existence and content of such agreements. It shall forward such information to the competent authorities of the other Member States and to the ***European Banking*** Committee.

Justification

Cross reference / Typographical error.

Amendment 131
Article 132, paragraph 1, subparagraph 1 a (new)

	Information referred to in the first subparagraph shall be regarded as essential if it could materially influence the assessment of the financial soundness of a credit institution or financial institution in another Member State.

Justification

The conceptual clarification proposed by the Council is hereby endorsed.

Amendment 132
Article 132, paragraph 1, subparagraph 2

In particular, competent authorities responsible for consolidated supervision of EU companies shall ***ensure that relevant information is provided to*** competent authorities in other Member States who supervise subsidiaries of these parents. In determining the extent of relevant information, the importance of these subsidiaries within the financial system in those Member States shall be taken into account.	In particular, competent authorities responsible for consolidated supervision of EU ***parent credit institutions and credit institutions controlled by EU parent financial holding*** companies shall ***provide the*** competent authorities in other Member States who supervise subsidiaries of these parents ***with all relevant information***. In determining the extent of relevant information, the importance of these subsidiaries within the financial system in those Member States shall be taken into account.

Justification

The more consistent wording proposed by the Council is hereby endorsed.

Amendment 133
Article 132, paragraph 2

2. The competent authorities responsible for the supervision of credit institutions controlled by an EU parent credit institution shall contact the competent authority referred to in Article 129(1) when they need information regarding the implementation of approaches and methodologies set out in this Directive that may already be available to that competent authority.	2. The competent authorities responsible for the supervision of credit institutions controlled by an EU parent credit institution shall ***whenever possible*** contact the competent authority referred to in Article 129(1) when they need information regarding the implementation of approaches and methodologies set out in this Directive that may already be available to that competent authority.

Justification

The Council proposal is hereby endorsed.

Amendment 134
Article 136, paragraph 1, subparagraph 2, point (b)

(b) ***reinforcing*** the arrangements and strategies implemented to comply with Articles 22 and 123;	(b) ***requiring the reinforcement of*** the arrangements***, processes, mechanisms*** and strategies implemented to comply with Articles 22 and 123;

Justification

The more consistent wording proposed by the Council is hereby endorsed.

Amendment 135
Article 136, paragraph 1, subparagraph 2, point (e)

(e) ***reducing*** the risk inherent in activities, products and systems *by* credit institutions.	(e) ***requiring the reduction of*** the risk inherent in *the* activities, products and systems *of* credit institutions.

Justification

The Council proposal is hereby endorsed.

Amendment 136
Article 136, paragraph 2

2. A specific own funds requirement in excess of the minimum level laid down in Article 75 shall be imposed by the competent authorities at least on the credit institutions which ***have in place inadequate arrangements, processes, mechanisms and strategies for the management and coverage of their risks***, if the sole application of other measures is unlikely to ***reinforce those arrangements*** within an appropriate timeframe.	2. A specific own funds requirement in excess of the minimum level laid down in Article 75 shall be imposed by the competent authorities at least on the credit institutions which ***do not meet the requirements laid down in Articles 22, 109 and 123, or in respect of which a negative determination has been made on the issue described in Article 124, paragraph 3***, if the sole application of other measures is unlikely to ***improve the arrangements, processes, mechanisms and strategies sufficiently*** within an appropriate timeframe.

Justification

The Council proposal is hereby endorsed.

Amendment 137
Article 137, paragraph 2

2. Member States shall provide that their competent authorities may carry out, or have carried out by external inspectors, on-the-spot inspections to verify information received from mixed-activity holding companies and their subsidiaries. If the mixed-activity holding company or one of its subsidiaries is an insurance undertaking, the procedure laid down in Article 140(1) may also be used. If a mixed-activity holding company or one of its subsidiaries is situated in a Member State other than that in which the credit institution subsidiary is situated, on-the-spot verification of information shall be carried out in accordance with the procedure laid down in ***Article 140(1)***.	2. Member States shall provide that their competent authorities may carry out, or have carried out by external inspectors, on-the-spot inspections to verify information received from mixed-activity holding companies and their subsidiaries. If the mixed-activity holding company or one of its subsidiaries is an insurance undertaking, the procedure laid down in Article 140(1) may also be used. If a mixed-activity holding company or one of its subsidiaries is situated in a Member State other than that in which the credit institution subsidiary is situated, on-the-spot verification of information shall be carried out in accordance with the procedure laid down in ***Article 141***.

Justification

Cross reference / Typographical error.

Amendment 138
Article 143, paragraph 3, subparagraph 1

3. In the absence of such equivalent supervision, Member States shall apply the provisions of ***Article 52*** this Directive to the credit institution by analogy or shall allow their competent authorities to apply other appropriate supervisory techniques which achieve the objectives of supervision on a consolidated basis of credit institutions.	3. In the absence of such equivalent supervision, Member States shall apply the provisions of this Directive to the credit institution by analogy or shall allow their competent authorities to apply other appropriate supervisory techniques which achieve the objectives of supervision on a consolidated basis of credit institutions.

Justification

Cross reference / Typographical error.

Amendment 139
Article 144, paragraph 1, subparagraph 2

The disclosures provided for in the first subparagraph shall be sufficient to enable a meaningful comparison of the approaches adopted by the competent authorities of the different Member States.	The disclosures provided for in the first subparagraph shall be sufficient to enable a meaningful comparison of the approaches adopted by the competent authorities of the different Member States. ***The disclosures shall be published with a common format, and updated regularly. The disclosures shall be accessible at a single electronic location.***

Justification

The Council proposal promoting the comparability of supervisory practices is welcomed.

Amendment 140
Article 145, paragraph 3 a (new)

	3a. The banks credit institutions shall be called upon to disclose their rating decisions in writing, and comprehensibly, to SME and other corporate applicants for loans. Should a voluntary undertaking by the sector in this regard prove inadequate, national legislative measures shall be adopted. Credit institutions' administrative costs in this regard shall be proportionate to the size of the loan.

Amendment 141
Article 146, paragraph 1

1. Notwithstanding Article 145, ***competent authorities shall permit*** credit institutions ***not to make*** one or more *of the* disclosures listed in Annex XII, Part 2 if ***the credit institution concerned considers that*** the information provided by such disclosures is not, in the light of the criterion specified in Annex XII, Part 1, paragraph 1, ***to be*** regarded as material.	1. Notwithstanding Article 145, credit institutions ***may omit*** one or more *of the* disclosures listed in Annex XII, Part 2 if the information provided by such disclosures is not, in the light of the criterion specified in Annex XII, Part 1, paragraph 1, regarded as material.

Justification

The Council proposal whereby the decision concerning the disclosure of certain information shifts from the supervisors to the credit institutions is hereby endorsed.

Amendment 142
Article 146, paragraph 2

2. Notwithstanding Article 145, ***competent authorities shall permit*** credit institutions ***not to publish*** one or more items of information included in the disclosures listed in Annex XII, Parts 2 and 3 ***if the credit institution concerned considers that*** those items would include information which, in the light of the criteria specified in Annex XII, Part 1, paragraphs 2 and 3, is ***to be*** regarded as proprietary or confidential.	2. Notwithstanding Article 145, credit institutions ***may omit*** one or more items of information included in the disclosures listed in Annex XII, Parts 2 and 3 those items would include information which, in the light of the criteria specified in Annex XII, Part 1, paragraphs 2 and 3, is regarded as proprietary or confidential.

Justification

The Council proposal is hereby endorsed.

Amendment 143
Article 146, paragraph 3

3. In the exceptional cases referred to in paragraph 2, the credit institution concerned shall state in its disclosures the fact that the specific items of information are not disclosed, the reason for non-disclosure, and	3. In the exceptional cases referred to in paragraph 2, the credit institution concerned shall state in its disclosures the fact that the specific items of information are not disclosed, the reason for non-disclosure, and

publish more general information about the subject matter of the disclosure requirement.	publish more general information about the subject matter of the disclosure requirement***, except where these are to be classified as secret or confidential under the criteria set out in Annex XII, Part 1, points 2 and 3***.

Justification

The requirement in 146(3) to publicly describe and explain or justify the reasons for not disclosing a piece of information must not have the effect of undermining confidence. In the absence of sufficient overall provision of individual details, such a requirement may mean that the protection sought from non-disclosure is not obtained. To clarify, Article 146(3) should therefore also say that the requirement to explain non-disclosure of a fact can only apply where this does not reduce the area and effect of protection.

Amendment 144
Article 148, paragraph 1

1. ***Competent authorities shall permit*** credit institutions ***to*** determine the appropriate medium, location and means of verification to comply effectively with the disclosure requirements laid down in Article 145. To the degree feasible, all disclosures shall be provided in one medium or location.	1. **C**redit institutions ***may*** determine the appropriate medium, location and means of verification to comply effectively with the disclosure requirements laid down in Article 145. To the degree feasible, all disclosures shall be provided in one medium or location.

Justification

The Council proposal is hereby endorsed.

Amendment 145
Article 150, paragraph 1, introductory part

1. Without prejudice, regarding own funds, to the proposal that the Commission is to submit pursuant to Article 62, the ***amendments*** in the following areas shall be adopted in accordance with the procedure referred to in Article 151:	1. Without prejudice, regarding 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 in accordance with the procedure referred to in Article 151:

Justification

The rapporteur considers that the term 'amendments' is much broader than the term 'technical adjustments'. The substantial widening of the Commission's powers that this engenders, not least in connection with existing implementing powers, is unacceptable.

Amendment 146
Article 150, paragraph 1, point (d)

(d) ***amendments*** to the list in Article 2;	(d) ***technical adjustments*** to the list in Article 2;

Justification

List 2 encompasses institutions such as central banks which are excluded from the scope of this Directive. This power is too far-reaching, because if the Commission were empowered to undertake 'amendments', as proposed, it might exclude whole classes of institutions from the scope of this Directive. The term 'technical adjustments' is therefore more appropriate.

Amendment 147
Article 150, paragraph 1, point (h)

(h) ***amendments to*** *Article* 56 to 67 ***in order to take into account*** developments in accounting standards or requirements ***set out in*** Community legislation;	(h) ***technical adjustments in*** *Articles* 56 to 67 ***and in Article 74 as a result of*** developments in accounting standards or requirements ***which take account of*** Community legislation ***or with regard to convergence of supervisory practices***;

Justification

The rapporteur considers that it must be made clear that changes to international accounting standards are not taken into account automatically, but that legal procedures laid down for that purpose take place at European level.

Amendment 148
Article 150, paragraph 1, point (j)

(j) the amount specified in Article 79(2)(c) ***and in*** Article 86(4)(a) to take into account the effects of inflation;	(j) the amount specified in ***Article 4(6a),*** Article 79(2)(c) Article 86(4)(a)***, Article 89(1)ba and Annex VII, part 1, paragraph 4 and Annex VII, part 2, paragraph 14*** to take into account the effects of inflation;

Justification

Replaces amendment 76 of the Radwan draft report in order to take account of Article 89(1)ba (new).

Amendment 149
Article 150, paragraph 1, point (l)

(l) adjustment of the provisions in Annexes V to XII in order to take account of developments on financial markets in particular new financial products, or in accounting standards or requirements ***set out in*** Community legislation;	(l) adjustment of the provisions in Annexes V to XII in order to take account of developments on financial markets *(*in particular new financial products*)* or in accounting standards or requirements ***which take account of*** Community legislation***, or with regard to convergence of supervisory practices***;

Justification

See amendment relating to Article 150(1)(h).

Amendment 150
Article 150, paragraph 2, point (b)

(b) a temporary reduction in the minimum level of own funds laid down in Article 75 the risk weights laid down in Title V, Chapter 2, Section 3 in order to take account of specific circumstances;	(b) a temporary reduction in the minimum level of own funds laid down in Article 75 ***and/or*** the risk weights laid down in Title V, Chapter 2, Section 3 in order to take account of specific circumstances;

Justification

Cross reference / Typographical error.

Amendment 151
Article 150, paragraph 2, point (e)

(e) specification of the format, structure, contents list and annual publication date of the disclosures provided for in ***Article 114***;	(e) specification of the format, structure, contents list and annual publication date of the disclosures provided for in ***Article 144***;

Justification

Incorrect cross-reference.

Amendment 152
Article 150, paragraph 2 a (new)

2a. None of the implementing measures enacted may change the provisions of this Directive.

Justification

The insertion of paragraph 2a is necessary in order to safeguard the rights of Parliament.

Amendment 153
Article 150 a (new)

Article 150a

Article 150 shall not be applied until the conditions to which the powers of the Parliament, the Commission and the Council of the European Union are subject under Decision 1999/468/EC are modified along the lines of Article I - 36 of the Treaty establishing a Constitution for Europe.

Amendment 154
Article 152, paragraph 1

1. Credit institutions calculating risk-weighted exposure amounts in accordance with Articles 84 to 89 ***or using the Advanced Measurement Approaches as specified in Article 105 for the calculation of their capital requirements for operational risk*** shall during the first, second and third twelve-month periods after ***the date specified in Article 157*** provide own funds which are at all times more than or equal to the amounts indicated in paragraphs 2, 3 and 4.	1. Credit institutions calculating risk-weighted exposure amounts in accordance with Articles 84 to 89 shall during the first, second and third twelve-month periods after ***31 December 2006*** provide own funds which are at all times more than or equal to the amounts indicated in paragraphs 2, 3 and 4.

Justification

The Council amendment is hereby endorsed.

Amendment 155
Article 152, paragraph 1 a (new)

1a. Credit institutions using the Advanced Measurement Approaches as specified in Article 105 for the calculation of their capital requirements for operational risk shall, during the second and third twelve-month periods after 31 December 2006, provide own funds which are at all times more than or equal to the amounts indicated in paragraphs 3 and 4.

Justification

The Council amendment is hereby endorsed.

Amendment 156
Article 152, paragraph 2

2. For the first twelve-month period referred to in paragraph 1, the amount of own funds shall be 95% of the total minimum amount of own funds that would be required to be held during that period by the credit institution under Article 4 of Directive 93/6/EEC as that Directive and Directive 2000/12/EC stood prior to the date specified in ***Article 157*** of this Directive.	2. For the first twelve-month period referred to in paragraph 1, the amount of own funds shall be 95% of the total minimum amount of own funds that would be required to be held during that period by the credit institution under Article 4 of Directive 93/6/EEC as that Directive and Directive 2000/12/EC stood prior to the date specified in ***Article 157(1)*** of this Directive.

Justification

Cross reference / Typographical error.

Amendment 157
Article 152, paragraph 3

3. For the second twelve-month period referred to in paragraph 1, the amount of own funds shall be 90% of the total minimum amount of own funds that would be required to be held during that period by the credit institution under Article 4 of Directive 93/6/EEC as that Directive and Directive 2000/12/EC stood prior to the date specified in ***Article 157*** this Directive.	3. For the second twelve-month period referred to in paragraph 1, the amount of own funds shall be 90% of the total minimum amount of own funds that would be required to be held during that period by the credit institution under Article 4 of Directive 93/6/EEC as that Directive and Directive 2000/12/EC stood prior to the date specified in ***Article 157(1) of*** this Directive.

Justification

Cross reference / Typographical error.

Amendment 158
Article 152, paragraph 4

4. For the third twelve-month period referred to in paragraph 1, the amount of own funds shall be 80% of the total minimum amount of own funds that would be required to be held during that period by the credit institution under Article 4 of Directive 93/6/EEC as that Directive and Directive 2000/12/EC stood prior to the date specified in ***Article 157*** of this Directive.	4. For the third twelve-month period referred to in paragraph 1, the amount of own funds shall be 80% of the total minimum amount of own funds that would be required to be held during that period by the credit institution under Article 4 of Directive 93/6/EEC as that Directive and Directive 2000/12/EC stood prior to the date specified in ***Article 157(1)*** of this Directive.

Justification

Cross reference / Typographical error.

Amendment 159
Article 152, paragraph 5

5. Compliance with the requirements of paragraphs 1 to 4 shall be on the basis of amounts of own funds fully adjusted to reflect differences in the calculation of own funds under Directive 2000/12/EC and Directive 93/6/EEC as those Directives stood prior to the date specified in ***Article 157*** of this Directive and the calculation of own funds under this Directive deriving from the separate treatments of expected loss and unexpected loss under Articles 84 to 89 of this Directive.	5. Compliance with the requirements of paragraphs 1 to 4 shall be on the basis of amounts of own funds fully adjusted to reflect differences in the calculation of own funds under Directive 2000/12/EC and Directive 93/6/EEC as those Directives stood prior to the date specified in ***Article 157(1)*** of this Directive and the calculation of own funds under this Directive deriving from the separate treatments of expected loss and unexpected loss under Articles 84 to 89 of this Directive.

Justification

Cross reference / Typographical error.

Amendment 160
Article 152, paragraph 7

7. Until ***31 December 2007*** credit institutions may treat the articles constituting the Standardised Approach set out in Title V, Chapter 2, Section 3, Subsection 1 as being replaced by Articles 42 to 46 of Directive 2000/12/EC as those articles stood prior to ***the date referred to in Article 157***.	7. Until ***1 January 2008*** credit institutions may treat the articles constituting the Standardised Approach set out in Title V, Chapter 2, Section 3, Subsection 1 ***and the Simple IRB Approach as set out in Subsection 2*** as being replaced by Articles 42 to 46 of Directive 2000/12/EC as those articles stood prior to ***31 December 2007.***

Justification

Incorporates the Council proposal, bearing in mind that not only banks that have opted for the standardised approach but also banks that have chosen the Simple IRB Approach can choose when in the period from 1.1.2007 to 1.1.2008 to begin implementing Basel II.

Amendment 161
Article 152, paragraph 8, point (a)

(a) the provisions of that Directive referred to in Articles 42 to 46 shall apply as they stood prior to the date referred to in ***Article 157***;	(a) the provisions of that Directive referred to in Articles 42 to 46 shall apply as they stood prior to the date referred to in ***Article 157(1)***;

Justification

Cross reference / Typographical error.

Amendment 162
Article 152, paragraph 8, point (e)

(e) the treatment set out in Article 43(3) of that Directive shall apply to derivative instruments listed in Annex IV of that Directive whether on- or off-balance sheet and the figures produced by the treatment set out in ***that Annex*** shall be considered risk-weighted exposure amounts;	(e) the treatment set out in Article 43(3) of that Directive shall apply to derivative instruments listed in Annex IV of that Directive whether on- or off-balance sheet and the figures produced by the treatment set out in ***Annex III*** shall be considered risk-weighted exposure amounts;

Justification

Cross reference / Typographical error.

Amendment 163
Article 152, paragraph 10

10. Where the discretion referred to in paragraph 7 is exercised the capital requirement for operational risk under ***Article 75(e)*** shall be reduced by the percentage representing the ratio of the value of the credit institution's exposures for which risk-weighted exposure amounts are calculated in accordance with the discretion referred to in paragraph 7 to the total value of its exposures.	10. Where the discretion referred to in paragraph 7 is exercised the capital requirement for operational risk under ***Article 75(d)*** shall be reduced by the percentage representing the ratio of the value of the credit institution's exposures for which risk-weighted exposure amounts are calculated in accordance with the discretion referred to in paragraph 7 to the total value of its exposures.

Justification

Cross reference / Typographical error.

Amendment 164
Article 152, paragraph 11

11. Where a credit institution calculates risk-weighted exposure amounts for all of its exposures in accordance with the discretion referred to in paragraph 7, Articles 48 to 50 of Directive 2000/12/EC relating to large exposures may apply as they stood prior to ***the date referred to in Article 157***.	11. Where a credit institution calculates risk-weighted exposure amounts for all of its exposures in accordance with the discretion referred to in paragraph 7, Articles 48 to 50 of Directive 2000/12/EC relating to large exposures may apply as they stood prior to ***31 December 2006***.

Justification

The Council amendment is hereby endorsed.

Amendment 165
Article 152, paragraph 12

12. Where the discretion referred to in paragraph 7 is exercised, references to Articles ***46*** to ***52*** of this Directive shall be read as references to Articles 42 to 46 of Directive 2000/12/EC as those articles stood prior to ***the date referred to in Article 157***.	12. Where the discretion referred to in paragraph 7 is exercised, references to Articles ***78*** to ***83*** of this Directive shall be read as references to Articles 42 to 46 of Directive 2000/12/EC as those articles stood prior to ***31 December 2006***.

Justification

The Council amendment is hereby endorsed.

Amendment 166
Article 152, paragraph 12 a (new)

	12a. Where the discretion referred to in paragraph 7 is exercised, or where a credit institution is covered by Article 157(2), Articles 124, 145 and 149 shall not apply before the date referred to therein.

Justification

There is a need to clarify the point that Pillars II and III will apply in the transitional period only if an institution is also applying Pillar I. This must be the case not only for the Standardised Approach but also for the two progressive approaches. The three pillars are

strongly interdependent and cannot be implemented separately from one another in any of the three approaches.

Amendment 167
Article 152, paragraph 12 b (new)

12b. Credit institutions may also calculate the comparative size pursuant to paragraphs 1 to 4 by means of the average own funds requirement for 2005 and 2006 and the total balance sheet growth for years 2007 to 2009.

Justification

The directive stipulates that credit institutions implementing progressive approaches (IRB, AMA) to ascertain their own fund requirements must carry out 'floor calculations' in the years 2007 to 2009. It is specifically stated that the own capital supply in 2007 must represent at least 95 % (in 2008 at least 90 % and in 2009 at least 80 %) of the minimum capital requirements that the institution would have to reserve when implementing Basel I. This burdensome obligation is not justified, as the complete Basel I data and calculation machinery would have to run for another three years – in parallel with the new data collection – and possibly even longer. Since the institutions are already facing substantial conversion costs, we should here endeavour to avoid unnecessary extra expenditure. The competent authorities should be permitted to specify and authorise simplified procedures in this regard.

Amendment 168
Article 153, paragraph 1

In the calculation of risk-weighted exposure amounts for exposures arising from property leasing transactions concerning offices or other commercial premises situated in their territory and meeting the criteria set out in Annex VI, part 1, paragraph 51, the competent authorities may, until 31 December 2012 allow a 50% risk weighting to be applied without the application of Annex VI, part 1, ***paragraphs 55 and 56***.	In the calculation of risk-weighted exposure amounts for exposures arising from property leasing transactions concerning offices or other commercial premises situated in their territory and meeting the criteria set out in Annex VI, part 1, paragraph 51, the competent authorities may, until 31 December 2012 allow a 50% risk weighting to be applied without the application of Annex VI, part 1, ***paragraphs 52 and 53***.

Justification

Cross reference / Typographical error.

Amendment 169
Article 153, paragraph 2 a (new)

2a. In the calculation of risk weighted exposure amounts for the purposes of Annex VI, part 1, paragraph 4, until 31

December 2012 the same risk weighting shall be applied in relation to exposures to Member States' central governments or central banks denominated and funded in the domestic currency of any Member State as would be applied to such exposures denominated and funded in their domestic currency.

Justification

The Directive amends the rules relating to risk weights are applied to government debt denominated and funded in a currency other than the domestic currency. Without the suggested amendment, the risk weights, as a consequence of the EU membership compared to the pre-accession status, for several new Member States holding debt denominated in euro would significantly increase. This would make it difficult for these Member States to adopt the single currency by imposing costs on Member States in the process of accession to the euro-zone when new debt issued will be denominated in euro and previously issued debt will gradually be converted into euro. Furthermore, the higher risk weights would also make it more costly for investors in other Member States to invest in such new Member States, hindering the single market.

Therefore a six-year long transitional period till the end of 2012 is deemed necessary during which the same risk-weights shall be applied to the exposures to Member States' central governments or central banks denominated in domestic currency and in euro. This will contribute to ensuring new Member States (first of all Visegrad countries and possibly Romania and Bulgaria) prepare smoothly for the accession to the euro-zone.

Amendment 170
Article 154, paragraph 1 a (new)

1a. Until 31 December 2011, the competent authorities of each Member State may, for the purposes of Annex VI, part 1, paragraph 58, set the number of days past due up to a figure of 180 for those exposures indicated in Annex VI, part 1, paragraphs 13 to 18 and 39 to 41, if local conditions make such adjustment appropriate. The specific number may differ across product lines.

Competent authorities which do not exercise the discretion provided for in the first subparagraph in relation to exposures in their territory may set a

higher number of days for exposures to counterparts situated in the territories of other Member States, the competent authorities of which have exercised that discretion. The specific number shall fall within 90 days and such figures as the other competent authorities have set for exposures to such counterparties within their territory.

Amendment 171
Article 154, paragraph 1

1. The requirements in Article 84(3) and (4) shall apply from the 31 December 2009.	***1b. For credit institutions applying for the use of the IRB Approach before 2010, subject to the approval of the competent authorities, the two years' use requirement prescribed in Article 84 paragraph 3 may be reduced to a period not shorter than one year until 31 December 2010.***
	1c. For credit institutions applying for the use of own estimates of LGDs and/or conversion factors, the three year use requirement prescribed in Article 84 paragraph 4 may be reduced to two years until 31 December 2010.

Amendment 172
Article 154, paragraph 1 d (new)

1d Until 31 December 2012, the competent authorities of each Member State may allow credit institutions to continue to apply to participations of the type set out in Article 57(o) acquired before the entry into force of this Directive the treatment set out in Article 38 of Directive 2000/12/EC as that Article stood prior to the date referred to in Article 157(1).

Amendment 173
Article 154, paragraph 3, subparagraph 1

Until 31 December 2017, the competent authorities of the Member States may exempt from the IRB treatment certain equity exposures held at 31 December 2007.	Until 31 December 2017, the competent authorities of the Member States may exempt from the IRB treatment certain equity exposures held at 31 December 2007. ***When the competent authorities of a Member State allow such an exemption, it shall be extended to all equity exposures held by EU subsidiaries of credit institutions in that Member State, as well as to equity exposures held in another Member State that are issued by an issuer established in that Member State.***

Justification

The 10-year grandfathering provisions for equity, under which Member State will be allowed to exempt from the IRB treatment certain equity exposures held on 31 December 2007 until 31 December 2017 is subject to national discretion. This will create an unlevel playing field within the EU. The 10-year grandfathering provisions for equity, under which Member State will be allowed to exempt from the IRB treatment certain equity exposures held on 31 December 2007 until 31 December 2017 is subject to national discretion. This will create an unlevel playing field within the EU. Thus at a minimum, in case a host supervisor allows the grandfathering provision in its home country, this provision should be automatically extended to equity exposures held by foreign subsidiaries of banks in this host country as well as to equity exposures held in another country that are issued by an equity issuer established in the host country.

Amendment 174
Article 156, paragraph 2

Based on that analysis and taking into account the contribution of the European Central Bank, the Commission shall draw up a biennial report and submit it to the	Based on that analysis and taking into account the contribution of the European Central Bank, the Commission shall draw up a biennial report and submit it to the

European Parliament and to the Council, together with any appropriate proposals.	European Parliament and to the Council, together with any appropriate proposals. ***Contributions from credit taking and credit lending parties shall be adequately acknowledged when the report is drawn up.***

Amendment 175
Article 156, paragraph 2 a (new)

	The Commission shall four years after the date referred to in Article 157(2) review and report on the application of this Directive with particular attention to all aspects of Articles 68–73, 80(7), 80(7a) and 129, and shall submit this report to the Parliament and the Council together with any appropriate proposals.

Amendment 176
Article 157, paragraph 1, subparagraph 2

Notwithstanding paragraph 2, ***they*** shall apply those provisions from ***31 December 2006***.	Notwithstanding paragraph 2, ***Member States*** shall apply those provisions from ***1 January 2007***.

Justification

Since the legislation's entry into force on the last day of the year would entail an unjustifiable burden with regard to accounting work the rapporteur, like the Council, argues for an initial delay of a notional second, to 1 January of the following year.

Amendment 177
Article 157, paragraph 2

2. Member States shall apply, by ***31 December 2007*** at the latest, and not earlier, the laws regulations and administrative provisions necessary to comply with Articles 87(9) and 105.	2. Member States shall apply, by ***1 January 2008*** at the latest, and not earlier, the laws regulations and administrative provisions necessary to comply with Articles 87(9) and 105.

Justification

See justification to the amendment relating to Article 157(1), subparagraph 2.

Amendment 178
Article 158, paragraph 1

1. as amended by the Directives set out in ***Annex XV***, part A, is hereby repealed without prejudice to the obligations of the Member States concerning the deadlines for transposition of the said Directives listed in ***Annex XV***, part B.	1. ***Directive 2001/12/EC*** as amended by the Directives set out in ***Annex XIII***, part A, is hereby repealed without prejudice to the obligations of the Member States concerning the deadlines for transposition of the said Directives listed in ***Annex XIII***, part B.

Justification

Cross reference / Typographical error.

Amendment 179
Article 158, paragraph 2

2. References to the repealed Directives shall be construed as references to this Directive and should be read in accordance with the correlation table in ***Annex XVI***.	2. References to the repealed Directives shall be construed as references to this Directive and should be read in accordance with the correlation table in ***Annex XIV***.

Justification

Cross reference / Typographical error.

Amendment 180
Annex III, heading 2, paragraph 3 (after Table 1)

For the purpose of calculating the potential future exposure in accordance with step (b) the competent authorities may allow credit institutions ***until 31 December 2006*** to apply the following percentages instead of those prescribed in Table 1 provided that the institutions make use of the option set out in ***Article 11a*** of Directive 93/6/EEC for contracts within the meaning of paragraph 3(b) and (c) of Annex IV:	For the purpose of calculating the potential future exposure in accordance with step (b) the competent authorities may allow credit institutions to apply the following percentages instead of those prescribed in Table 1 provided that the institutions make use of the option set out in ***Annex IV, paragraph 21*** of Directive ***[***93/6/EEC***]*** for contracts within the meaning of paragraph 3(b) and (c) of Annex IV:

Justification

Cross reference / Typographical error.

Amendment 181
Annex V, heading 6 a (new)

6a. MARKET RISKS

Justification

The Council's proposal to extend the list of risks to be taken into account is hereby endorsed.

Amendment 182
Annex V, paragraph 9 a (new)

9a. Policies and processes for the measurement and management of all material sources and effects of market risks shall be implemented.

Justification

See justification to the amendment relating to Annex V, heading 6a (new).

Amendment 183
Annex VI, Part 1, paragraph 2

2. Exposures to central governments and central banks for which a credit assessment by a nominated ECAI is available shall be assigned a risk weight according to Table 1 in accordance with the assignment by the competent authorities of the credit assessments of eligible ECAIs to six steps in a credit quality assessment scale.	2. ***Subject to paragraph 3,*** exposures to central governments and central banks for which a credit assessment by a nominated ECAI is available shall be assigned a risk weight according to Table 1 in accordance with the assignment by the competent authorities of the credit assessments of eligible ECAIs to six steps in a credit quality assessment scale.

Justification

The proposed amendment ensures that the European Central Bank will in any case be assigned a risk weight of 0, as provided for in paragraph 3. The proposal is hereby endorsed.

Amendment 184
Annex VI, Part 1, paragraph 4

4. ***Subject to the discretion of competent authorities,*** exposures to ***their*** central	4. Exposures to ***Member States'*** central government***s*** and central bank***s***

government and central bank denominated and funded in the domestic currency ***may*** be assigned a risk weight ***which is lower than that indicated in paragraph 2***.	denominated and funded in the domestic currency ***of that central government and central bank shall*** be assigned a risk weight ***of 0%***.

Justification

The removal of national discretion proposed by the Council is hereby endorsed.

Amendment 185
Annex VI, Part 1, paragraph 5

5. When the discretion in paragraph 4 is exercised by the competent authorities of one Member State, the competent authorities of another Member State may also allow their credit institutions to apply the same risk weight to exposures to that central government or central bank denominated and funded in that currency.	***deleted***

Justification

See justification to the amendment relating to Annex VI, Part 1, paragraph 4.

Amendment 186
Annex VI, Part 1, paragraph 7, introductory part

7. ***A credit assessment by an*** Export Credit Agency ***may*** be recognised ***only*** if either of the following conditions are met:	7. Export Credit Agency ***credit assessments shall*** be recognised ***by the competent authorities*** if either of the following conditions are met:

Justification

The removal of this national discretion proposed by the Council is hereby endorsed.

Amendment 187
Annex VI, Part 1, paragraph 7, point (a)

(a) ***the credit assessment*** is a consensus risk score from ***an*** Export Credit ***Agency*** participating in the OECD "Arrangement on Guidelines for Officially Supported	(a) ***it*** is a consensus risk score from Export Credit ***Agencies*** participating in the OECD "Arrangement on Guidelines for Officially

Export Credits";	Supported Export Credits";

Justification

The Council amendment is hereby endorsed.

Amendment 188
Annex VI, Part 1, paragraph 7, point (b)

(b) the Export Credit Agency publishes its credit assessments, and the Export Credit Agency subscribes to the OECD agreed methodology, and the credit assessment is associated with one of the ***seven*** minimum export insurance premiums (MEIP) that the OECD agreed methodology establishes.	(b) the Export Credit Agency publishes its credit assessments, and the Export Credit Agency subscribes to the OECD agreed methodology, and the credit assessment is associated with one of the ***eight*** minimum export insurance premiums (MEIP) that the OECD agreed methodology establishes.

Justification

The change proposed by the Council in paragraph 7, point (b) and in Table 2 is an adjustment to the Basel framework agreement.

Amendment 189
Annex VI, Part 1, paragraph 8, Table 2, column 1a (new)

	0
	0%

Justification

See justification to the amendment relating to Annex VI, Part 1, paragraph 7, point (b).

Amendment 190
Annex VI, Part 1, paragraph 9

9. Without prejudice to paragraphs 10 to 12, exposures to regional governments and local authorities shall be risk weighted as exposures to institutions. ***Exercise of this discretion by competent authorities*** is independent of the exercise of discretion ***by competent authorities*** as specified in Article 80. The preferential treatment for	9. Without prejudice to paragraphs 10 to 12, exposures to regional governments and local authorities shall be risk weighted as exposures to institutions. ***This treatment*** is independent of the exercise of discretion as specified in Article 80***(3)***. The preferential treatment for short-term exposures specified in paragraphs 30, 31and 36 shall

short-term exposures specified in paragraphs 30, 31and 36 shall not be applied.	not be applied.

Justification

The removal of this national discretion advocated by the Council is welcomed. Correction of the cross-reference.

Amendment 191
Annex VI, Part 1, paragraph 10

10. ***Subject to the discretion of competent authorities,*** exposures to regional governments and local authorities ***may*** be treated as exposures to the central government in whose jurisdiction they are established where there is no difference in risk between such exposures because of the specific revenue-raising powers of the former, and the existence of specific institutional arrangements the effect of which is to reduce their risks of default.	10. Exposures to regional governments and local authorities ***shall*** be treated as exposures to the central government in whose jurisdiction they are established where there is no difference in risk between such exposures because of the specific revenue-raising powers of the former, and the existence of specific institutional arrangements the effect of which is to reduce their risks of default. ***Competent authorities shall draw up and make public the list of the regional governments and local authorities to be risk-weighted like central governments.***

Justification

The removal of this national discretion advocated by the Council is welcomed. The additional disclosure requirement introduced instead is hereby endorsed.

Amendment by Alexander Radwan

Amendment 192
Annex VI, part 1, paragraph 10 a (new)

	10a. Exposures to churches and religious communities constituted in the form of a legal person under public law shall, in so far as they raise taxes in accordance with legislation conferring on them the right to do so, be treated as exposures to regional governments and local authorities, except that paragraph 10 shall not apply. In this

case for the purposes of Article 89 paragraph (a), approval to apply subsection 1 shall not be withheld.

Or. en

Justification

Replaces amendment 113 of the Radwan draft report.

Amendment 193
Annex VI, Part 1, paragraph 11

11. When the discretion of paragraph 10 is exercised by the competent authorities of one Member State, the competent authorities of another Member States may also allow their credit institutions to apply the same risk weight to exposures to those regional governments and local authorities.	***deleted***

Justification

Paragraph 11 is made redundant by the amendment relating to Annex VI, Part 1, paragraph 10.

Amendment 194
Annex VI, Part 1, paragraph 15

15. Subject to the discretion of competent authorities, exposures to public sector entities may be treated as exposures to institutions. Exercise of this discretion by competent authorities is independent of the exercise of discretion ***by competent authorities*** as specified in Article 80. The preferential treatment for short-term exposures specified in paragraphs 30, 31 and 36 shall not be applied.	15. Subject to the discretion of competent authorities, exposures to public sector entities may be treated as exposures to institutions. Exercise of this discretion by competent authorities is independent of the exercise of discretion as specified in Article 80(3). The preferential treatment for short-term exposures specified in paragraphs 30, 31 and 36 shall not be applied.

Justification

The deletion proposed by the Council is hereby endorsed.

Amendment 195
Annex VI, Part 1, paragraph 15 a (new)

	15a. In exceptional circumstances, exposures to public-sector entities may be treated as exposures to the central government in whose jurisdiction they are established where in the opinion of the competent authorities there is no difference in risk between such exposures because of the existence of an appropriate guarantee by the central government.

Justification

The rapporteur welcomes the Council's proposal whereby it will be possible, in exceptional circumstances, to treat exposures to public-sector entities in the same way as exposures to central government.

Amendment 196
Annex VI, Part 1, paragraph 16

16. When the discretion to treat exposures to *public sector* entities as exposures to institutions is exercised by the competent authorities of one Member State, the competent authorities of another Member State ***may*** allow their credit institutions to *risk weight* exposures to such *public sector* entities in the same manner.	16. When the discretion to treat exposures to *public-sector* entities as exposures to institutions ***or as exposures to the central government in whose jurisdiction they are established*** is exercised by the competent authorities of one Member State, the competent authorities of another Member State ***shall*** allow their credit institutions to *risk-weight* exposures to such *public-sector* entities in the same manner.

Justification

See justification to the amendment relating to Annex VI, Part 1, paragraph 15a (new).

Amendment 197
Annex VI, part 1, paragraph 19

19. For the purposes of Articles 78 to 83, the Inter-American Investment Corporation ***is*** considered to be a Multilateral Development Bank (MDB).	19. For the purposes of Articles 78 to 83, the Inter-American Investment Corporation, ***the Black Sea Trade and Development Bank and the Central American Bank for Economic Integration are*** considered to be

a Multilateral Development Bank (MDB).

Justification

The Central American Bank for Economic Integration is considered a Multilateral Development Bank and therefore it must receive exactly the same general treatment as all the others Multilateral Banks and not that of the special regime.

Amendment 198
Annex VI, part 1, paragraph 20

20. Without prejudice to paragraphs 21 and 22, exposures to multilateral development banks shall be treated in the same manner as exposures to ***credit*** institutions in accordance with paragraphs 28 to 31. The preferential treatment for short-term exposures as specified in paragraph 30, 31 and 36 shall not apply.	20. Without prejudice to paragraphs 21 and 22, exposures to multilateral development banks shall be treated in the same manner as exposures to institutions in accordance with paragraphs 28 to 31. The preferential treatment for short-term exposures as specified in paragraph 30, 31 and 36 shall not apply.

Justification

Cross reference / Typographical error.

Amendment 199
Annex VI, Part 1, paragraph 24a (new)

	24a. Without prejudice to the other provisions of paragraphs 24 to [38] , exposures to financial institutions authorised and supervised by the competent authorities responsible for the authorisation and supervision of credit institutions and subject to prudential requirements equivalent to those applied to credit institutions shall be risk-weighted as exposures to institutions.

Justification

The Council amendment ensures that financial institutions such as leasing and factoring firms are given equal treatment in the Directive, and is endorsed.

Amendment 200
Annex VI, part 1, paragraph 27 a (new)

	27a. For exposures to institutions with an original effective duration of three months or less, the weighting shall be 20 %.

Justification

A 20 % risk weighting is appropriate for such exposures by analogy with paragraph 31.

Amendment 201
Annex VI, Part 1, paragraph 33

33. If there is no short-term exposure assessment, the general preferential treatment for short-term exposures as specified in paragraph 30 shall apply to all exposures to institutions of up to three months ***initial*** maturity.	33. If there is no short-term exposure assessment, the general preferential treatment for short-term exposures as specified in paragraph 30 shall apply to all exposures to institutions of up to three months ***residual*** maturity.

Justification

The Council amendment is hereby endorsed. Taking residual maturity into account, instead of the original maturity, results in a lowering of capital requirements.

Amendment 202
Annex VI, Part 1, paragraph 36

36. ***When competent authorities have adopted for exposures to central governments and central banks the method described in paragraphs 4 to 6, subject to their discretion, exposures*** to institutions of ***an original effective*** maturity of 3 months or less denominated and funded in the national currency may be assigned, under both methods described in paragraphs 26 to 27 and 28 to 31, a risk weight that is one category less favourable than the preferential risk weight, as described in paragraphs 4 to 6, assigned to exposures to its central government.	36. ***Exposures*** to institutions of ***a residual*** maturity of 3 months or less denominated and funded in the national currency may, ***subject to the discretion of the competent authority,*** be assigned, under both methods described in paragraphs 26 to 27 and 28 to 31, a risk weight that is one category less favourable than the preferential risk weight, as described in paragraphs 4 to 6, assigned to exposures to its central government.

Justification

See justification to the amendment relating to Annex VI, Part 1, paragraph 33.

Amendment 203
Annex VI, Part 1, paragraph 37

37. No exposures of ***an original effective*** maturity of 3 months or less denominated and funded in the national currency of the borrower shall be assigned a risk weight less than 20%.	37. No exposures of ***a residual*** maturity of 3 months or less denominated and funded in the national currency of the borrower shall be assigned a risk weight less than 20%.

Justification

See justification to the amendment relating to Annex VI, Part 1, paragraph 33.

Amendment 204
Annex VI, Part 1, subheading 6.7 a (new)

	6.7a Minimum reserves required by the ECB

Justification

The Council's proposal that minimum reserve balances held with the European Central Bank be taken into account is hereby endorsed.

Amendment 205
Annex VI, Part 1, paragraph 38 a (new)

	38a. Where an exposure to an institution is in the form of minimum reserves required by the European Central Bank or by the central bank of a Member State to be held by the credit institution, Member States may permit the application of the risk weight that would be applied to exposures to the central bank of the Member State in question provided:
	(a) the reserves are held in accordance with Regulation (EC) No 1745/2003 of the European Central Bank of 12 September 2003 on the application of

	minimum reserves[1] or a subsequent replacement regulation or in accordance with national requirements in all material respects equivalent to that regulation; and
	(b) in the event of the bankruptcy or insolvency of the institution where the reserves are held, the reserves are fully repaid to the credit institution in a timely manner and are not made available to meet other liabilities of the institution.
	[1] OJ L 250, 2.10.2003, p. 10.

Justification

See justification to the amendment relating to Annex VI, Part 1, heading 6.7a (new).

Amendment 206
Annex VI, Part 1, paragraph 39, introductory part

39. Exposures for which a credit assessment by a nominated ECAI is available shall be assigned a risk weight according to ***Table 5*** in accordance with the assignment by the competent authorities of the credit assessments of eligible ECAIs to six steps in a credit quality assessment scale.	39. Exposures for which a credit assessment by a nominated ECAI is available shall be assigned a risk weight according to ***the following table*** in accordance with the assignment by the competent authorities of the credit assessments of eligible ECAIs to six steps in a credit quality assessment scale.

Justification

Drafting clarification.

Amendment 207
Annex VI, Part 1, paragraph 41

41. Exposures that comply with the criteria listed in Article 79(2) ***may, subject to the discretion of competent authorities,*** be assigned a risk weight of 75%.	41. Exposures that comply with the criteria listed in Article 79(2) ***shall*** be assigned a risk weight of 75%.

Justification

Translation error in Radwan draft report. The German wording "werden ... belegt" means "shall be assigned" not "may be assigned". This is an intentional deviation from the Council

wording.

Amendment 208
Annex VI, Part 1, paragraph 43

43. Exposures fully and completely secured, to the satisfaction of the competent authorities, by mortgages on residential property which is or shall be occupied or let by the owner shall be assigned a risk weight of 35%.	43. Exposures ***or any part of an exposure*** fully and completely secured, to the satisfaction of the competent authorities, by mortgages on residential property which is or shall be occupied or let by the owner ***or the beneficial owner in the case of personal investment companies*** shall be assigned a risk weight of 35%.

Amendment 209
Annex VI, Part 1, paragraph 44 a (new)

	44a. Subject to compliance with paragraph 45, points (a) to (d), exposures related to property leasing transactions concerning residential property and governed by statutory provisions whereby the lessor retains full ownership of the rented assets until the tenant exercises his option to purchase, may be assigned a risk weight of 35%. Paragraphs 46 and 47 shall apply for these purposes.

Justification

The Council amendment is hereby endorsed.

Amendment 210
Annex VI, Part 1, paragraph 45, introductory part

45. In the exercise of their judgement, competent authorities shall be satisfied only if the following conditions are met:	45. In the exercise of their judgement ***for the purposes of paragraphs 43 and 44***, competent authorities shall be satisfied

only if the following conditions are met:

Justification

The clarification proposed by the Council is hereby endorsed.

Amendment 211
Annex VI, Part 1, paragraph 48

48. Subject to the discretion of competent authorities, exposures fully and completely secured, to the satisfaction of the competent authorities, by mortgages on offices or other commercial premises situated within their territory may be assigned a risk weight of 50%.	48. Subject to the discretion of competent authorities, exposures ***or any part of an exposure*** fully and completely secured, to the satisfaction of the competent authorities, by mortgages on offices or other commercial premises situated within their territory may be assigned a risk weight of 50%.

Justification

Replaces amendment 125 of the Radwan draft report.

Amendment 212
Annex VI, Part 1, paragraph 50

50. Subject to the discretion of competent authorities, exposures related to property leasing transactions concerning offices or other commercial premises situated in their ***territory and governed by statutory provisions whereby the lessor retains full ownership of the rented assets until the tenant exercises his*** option to purchase, may be assigned a risk weight of 50%.	50. Subject to the discretion of ***the*** competent authorities, exposures related to property leasing transactions concerning offices or other commercial premises situated in their ***territories under which the credit institution is the lessor and the tenant has an*** option to purchase may be assigned a risk weight of 50% ***provided that the exposure of the credit institution is fully and completely secured by its ownership of the property.***

Justification
Islamic law forbids the payment of interest on borrowing. Islamic products are therefore

treated as a leasing arrangement rather than a residential mortgage.

The suggested amendment addresses technical problems with the Commission's original proposal to ensure that it fully covers the Ijara type product, by removing the 'governed by statutory provisions requirement'.

Amendment 213
Annex VI, Part 1, paragraph 55, point (a)

(a) up to 50% of the market value (or where applicable and if lower 60 % of the mortgage lending value (MLV)) ***must*** not exceed 0.3 % of the outstanding loans in any given year;	(a) ***Losses stemming from lending collateralised by commercial real estate property*** up to 50% of the market value (or where applicable and if lower 60 % of the mortgage lending value (MLV)) ***do*** not exceed 0.3 % of the outstanding loans ***collateralised by commercial real estate property*** in any given year;

Justification

Cross reference / Typographical error.

Amendment 214
Annex VI, Part 1, paragraph 55, point (b)

(b) overall losses stemming from commercial real estate ***lending*** must not exceed 0.5% of the outstanding loans in any given year.	(b) overall losses stemming from ***lending collateralised by*** commercial real estate ***property*** must not exceed 0.5% of the outstanding loans ***collateralised by commercial real estate property*** in any given year.

Justification

Cross reference / Typographical error.

Amendment 215
Annex VI, Part 1, paragraph 56

56. If either of the limits referred to in paragraph 55 is not satisfied in a given year, the eligibility to use ***this treatment*** shall cease and the ***second*** condition contained in paragraph 51(b) shall ***need to be*** satisfied ***again before it can be applied any more***.	56. If either of the limits referred to in paragraph 55 is not satisfied in a given year, the eligibility to use ***paragraph 55*** shall cease and the condition contained in paragraph 51(b) shall ***apply until the conditions in paragraph 55 are*** satisfied ***in a subsequent year***.

Justification

The clarification proposed by the Council is hereby endorsed.

Amendment 216
Annex VI, Part 1, paragraph 58, introductory part

58. Without prejudice to the provisions contained in paragraphs 59 to 62, the unsecured portion of any item that is past due for more than 90 days shall be assigned a risk weight of:	58. Without prejudice to the provisions contained in paragraphs 59 to 62, the unsecured portion of any item that is past due for more than 90 days ***and which are above a threshold defined by the competent authorities and which reflects a reasonable level of risk*** shall be assigned a risk weight of:

Amendment 217
Annex VI, Part 1, paragraph 58, point (c)

(c) 50%, subject to the discretion of competent authorities, if value adjustments are no less than 50% of the unsecured part of the exposure gross of value adjustments.	***deleted***

Justification

Several instances of national discretion should be deleted in order to enhance regulatory harmonisation in the internal market. Many of those deletions are also recommended by the national banking supervisors.

Amendment 218
Annex VI, Part 1, paragraph 65, introductory part

65. 'Covered bonds', shall mean bonds as defined in Article 22(4) of Directive 85/611/EEC and collateralised by any of the following eligible assets:	65. 'Covered bonds', shall mean bonds as defined in Article 22(4) of Directive 85/611/EEC ***(UCITS)*** and collateralised by any of the following eligible assets:

Amendment 219
Annex VI, Part 1, paragraph 65, point (a)

(a) exposures to or guaranteed by central governments***, central banks, multilateral development banks, international organisations that qualify for the credit quality assessment step 1 as set out in this Annex;***	(a) exposures to or guaranteed by central governments ***in the EU.***

Amendment 220
Annex VI, Part 1, paragraph 65, point (b)

(b) exposures to or guaranteed by public sector entities, regional governments and local authorities that are risk weighted as exposures to institutions or central governments and central banks according to paragraphs 15, 9 or 10 respectively and that qualify for the credit quality assessment step 1 as set out in this Annex;	(b) exposures to or guaranteed by public sector entities, regional governments and local ***authorities in the EU and exposures to or guaranteed by central governments, central banks, multilateral development banks, international organisations, public sector entities, regional governments and local*** authorities that are risk weighted as exposures to institutions or central governments and central banks according to paragraphs 15, ***15a,*** 9 or 10 respectively and that qualify for the credit quality assessment step 1 as set out in this Annex, ***[ba] provided that they do not exceed 20% of the nominal amount of outstanding covered bonds of issuing institutions, that qualify as a minimum for the credit quality assessment step 2 or less as set out in this Annex;***

Amendment 221
Annex VI, Part 1, paragraph 65, point (c)

(c) exposures to institutions that qualify for the credit quality assessment step 1 as set out in this Annex. The total exposure of this kind shall not exceed ***10***% of the nominal amount of outstanding covered bonds of the issuing credit institution. Exposures caused by transmission of payments ***from*** the obligors of loans secured by real estate to the	(c) exposures to institutions that qualify for the credit quality assessment step 1 as set out in this Annex. The total exposure of this kind shall not exceed ***15%*** of the nominal amount of outstanding covered bonds of the issuing credit institution. Exposures caused by transmission ***and management*** of payments ***or liquidation proceeds of*** the

holders of covered bonds shall not be comprised by the ***10%*** limit;	obligors of loans secured by real estate to the holders of covered bonds shall not be comprised by the ***15%*** limit***. Exposures to institutions with a maturity not exceeding 100 days shall not be comprised by the step 1 requirement but those institutions must as a minimum qualify for credit quality assessment step 2 as set out in this Annex;***

Justification

A 10% ceiling on the level of substitution assets that may be held in the cover pool is too restrictive for flexible management in this developing sector of financial services, and should be increased to 15%.

*Requiring holders of deposits eligible as substitution assets to be of Step 1 quality for covered bonds to carry a 10% risk weighting is excessive, especially where the deposits are of short-term duration (i.e. not exceeding 100 days). Issuers of covered bonds could be constrained from placing deposits, eligible to qualify as substitution assets in given asset pools, within the group structure (e.g. with the parent bank), which would adversely impact on liquidity and could restrict bond issuance in the Union. A step 2 credit rating for such deposit holders would reflect current market practice, while underpinning the low-risk approach which secures such deposits.*Amendment222

Annex VI, Part 1, paragraph 65, point (c), subparagraph 1a (new)

	Exposures caused by transmission and management of payments from or liquidation proceeds of the obligor of loans secured by pledged properties of the senior units or debt securities shall not be comprised in calculating the 20% limit.

Amendment 223

Annex VI, Part 1, paragraph 65, point (d)

(d) loans secured by residential real estate or shares in Finnish residential housing companies as referred to in paragraph 44 ***where only*** liens that are combined with any prior liens ***within*** 80% of the value of the pledged ***property***;	(d) loans secured by residential real estate or shares in Finnish residential housing companies as referred to in paragraph 44 ***up to the lesser of the principal amount of the*** liens that***,*** are ***when***combined with any prior liens ***and*** 80% of the value of the pledged ***properties***; ***or by senior units issued by French Fonds Communs de Créances or by***

equivalent securitisation entities governed by the laws of a Member State securitising residential real estate exposures provided that at least 90% of the assets of such Fonds Communs de Créances or of equivalent securitisation entities governed by the laws of a Member State are composed of mortgages that are combined with any prior liens up to the lesser of the principal amounts due under the units, the principal amounts of the liens, and 80% of the value of the pledged properties and the units qualify for the credit quality assessment step 1 as set out in this Annex where such units do not exceed 20% of the nominal amount of the outstanding issue;

Amendment224
Annex VI, part 1, paragraph 65, point (d), subparagraph 1a (new)

Exposures caused by transmission and management of payments from or liquidation proceeds of the obligor of loans secured by pledged properties of the senior units or debt securities shall not be comprised in calculating the 90% limit.

Amendment 225
Annex VI, Part 1, paragraph 65, point (e)

(e) loans secured by commercial real estate or shares in Finnish housing companies as referred to in paragraph 49 ***where only*** liens that are combined with any prior liens ***within*** 60% of the value of the pledged ***property***. The competent authorities may recognise loans secured by commercial real estate as eligible where the Loan to Value ratio of 60% is exceeded up to a maximum level of 70% if the value of the total assets pledged as collateral for the covered bonds exceed the nominal amount outstanding on the covered bond by at least 10%, and the	(e) loans secured by commercial real estate or shares in Finnish housing companies as referred to in paragraph 49 ***up to the lesser of the principal amount of the*** liens that are***, when*** combined with any prior liens ***and*** 60% of the value of the pledged ***properties or by senior units issued by French Fonds Communs de Créances or by equivalent securitisation entities governed by the laws of a Member State securitising commercial real estate exposures provided that at least 90% of the assets of such Fonds Communs de Créances or of equivalent securitisation***

bondholders' claim meets the legal certainty requirements set out in ***Annex IX***. The bondholders' claim must take priority over all other claims on the collateral.	***entities governed by the laws of a Member State are composed of mortgages that are combined with any prior liens up to the lesser of the principal amounts due under the units, the principal amounts of the liens, and 60% of the value of the pledged properties and the units qualify for the credit quality assessment step 1 as set out in this Annex where such units do not exceed 20% of the nominal amount of the outstanding issue***. The competent authorities may recognise loans secured by commercial real estate as eligible where the Loan to Value ratio of 60% is exceeded up to a maximum level of 70% if the value of the total assets pledged as collateral for the covered bonds exceed the nominal amount outstanding on the covered bond by at least 10%, and the bondholders' claim meets the legal certainty requirements set out in ***Annex VIII***. The bondholders' claim must take priority over all other claims on the collateral.

Amendment226
Annex VI, part 1, paragraph 65, point (e), subparagraph 1a (new)

	Exposures caused by transmission and management of payments from or liquidation proceeds of the obligor of loans secured by pledged properties of the senior units or debt securities shall not be comprised in calculating the 90% limit.

Amendment 227
Annex VI, Part 1, paragraph 65, point (e a) (new)

	(ea) loans secured by ships where only liens that are combined with any prior liens within 60% of the value of the pledged ship.
	For these purposes "collateralised" includes situations where the assets as described in subparagraphs (a) to ea) are

	exclusively dedicated in law to the protection of the bond-holders against losses.
	Until 31 December 2010 the 20% limit for senior units issued by French Fonds Communs de Créances or by equivalent securitisation entities as specified in subparagraphs (d) and (e) does not apply, provided that those senior units have a credit assessment by a nominated ECAI which is the most favourable category of credit assessment made by the ECAI in respect of covered bonds. Before the end of this period this derogation shall be reviewed and consequent to such review the Commission may as appropriate extend this period in accordance with the procedure set out in Article 151 with or without a further review clause.
	Until 31 December 2010 the figure of 60% indicated in subparagraph (ea) can be replaced with a figure of 70%. Before the end of this period this derogation shall be reviewed and consequent to such review the Commission may as appropriate extend this period in accordance with the procedure set out in Article 151 with or without a further review clause.

Amendment 228
Annex VI, Part 1, paragraph 70

70. Short-term exposures on an institution or corporate for which a credit assessment by a nominated ECAI is available shall be assigned a risk weight according to Table 6 in accordance with the mapping by the competent authorities of the credit assessments of eligible ECAIs to six steps in a credit quality assessment scale:	70. Short-term exposures on an ***credit*** institution or corporate for which a credit assessment by a nominated ECAI is available shall be assigned a risk weight according to Table 6 in accordance with the mapping by the competent authorities of the credit assessments of eligible ECAIs to six steps in a credit quality assessment scale:

Justification

Cross reference / Typographical error.

Amendment 229
Annex VI, Part 1, paragraph 86

86. Where a credit institution provides credit protection for a number of exposures under terms that the *n*th default among the exposures shall trigger payment and that this credit event shall terminate the contract, if the product has an external credit assessment from an eligible ECAI the risk weights prescribed ***Articles 78 to 83*** shall be applied. If the product is not rated by an eligible ECAI, the risk weights of the exposures included in the basket will be aggregated, excluding *n*-1 exposures, up to a maximum of 1250% and multiplied by the nominal amount of the protection provided by the credit derivative to obtain the risk weighted asset amount. The *n-1* exposures to be excluded from the aggregation shall be determined on the basis that they shall include those exposures each of which produces a lower risk-weighted exposure amount than the risk-weighted exposure amount of any of the exposures included in the aggregation.	86. Where a credit institution provides credit protection for a number of exposures under terms that the *n*th default among the exposures shall trigger payment and that this credit event shall terminate the contract, if the product has an external credit assessment from an eligible ECAI the risk weights prescribed ***Articles 94 to 101*** shall be applied. If the product is not rated by an eligible ECAI, the risk weights of the exposures included in the basket will be aggregated, excluding *n*-1 exposures, up to a maximum of 1250% and multiplied by the nominal amount of the protection provided by the credit derivative to obtain the risk weighted asset amount. The *n-1* exposures to be excluded from the aggregation shall be determined on the basis that they shall include those exposures each of which produces a lower risk-weighted exposure amount than the risk-weighted exposure amount of any of the exposures included in the aggregation.

Justification

Cross reference / Typographical error.

Amendment 230
Annex VI, Part 2, paragraph 9, point (c a) (new)

	(ca) in case at least two banks use the ECAI's individual credit assessment for bond issuing and/or assessing credit risks.

Justification

In order to providing for the full credibility of ECAI's individual credit assessment, the amendment makes for greater rigour in authorising and recognising the new rating agencies and guarantees the reliability of the judgements the ECAIs issue on the borrower's creditworthiness. As a matter of fact, the market credibility is one of the most important requirement to recognise the eligible ECAI and market acceptance of them represents a significant proof of ECAIs' reliability.

Amendment 231
Annex VI, Part 2, paragraph 10

10. Competent authorities shall verify that	10. Competent authorities shall verify that

individual credit assessments are accessible at equivalent terms at least to all ***parties*** having a legitimate interest in these individual credit assessments.	individual credit assessments are accessible at equivalent terms at least to all ***credit institutions*** having a legitimate interest in these individual credit assessments.

Justification

The Council amendment, bringing the rules into line with the Basel Framework Agreement, is hereby endorsed.

Amendment 232
Annex VI, Part 2, paragraph 11

11. In particular, competent authorities shall verify that individual credit assessments are available to non-domestic parties on equivalent terms as to domestic ***parties*** having a legitimate interest in these individual credit assessments.	11. In particular, competent authorities shall verify that individual credit assessments are available to non-domestic parties on equivalent terms as to domestic ***credit institutions*** having a legitimate interest in these individual credit assessments.

Justification

The Council amendment is hereby endorsed.

Amendment 233
Annex VI, Part 3, paragraph 1

1. ***An*** institution may nominate one or more eligible ECAIs to be used for the determination of risk weights applicable to asset and off-balance sheet items.	1. ***A credit*** institution may nominate one or more eligible ECAIs to be used for the determination of risk weights applicable to asset and off-balance sheet items.

Justification

The Council amendment is hereby endorsed.

Amendment 234
Annex VI, Part 3, paragraph 3

3. ***An*** institution which decides to use the credit assessments produced by an eligible ECAI must use them in a continuous and	3. ***A credit*** institution which decides to use the credit assessments produced by an eligible ECAI must use them in a

consistent way over time.	continuous and consistent way over time.

Justification

The Council amendment is hereby endorsed.

Amendment 235
Annex VI, Part 3, paragraph 8

8. Credit institutions shall use solicited credit assessments. The competent authorities may allow credit institutions to use unsolicited credit assessments.	***deleted***

Justification

The Council amendment is hereby endorsed.

Amendment 236
Annex VI, Part 3, paragraph 18

18. Notwithstanding paragraph 17, when an exposure arises through a ***bank's*** participation in a loan that has been extended by a Multilateral Development Bank whose preferred creditor status is recognised in the market, competent authorities may allow the credit assessment on the obligor's domestic currency item to be used for risk weighting purposes.	18. Notwithstanding paragraph 17, when an exposure arises through a ***credit institution's*** participation in a loan that has been extended by a Multilateral Development Bank whose preferred creditor status is recognised in the market, competent authorities may allow the credit assessment on the obligor's domestic currency item to be used for risk weighting purposes.

Justification

The Council amendment is hereby endorsed.

Amendment 237
Annex VII, Part 1, paragraph 3, subparagraph 4

Risk weight (RW) = ***LGD*(N***[....	Risk weight (RW) = ***(LGD*N[***....

Justification

Cross reference / Typographical error.

Amendment 238

Annex VII, Part 1, paragraph 3, subparagraph 5 a (new)

5a. For PD = 0, RW shall be: 0

Justification

The Council amendment is hereby endorsed. It is important to be specific, in order to allow for the eventuality that PD=0 and for alterations to the UL/EL Approach (see also amendment to Article 66).

Amendment 239
Annex VII, Part 1, paragraph 3, subparagraph 5 b (new)

5b. For PD = 1:

Justification

The Council amendment is hereby endorsed. See amendment to Annex VII, Part 1, paragraph 3, subparagraph 5a (new).

Amendment 240
Annex VII, Part 1, paragraph 3, subparagraph 5 c (new)

5c. for defaulted exposures where credit institutions apply the LGD values set out in Part 2, paragraph 8, RW shall be: 0;

Justification

The Council amendment is hereby endorsed.

Amendment 241
Annex VII, Part 1, paragraph 3, subparagraph 5 d (new)

5d. for defaulted exposures where credit institutions use own estimates of LGDs, RW shall be: Max{0, 12.5 *(LGD-EL_{BE})};

Justification

The Council amendment is hereby endorsed.

Amendment 242
Annex VII, Part 1, paragraph 3, subparagraph 5 e (new)

	5e. where EL_{BE} shall be the credit institution's best estimate of expected loss for the defaulted exposure according to Part 4, paragraph 79 of this Annex.

Justification

The Council amendment is hereby endorsed. It is important to be specific, in order to allow for the eventuality that PD=0 and for alterations to the UL/EL Approach (see also amendment to Article 66).

Amendment 243
Annex VII, Part 1, paragraph 5, subparagraph 3

In assigning risk weights to specialised lending exposures institutions shall take into account the following factors: Financial strength, political and legal environment, transaction and/or asset characteristics, strength of the sponsor and developer including any public private partnership income stream, security package.	In assigning risk weights to specialised lending exposures ***credit*** institutions shall take into account the following factors: Financial strength, political and legal environment, transaction and/or asset characteristics, strength of the sponsor and developer including any public private partnership income stream, security package.

Justification

Cross reference / Typographical error.

Amendment 244
Annex VII, Part 1, paragraph 6

6. ***To be eligible for the corporate treatment*** purchased corporate receivables shall comply with the minimum requirements set out in Part 4, paragraphs 104 to 108. For purchased corporate receivables that comply in addition with the conditions set out in paragraph 12, and where it would be unduly burdensome for a credit institution to use the risk quantification standards for corporate exposures as set out in Part 4 for these receivables, the risk quantification standards for retail exposures as set out in Part 4 may be used.	6. ***For their*** purchased corporate receivables ***credit institutions*** shall comply with the minimum requirements set out in Part 4, paragraphs 104 to 108. For purchased corporate receivables that comply in addition with the conditions set out in paragraph 12, and where it would be unduly burdensome for a credit institution to use the risk quantification standards for corporate exposures as set out in Part 4 for these receivables, the risk quantification standards for retail exposures as set out in Part 4 may be used.

Justification

The Council amendment, bringing the text into line with Article 87(2), is hereby endorsed.

Amendment 245
Annex VII, Part 1, paragraph 7

7. For purchased corporate receivables, refundable purchase discounts, collateral or partial guarantees that provide first-loss protection for default losses, or both, may be treated as first-loss positions under the IRB securitisation framework.	7. For purchased corporate receivables, refundable purchase discounts, collateral or partial guarantees that provide first-loss protection for default losses, ***dilution losses,*** or both, may be treated as first-loss positions under the IRB securitisation framework.

Justification

The German version of the COM text already included "dilution losses". For the English version, this amendment is needed.

Amendment 246
Annex VII, Part 1, paragraph 9, subparagraph 3

Risk weight: ***LGD*(N***[...	Risk weight ***(RW)***: ***(LGD*N***[...

Justification

Cross reference / Typographical error.

Amendment 247
Annex VII, Part 1, paragraph 9, subparagraph 4 a (new)

	4a. For PD = 1 (defaulted exposure), RW shall be: Max{0, 12.5 *(LGD-EL_{BE})}

Justification

The Council amendment is hereby endorsed.

Amendment 248
Annex VII, Part 1, paragraph 9, subparagraph 4 b (new)

	4b. where EL_{BE} shall be the credit institution's best estimate of expected loss for the defaulted exposure according to Part 4, paragraph 79 of this Annex.

Justification

The Council amendment is hereby endorsed. See justification to paragraph 6 above.

Amendment 249
Annex VII, Part 1, paragraph 10

10. For ***retail exposures*** secured by ***real estate collateral*** a correlation (R) of 0.15 shall replace the figure produced by the correlation formula in paragraph 9.	10. For ***lending*** secured by ***mortgages to individuals*** a correlation (R) of 0.15 shall replace the figure produced by the correlation formula in paragraph 9.

Justification

This wording should be preferred, to safeguard uniformity between Basel and the EU provision.

Amendment 250
Annex VII, Part 1, paragraph 11, subparagraph 2a (new)

	By way of derogation from point (b) competent authorities may waive the requirement that the exposure be unsecured in respect of collateralised credit facilities linked to a wage account. In this case amounts recovered from the collateral shall not be taken into account in the LGD estimate.

Justification

Takes account of Council amendment.

Amendment 251
Annex VII, Part 1, paragraph 15

15. ***Subject to approval of the competent authorities, a*** credit institution may employ different approaches to different portfolios where the credit institution itself uses different approaches internally. Where a credit institution ***is permitted to use*** different approaches, the credit institution shall demonstrate to the competent Authorities that the choice is made consistently and is	15. ***A*** credit institution may employ different approaches to different portfolios where the credit institution itself uses different approaches internally. Where a credit institution ***uses*** different approaches, the credit institution shall demonstrate to the competent Authorities that the choice is made consistently and is not determined by regulatory arbitrage considerations

not determined by regulatory arbitrage considerations.

Justification

The possibility to employ different approaches for equity exposures should be allowed in all the 25 Member States and not as a national discretion, as in any cases the credit institution ought to demonstrate to the competent authorities that the choice is made consistently. Otherwise, credit institutions operating across borders could be subject to materially different treatment to competitors operating in the same market. This would be inconsistent with the Single Market objective.

Amendment 252
Annex VII, Part 1, paragraph 20

20. The risk weighted exposure amounts shall be calculated according to the formulas in paragraph 3. If institutions do not have sufficient information to use the definition of default set out in part 4, paragraphs 44 to 48, a scaling factor of 1.5 shall be applied to the risk weights.	20. The risk weighted exposure amounts shall be calculated according to the formulas in paragraph 3. If ***credit*** institutions do not have sufficient information to use the definition of default set out in part 4, paragraphs 44 to 48, a scaling factor of 1.5 shall be applied to the risk weights.

Justification

Cross reference / Typographical error.

Amendment 253
Annex VII, Part 1, paragraph 23

23. The risk weighted exposure amounts shall be the potential loss on the institution's equity exposures as derived using internal value-at-risk models subject to the 99th percentile, one-tailed confidence interval of the difference between quarterly returns and an appropriate risk-free rate computed over a long-term sample period, multiplied by 12.5. The risk weighted exposure amounts at the individual exposure level shall not be less than the sum of minimum risk weighted exposure amounts required under the PD/LGD Approach and the corresponding expected loss amounts multiplied by 12.5.	23. The risk weighted exposure amounts shall be the potential loss on the ***credit*** institution's equity exposures as derived using internal value-at-risk models subject to the 99th percentile, one-tailed confidence interval of the difference between quarterly returns and an appropriate risk-free rate computed over a long-term sample period, multiplied by 12.5. The risk weighted exposure amounts at the individual exposure level shall not be less than the sum of minimum risk weighted exposure amounts required under the PD/LGD Approach and the corresponding expected loss amounts multiplied by 12.5 ***and calculated on the basis of the PD values set out in Annex VII Part 2, paragraph 22, subparagraph (a) and the corresponding LDG values set out***

	in Annex VII, Part 2, paragraphs 23 and 24.

Justification

Cross reference / Typographical error. Substitutes Amendment 151 of Radwan draft report.

Amendment 254
Annex VII, Part 1, paragraph 25

25. The risk weighted exposure amounts shall be calculated according to the formula:	25. The risk weighted exposure amounts shall be calculated according to the formula:
Risk-weighted exposure amount = 100% * exposure value	Risk-weighted exposure amount = 100% * exposure value ***except for when the exposure is a residual value in which case it should be provisioned for each year and will be calculated as follows: 1/t * 100% * exposure value; where t is the number of years of the lease contract term.***

Justification

If a lessee is in default before the end of the lease contract term, the credit risk relating to this event is taken into account via LGDs. In the other case of a lessee not being in default, the residual value of the leased asset is exclusively subject to market risk and, even then, this risk is only realised at the end of the contract. The credit institution should take into account a portion of the residual value risk each year over the lease contract term. The most simple and effective way to determine this proportion is to take into account the same fraction of the exposure every year.

Amendment 255
Annex VII, Part 1, paragraph 28, subparagraph 3

Premiums on purchased exposures shall be treated as EL.	***For defaulted exposures (PD =1) where credit institutions use own estimates of LGDs, EL shall be EL_{BE}, the credit institution's best estimate of expected loss for the defaulted exposure according to Part 4, paragraph 79 of this Annex.***

Justification

The Council amendment, bringing the text into line with the Basel Framework Agreement as

regards the UL/EL Approach, is hereby endorsed.

Amendment 256
Annex VII, Part 1, paragraph 29, Table 2

Text proposed by the Commission

Remaining Maturity	category 1	category 2	category 3	category 4	category 5
Less than 2.5 years	0%	***5%***	***35%***	***100%***	***625%***
Equal or more than 2.5 years ***EL***	***5%***	***10%***	***35%***	***100%***	***625%***

Amendment by Parliament

Remaining Maturity	category 1	category 2	category 3	category 4	category 5
Less than 2.5 years	0%	***0.4%***	***2.8%***	***8%***	***50%***
Equal or more than 2.5 years	***0.4%***	***0.8%***	***2.8%***	***8%***	***50%***

Justification

Cross reference / Typographical error.

Amendment 257
Annex VII, Part 1, paragraph 29, subparagraph 2

Where competent authorities have authorised a credit institution to generally assign preferential risk weights of 50% to exposures in category 1, and 70% to exposures in category 2, the EL value for exposures in category 1 shall be 0%, and for exposures in category 2 shall be ***5%***.	Where competent authorities have authorised a credit institution to generally assign preferential risk weights of 50% to exposures in category 1, and 70% to exposures in category 2, the EL value for exposures in category 1 shall be 0%, and for exposures in category 2 shall be ***0.4%***.

Justification

Cross reference / Typographical error.

Amendment 258
Annex VII, Part 1, paragraph 30

30. The expected loss amounts for equity exposures where the risk weighted exposure amounts are calculated according to the methods set out in paragraphs 17 to 19, shall	30. The expected loss amounts for equity exposures where the risk weighted exposure amounts are calculated according to the methods set out in paragraphs 17 to 19, shall

be calculated according to the following formula:	be calculated according to the following formula:
Expected loss amount = EL × exposure value	Expected loss amount = EL × exposure value
The EL values shall be the following:	The EL values shall be the following:
Expected loss (EL) = ***10%*** for private equity exposures in sufficiently diversified portfolios	Expected loss (EL) = ***0.8%*** for private equity exposures in sufficiently diversified portfolios
Expected loss (EL) = ***10%*** for exchange traded equity exposures.	Expected loss (EL) = ***0.8%*** for exchange traded equity exposures.
Expected loss (EL) = ***30%*** for all other equity exposures.	Expected loss (EL) = ***2.4%*** for all other equity exposures.

Justification

Cross reference / Typographical error.

Amendment 259
Annex VII, Part 1, paragraph 34

34. The expected loss amounts calculated in accordance with paragraphs 28, 29 and 33 shall be subtracted from the sum of value adjustments and provisions related to these exposures. Discounts on ***purchased*** exposures according to Part 3, paragraph 1 shall be treated in the same manner as value adjustments***, premiums on purchased exposures according to Part 3, paragraph 1 shall be added to the expected loss amounts***. Expected loss amounts for securitised exposures and value adjustments and provisions related to these exposures shall not be included in this calculation.	34. The expected loss amounts calculated in accordance with paragraphs 28, 29 and 33 shall be subtracted from the sum of value adjustments and provisions related to these exposures. Discounts on ***balance sheet*** exposures ***purchased when in default*** according to Part 3, paragraph 1 shall be treated in the same manner as value adjustments. Expected loss amounts for securitised exposures and value adjustments and provisions related to these exposures shall not be included in this calculation.

Justification

The Council amendment, bringing the text into line with Article 87(2), is hereby endorsed (see Amendment to Article 87(2)).

Amendment 260

Annex VII, Part 2, paragraph 5

5. Credit institutions may recognise unfunded credit protection in the PD in accordance with the provisions of Articles 90 to 93.	5. Credit institutions may recognise unfunded credit protection in the PD in accordance with the provisions of Articles 90 to 93. ***For dilution risk, however, competent authorities may recognise as eligible unfunded protection providers other than those indicated in Annex VIII, Part 1.***

Justification

The Council amendment, bringing the text into line with Article 87(2), is hereby endorsed (see Amendment to Article 87(2)).

Amendment 261
Annex VII, Part 2, paragraph 6

6. Credit institutions using own LGD estimates may recognise unfunded credit protection by adjusting PDs subject to ***paragraph 11***.	6. Credit institutions using own LGD estimates may recognise unfunded credit protection by adjusting PDs subject to ***paragraph 10***.

Justification

Cross reference / Typographical error.

Amendment 262
Annex VII, Part 2, paragraph 7

7. For dilution risk of purchased corporate receivables PD shall be set equal to EL estimate for dilution risk. If a credit institution is permitted to use own LGD estimates for corporate exposures and it can decompose its EL estimates for dilution risk of purchased corporate receivables into PDs and LGDs in a reliable manner, the PD estimate may be used.	7. For dilution risk of purchased corporate receivables PD shall be set equal to EL estimate for dilution risk. If a credit institution is permitted to use own LGD estimates for corporate exposures and it can decompose its EL estimates for dilution risk of purchased corporate receivables into PDs and LGDs in a reliable manner, the PD estimate may be used. ***Credit institutions may recognise unfunded credit protection in the PD in accordance with the provisions of Articles 90 to 93. Competent authorities may recognise as eligible unfunded protection providers other than those indicated in Annex VIII, Part 1. If a credit institution is permitted to use own LGD estimates for dilution risk of purchased corporate***

receivables, it may recognise unfunded protection by adjusting PDs subject to the provisions of paragraph 10.

Justification

The Council amendment, bringing the text into line with Article 87(2), is hereby endorsed (see Amendment to Article 87(2)).

Amendment 263
Annex VII, Part 2, paragraph 8, point (d)

(d) Covered bonds as defined in Annex VI, Part 1, paragraphs 65 to 67 may be assigned an LGD value of 12.5***%***.	(d) Covered bonds as defined in Annex VI, Part 1, paragraphs 65 to 67 may be assigned an LGD value of 12.5***%***. Notwithstanding subparagraph 1, where in case Annex VI, Part 1, paragraph 65 points [ba] and (ea) are not applied, and the respective upper limits laid down in points (c), (d) and (e) are reduced to 10% of the nominal amount of outstanding covered bonds of the issuing credit institution or where the covered bonds have a credit assessment by a nominated ECAI which is the most favourable category of credit assessment made by the ECAI in respect of covered bonds, a LGD value of 10% may be assigned. By 31 December 2010 the provisions of this subparagraph shall be reviewed.

Amendment 264
Annex VII, Part 2, paragraph 10

10. Notwithstanding paragraph 8, if a credit institution is permitted to use own LGD estimates for exposures to corporates, institutions, central governments and central banks, unfunded credit protection may be recognised by adjusting PD or LGD estimates subject to minimum requirements as specified in part 4 and approval of competent authorities. A credit institution shall not assign guaranteed exposures an	10. Notwithstanding paragraph 8, if a credit institution is permitted to use own LGD estimates for exposures to corporates, institutions, central governments and central banks, unfunded credit protection may be recognised by adjusting PD ***and/***or LGD subject to minimum requirements as specified in part 4 and approval of competent authorities. A credit institution shall not assign guaranteed exposures an

adjusted PD or LGD such that the adjusted risk weight would be lower than that of a comparable, direct exposure to the guarantor.	adjusted PD or LGD such that the adjusted risk weight would be lower than that of a comparable, direct exposure to the guarantor.

Justification

Since the ultimate repayment source is represented by the guarantor of the exposure, it is the PD but also the LGD estimates of this guarantor that reflect the risk of the bank that ultimately is incurred. The PD substitution implies that the bank incurs a risk on the guarantor; consequently, it is this party's LGD that should be used. Double default methodology is deemed to change this stipulation.

Amendment 265
Annex VII, Part 2, paragraph 10 a (new)

	10a. Notwithstanding paragraph 8, a credit institution which uses own LDG estimates for covered bonds may take data supplied by the issuing bank as the basis for the calculation of own capital requirements.

Justification

For reasons of efficiency, i.e. in order to simplify data collection for the purchasing bank, your rapporteur favours permitting the use of data supplied by the issuing bank in calculating own capital requirements for covered bonds.

Amendment 266
Annex VII, Part 2, paragraph 12, point (d)

(d) If a credit institution is permitted to use own PD estimates for purchased corporate receivables, for drawn amounts M shall equal the purchased receivables exposure weighted average maturity, where M shall be at least ***1 year***. This same value of M shall also be used for undrawn amounts under a committed purchase facility provided the facility contains effective covenants, early amortisation triggers, or other features that protect the purchasing	(d) If a credit institution is permitted to use own PD estimates for purchased corporate receivables, for drawn amounts M shall equal the purchased receivables exposure weighted average maturity, where M shall be at least ***90 days***. This same value of M shall also be used for undrawn amounts under a committed purchase facility provided the facility contains effective covenants, early amortisation triggers, or other features that protect the purchasing

credit institution against a significant deterioration in the quality of the future receivables it is required to purchase over the facility's term. Absent such effective protections, M for undrawn amounts shall be calculated as the sum of the longest-dated potential receivable under the purchase agreement and the remaining maturity of the purchase facility, where M shall be at least ***1 year***.	credit institution against a significant deterioration in the quality of the future receivables it is required to purchase over the facility's term. Absent such effective protections, M for undrawn amounts shall be calculated as the sum of the longest-dated potential receivable under the purchase agreement and the remaining maturity of the purchase facility, where M shall be at least ***90 days***.

Justification

The Council amendment is hereby endorsed.

Amendment 267
Annex VII, Part 2, paragraph 14

14. The competent authorities may allow for exposures to corporates situated in the Community and having consolidated sales and consolidated assets of less than EUR 500 million the use of M as set out in paragraph 11.	14. The competent authorities may allow for exposures to corporates situated in the Community and having consolidated sales and consolidated assets of less than EUR 500 million the use of M as set out in paragraph 11. ***Competent authorities may replace EUR 500 million total assets with EUR 1000 million total assets for corporates which primarily invest in real estate.***

Justification

The right of the member states to exempt certain corporates from the use of effective maturity in the advanced IRB approach is likely not to apply for housing and real estate corporates in Germany as they often exceed the threshold value in their consolidated assets due to their high investment costs. The maturity adjustments impact especially the housing and real estate corporates in Germany and Austria, because they are largely funded by mortgage loans with long maturities. Experience in the past shows that this financing scheme does not result in an increase of risk.

Amendment 268
Annex VII, Part 2, paragraph 19

19. Unfunded credit protection may be recognised by adjusting PDs subject to	19. Unfunded credit protection may be recognised by adjusting PDs subject to

paragraph 21.	paragraph 21. ***For dilution risk, where credit institutions do not use own estimates of LGDs, this shall be subject to compliance with Articles 90 to 93; for this purpose competent authorities may recognise as eligible unfunded protection providers other than those indicated in Annex VIII, Part 1.***

Justification

The Council amendment, bringing the text into line with Article 87(2), is hereby endorsed (see Amendment to Article 87(2)).

Amendment 269
Annex VII, Part 2, paragraph 20

20. Credit institutions shall provide own estimates of LGDs subject to minimum requirements as specified in part 4 and approval of competent authorities. For dilution risk of purchased receivables an LGD value of 75% shall be used. If a credit institution can decompose its EL estimates for dilution risk of purchased receivables into PDs and LGDs in a reliable manner, the ***PD*** estimate may be used.	20. Credit institutions shall provide own estimates of LGDs subject to minimum requirements as specified in part 4 and approval of competent authorities. For dilution risk of purchased receivables an LGD value of 75% shall be used. If a credit institution can decompose its EL estimates for dilution risk of purchased receivables into PDs and LGDs in a reliable manner, the ***LGD*** estimate may be used.

Justification

Cross reference / Typographical error.

Amendment 270
Annex VII, Part 2, paragraph 21

21. Unfunded credit protection may be recognised by adjusting PD or LGD estimates, subject to minimum requirements as specified in part 4, paragraphs 95 to 103 and approval by the competent authorities, either in support of an individual exposure or a pool of exposures. A credit institution shall not assign guaranteed exposures an adjusted PD or LGD such that the adjusted risk weight would be lower than that of a comparable, direct exposure to the guarantor.	21. Unfunded credit protection may be recognised by adjusting PD or LGD estimates, subject to minimum requirements as specified in part 4, paragraphs 95 to 103 and approval by the competent authorities, either in support of an individual exposure or a pool of exposures. A credit institution shall not assign guaranteed exposures an adjusted PD or LGD such that the adjusted risk weight would be lower than that of a comparable, direct exposure to the guarantor, ***such as that resulting from the application of the same approach for the***

guaranteed exposure and the guarantor.

Justification

It is proposed to amend §21 of part 2 of Appendix VII, incorporating a proposal intended to be applied only when the exposure guaranteed and the guarantor are covered by an identical internal rating method as the current treatment does not appear to be prudentially justified.

Amendment 271
Annex VII, Part 2, paragraph 22, point (c)

(c) 0.40% for exchange traded equity exposures including other short positions as set out in part 1, ***paragraph 17***;	(c) 0.40% for exchange traded equity exposures including other short positions as set out in part 1, ***paragraph 18***;

Justification

Cross reference / Typographical error.

Amendment 272
Annex VII, Part 2, paragraph 22, point (d)

(d) 1.25% for all other equity exposures including other short positions as set out in part 1, ***paragraph 17***.	(d) 1.25% for all other equity exposures including other short positions as set out in part 1, ***paragraph 18***.

Justification

Cross reference / Typographical error.

Amendment 273
Annex VII, Part 3, paragraph 2

2. Where credit institutions use Master netting agreements in relation to repurchase transactions***/security*** lending or borrowing transactions the exposure value shall be calculated in accordance with Articles 90 to 93	2. Where credit institutions use Master netting agreements in relation to repurchase transactions ***or securities or commodities*** lending or borrowing transactions the exposure value shall be calculated in accordance with Articles 90 to 93

Justification

The Council amendment is hereby endorsed.

Amendment 274
Annex VII, Part 3, paragraph 4

4. The exposure value for leases shall be the discounted ***lease payment stream***.	4. The exposure value for leases shall be the discounted ***minimum lease payments.***
	Minimum lease payments are the payments over the lease term that the lessee is or can be required to make and any bargain option (i.e. option the exercise of which is reasonably certain). Any guaranteed residual value fulfilling the set of conditions in Annex VIII, part 1, paragraphs 26 to 28 regarding the eligibility of protection providers as well as the minimum requirements for recognising other types of guarantees provided in Annex VIII, part 2, paragraphs 14 to 18 should also be included in the minimum lease payments.

Justification

The Commission's text calls for a split between lease payment streams and residual values. This has practical application difficulties. To avoid this, lease exposures should be equivalent to IAS 17 (the IASB standard that sets out accounting rules for leasing) minimum lease payments as these include guaranteed residual values.

Amendment 275
Annex VII, Part 3, paragraph 9

9. The exposure value for undrawn purchased commitments of revolving purchased corporate receivables exposures shall be calculated as the committed but undrawn amount multiplied by 75%.	***deleted***

Amendment 276
Annex VII, Part 3, paragraph 10

10. Where an exposure takes the form of	10. Where an exposure takes the form of

securities sold, posted or lent under a repurchase transaction or securities or commodities lending or borrowing transaction, the exposure value shall be the value of the securities or commodities determined in accordance with Article 74. Where the Financial Collateral Comprehensive Method as set out under Annex VIII, part 3 is used, the exposure value shall be increased by the volatility adjustment appropriate to such securities or commodities as set out therein.	securities ***or commodities*** sold, posted or lent under a repurchase transaction or securities or commodities lending or borrowing transaction, the exposure value shall be the value of the securities or commodities determined in accordance with Article 74. Where the Financial Collateral Comprehensive Method as set out under Annex VIII, part 3 is used, the exposure value shall be increased by the volatility adjustment appropriate to such securities or commodities as set out therein.

Justification

The German version of the COM proposal already included "or commodities". For the English version, this amendment is needed as an alignment to the Council proposal.

Amendment 277
Annex VII, Part 3, paragraph 11, point (a)

(a) for credit lines which are uncommitted, are unconditionally cancellable, or that effectively provide for cancellation, ***at any time by the institution without prior notice***, a conversion factor of 0% shall apply. To apply a conversion factor of 0% credit institutions shall actively monitor the financial condition of the obligor, and their internal control systems shall enable them to immediately detect a deterioration in the credit quality of the obligor. Undrawn retail credit lines may be considered as unconditionally cancellable if the terms permit the credit institution to cancel them to the full extent allowable under consumer protection and related legislation.	(a) for credit lines which are uncommitted, ***that*** are unconditionally cancellable ***at any time by the credit institution without prior notice***, or that effectively provide for ***automatic*** cancellation ***due to deterioration in a borrower's credit worthiness,*** a conversion factor of 0% shall apply. To apply a conversion factor of 0% credit institutions shall actively monitor the financial condition of the obligor, and their internal control systems shall enable them to immediately detect a deterioration in the credit quality of the obligor. Undrawn retail credit lines may be considered as unconditionally cancellable if the terms permit the credit institution to cancel them to the full extent allowable under consumer protection and related legislation.

Amendment278
Annex VII, Part 3, paragraph 11, point (b a) (new)

	(ba) For undrawn purchase commitments for revolving purchased receivables that are unconditionally cancellable or that effectively provide for automatic cancellation at any time by the institution without prior notice, a conversion factor of 0 % shall apply. To apply a conversion factor of 0%, credit institutions shall actively monitor the financial condition of the obligor, and their internal control systems shall enable them to immediately detect a deterioration in the credit quality of the obligor;

Amendment 279
Annex VII, Part 3, paragraph 11, point (d)

(d) Credit institutions which meet the minimum requirements for the use of own estimates of conversion factors as specified in Part 4 may use their own estimates of conversion factors across different product types, subject to approval of the competent authorities.	(d) Credit institutions which meet the minimum requirements for the use of own estimates of conversion factors as specified in Part 4 may use their own estimates of conversion factors across different product types ***as mentioned in points (a) to (d) above***, subject to approval of the competent authorities***, except where these are credit lines which may be cancelled at any time or are automatically cancelled, to which sub-paragraph (a) applies***.

Amendment 280
Annex VII, Part 3, paragraph 13

13. For all ***other*** off-balance sheet items than mentioned in paragraphs 1 to 11, the exposure value shall be ***determined according to Annex II***.	13. For all off-balance sheet items ***other*** than mentioned in paragraphs 1 to 11, the exposure value shall be ***the following percentage of its value: 100% if it is a full risk item, 50% if it is a medium-risk item,***

	20% if it is a medium/low-risk item, and 0% if it is a low-risk item. For these purposes the off-balance sheet items shall be assigned to risk categories as indicated in Annex II.

Justification

The Council amendment is hereby endorsed.

Amendment 281
Annex VII, Part 4, paragraph 10

10. To qualify for recognition by the competent authorities of the use for capital requirement calculation of own estimates of conversion factors a rating system shall incorporate a distinct facility rating scale which exclusively reflects conversion factor related transaction characteristics.	***deleted***

Justification

Credit institutions use their internal rating systems to associate a PD with each obligorgrade, and an LGD with each credit facility. For those two risk parameters (PD and LGD), a rating system has to be put in place. This rating system must comply with certain requirements as set out in part 4 of Annex VII. In addition to those two risk parameters, credit institutions calculate a conversion factor ("exposure value") per product type. That conversion factor is a calculation applied to the undrawn part of a credit facility. Thus for conversion factors, a quantification process suffices and there is no rating assessment process which is needed (as for LGD and PD). Therefore, it would be wrong to include all assignment and validation requirements that have to be used for PD and LGD to the conversion factor. This would also be in conformity with US standards (as mentioned by the FED).

Amendment 282
Annex VII, Part 4, paragraph 11

11. A 'facility grade' shall mean a risk category within a rating system's facility scale, to which exposures are assigned on the basis of a specified and distinct set of rating criteria from which own estimates of ***either*** LGDs ***and conversion factors*** are derived**.** The grade definition shall include	11. A 'facility grade' shall mean a risk category within a rating system's facility scale, to which exposures are assigned on the basis of a specified and distinct set of rating criteria from which own estimates of LGDs are derived. The grade definition shall include both a description of how

both a description of how exposures are assigned to the grade and of the criteria used to distinguish the level of risk across grades.	exposures are assigned to the grade and of the criteria used to distinguish the level of risk across grades.

Justification

Under the proposal, rating system requirements as set out in part 4 of annex VII should also apply to "conversion factors", whereas in practice it can only apply to two risk parameters (PD and LGD). For those two risk parameters (PD and LGD), a rating system has indeed to be put in place, but conversion factors are a calculation (a number) applied to the credit facility. Thus for conversion factors, there is no rating assessment process which is needed. It would therefore be impossible to comply with the rating requirements that have to be used for PD and LGD to the conversion factor. This would also be in conformity with US standards (as mentioned by the FED).

Amendment 283
Annex VII, Part 4, paragraph 12

12. Significant concentrations within a single facility grade shall be supported by convincing empirical evidence that the facility grade covers a reasonably narrow LGD ***or conversion factor*** band, respectively, and that the risk posed by all exposures in the grade falls within that band.	12. Significant concentrations within a single facility grade shall be supported by convincing empirical evidence that the facility grade covers a reasonably narrow LGD band, and that the risk posed by all exposures in the grade falls within that band.

Justification

Under the proposal, rating system should also apply to "conversion factors", whereas in practice it can only apply to two risk parameters (PD and LGD). For those two risk parameters (PD and LGD), a rating system does have to be put in place, but conversion factors are a calculation (a number) applied to the credit facility. Thus for conversion factors, there is no rating assessment process needed. It would therefore, be impossible to apply the rating requirements that have to be used for PD and LGD to the conversion factor. This would also be in conformity with proposed US standards.

Amendment284
Annex VII, Part 4, paragraph 24, point (b a) (new)

	(ba) where consumer protection, bank secrecy or other legislation prohibit the

exchange of client data.

Amendment 285
Annex VII, Part 4, paragraph 40, point (e)

(e) Data on loss rates ***and margin income*** for qualifying revolving retail exposures.	(e) Data on loss rates for qualifying revolving retail exposures.

Justification

The Council amendment, bringing the text into line with the Basel Framework Agreement, is hereby endorsed.

Amendment 286
Annex VII, Part 4, paragraph 41

41. A credit institution shall have in place sound stress testing processes for use in the assessment of its capital adequacy. ***Stress testing shall involve identifying possible events or future changes in economic conditions that could have unfavourable effects on a credit institution's credit exposures and assessment of the credit institution's ability to withstand such changes***	41. A credit institution shall have in place sound stress testing processes for use in the assessment of its capital adequacy.

Justification

Credit institutions are already required to adopt conservative views and stress internal estimations of PD, LGD and exposure at default, including taking into account an economic downturn (Annex VII, part 4, paragraphs 19, 49, 54, 63, 74, 87 & 114). The Commission proposal will make all types of obligor and exposure more capital intensive and therefore more expensive and will particularly affect SMEs and small banks.

Amendment 287
Annex VII, Part 4, paragraph 42

42. A credit institution shall regularly perform a credit risk stress test to assess the effect of certain specific conditions on its total capital requirements for credit risk. The test to be employed shall be one chosen by	42. A credit institution shall regularly perform a credit risk stress test to assess the effect of certain specific conditions on its total capital requirements for credit risk. The test to be employed shall be one chosen by

the credit institution, subject to supervisory review. The test to be employed shall be meaningful and reasonably conservative, ***considering at least the effect of mild recession scenarios.*** A credit institution shall assess migration in its ratings under the stress test scenarios. Stressed portfolios shall contain the vast majority of a credit institution´s total exposure.	the credit institution, subject to supervisory review. The test to be employed shall be meaningful and reasonably conservative. A credit institution shall assess migration in its ratings under the stress test scenarios. Stressed portfolios ***should represent the institution's overall credit risk exposure.***

Justification

Credit institutions are already required to adopt conservative views and stress internal estimations of PD, LGD and exposure at default, including taking into account an economic downturn (Annex VII, part 4, paragraphs 19, 49, 54, 63, 74, 87 & 114). The Commission proposal will make all types of obligor and exposure more capital intensive and therefore more expensive and will particularly affect SMEs and small banks. paragraph 42 relates to Pillar 2 requirements and could be moved to Annex XI paragraph 1(a).

Amendment 288
Annex VII, Part 4, paragraph 44, subparagraph 2

Days past due commence once an obligor has breached an advised limit, has been advised a limit smaller than current outstandings, or has drawn credit without authorisation.	***For overdrafts, d***ays past due commence once an obligor has breached an advised limit, has been advised a limit smaller than current outstandings, or has drawn credit without authorisation ***and the underlying amount is material***.

Justification

The Commission proposal conflicts with the Basel Framework and the suggested amendment reflects industry practice. There must be a materiality element to the definition of days past due to ensure defaults are not triggered by a small excess, e.g. EUR 1. For credit cards the minimum payment date is embodied in the contractual relationship with the counterparty and therefore the adoption of any other days past due interpretation will conflict with industry practice and potentially impact the terms and conditions for credit cards.

Amendment 289
Annex VII, Part 4, paragraph 44, subparagraph 3 a (new)

	3a. Days past due for credit cards commence on the minimum payment due

date.

Justification

The Commission proposal conflicts with the Basel Framework and the suggested amendment reflects industry practice. There must be a materiality element to the definition of days past due to ensure defaults are not triggered by a small excess, e.g. EUR 1. For credit cards the minimum payment date is embodied in the contractual relationship with the counterparty and therefore the adoption of any other days past due interpretation will conflict with industry practice and potentially impact the terms and conditions for credit cards.

Amendment290
Annex VII, Part 4, paragraph 44, subparagraph 6 a (new)

In all cases the exposure past due shall be above a threshold defined by the competent authorities and which reflects a reasonable level of risk.

Amendment 291
Annex VII, Part 4, paragraph 49

49. A credit institution's own estimates of the risk parameters PD, LGD, conversion factor and EL shall incorporate all relevant data, information and methods. The estimates shall be derived using both historical experience and empirical evidence, ***and not based purely on judgmental considerations***. The estimates shall be plausible and intuitive and shall be based on the material drivers of the respective risk parameters. ***The less data a credit institution has, the more conservative it shall be in its estimation.***	49. A credit institution's own estimates of the risk parameters PD, LGD, conversion factor and EL shall incorporate all relevant data, information and methods. The estimates shall be derived using both historical experience and empirical evidence, ***including statistical models***. The estimates shall be plausible and intuitive and shall be based on the material drivers of the respective risk parameters.

Justification

The intent is to ensure that a credit institution that has little historical data is not permitted to calculate own estimates of the risk parameters based on such inadequate data. However, the

statement on conservatism can be interpreted in such a way as to prevent firms with genuinely high quality business lines, for which extensive default data is unavailable (either internally or across the industry, including Low Default Portfolios) from applying the advanced approach to these exposures.

Amendment 292
Annex VII, Part 4, paragraph 66

66. Irrespective of whether a credit institution is using external, internal, or pooled data sources, or a combination of the three, for its PD estimation, the length of the underlying historical observation period used shall be at least five years for at least one source. If the available observation period spans a longer period for any source, and this data is relevant, this longer period shall be used. This paragraph also applies to the PD/LGD Approach to equity.	66. Irrespective of whether a credit institution is using external, internal, or pooled data sources, or a combination of the three, for its PD estimation, the length of the underlying historical observation period used shall be at least five years for at least one source. If the available observation period spans a longer period for any source, and this data is relevant, this longer period shall be used. This paragraph also applies to the PD/LGD Approach to equity. ***Member States may allow credit institutions which are not permitted to use own estimates of LGDs or conversion factors to have, when they implement the IRB Approach, relevant data covering a period of two years. The period to be covered shall increase by one year each year until relevant data cover a period of five years.***

Justification

See Amendment to Article 154(5).

Amendment 293
Annex VII, Part 4, paragraph 71

71. Irrespective of whether a credit institution is using external, internal, pooled data sources or a combination of the three, for their estimation of loss characteristics, the length of the underlying historical observation period used shall be at least five years for at least one source. If the available observation spans a longer period for any source, and these data are relevant, this longer period shall be used. A	71. Irrespective of whether a credit institution is using external, internal, pooled data sources or a combination of the three, for their estimation of loss characteristics, the length of the underlying historical observation period used shall be at least five years for at least one source. If the available observation spans a longer period for any source, and these data are relevant, this longer period shall be used. A

credit institution need not give equal importance to historic data if it can convince its competent authority that more recent data is a better predictor of loss rates.	credit institution need not give equal importance to historic data if it can convince its competent authority that more recent data is a better predictor of loss rates. ***Member States may allow credit institutions to have, when they implement the IRB Approach, relevant data covering a period of two years. The period to be covered shall increase by one year each year until relevant data cover a period of five years.***

Justification

See Amendment to Article 154(5).

Amendment 294
Annex VII, Part 4, paragraph 78

78. To the extent, that ***a credit institution does not meet the minimum requirements for*** collateral set out in Annex VIII ***any amount expected to be recovered from such collateral shall not be taken into account in its LGD estimates***.	78. To the extent that ***LGD estimates take into account the existence of*** collateral, ***credit institutions must establish internal requirements for collateral management, legal certainty and risk management that are generally consistent with those*** set out in Annex VIII***, part 2.***

Justification

The Commission's proposal would severely restrict the use of the Advanced IRB approach and would not be in keeping with the Basel Framework; the suggested changes bring them back in line. The draft proposed by the Commission might imply that if purchased credit risk mitigation does not meet all the requirements throughout Annex VIII, then own-LGD estimates cannot reflect the degree of credit risk mitigation obtained. This is impractical because it will require firms with relatively complex collateralised transactions to distinguish, within the estimated LGD, the cash collected from risk mitigation meeting the requirements and that collected from mitigation that does not meet the requirements. It is also unnecessary because own-LGD estimates must take into consideration any available relevant information, including any instrument that historically can be demonstrated to have an effect on LGD. Moreover, advanced IRB banks started developing their LGD methodologies in the understanding that they could bring in their own internal operational and eligibility requirements for collateral as long as they could base their LGD ratings on historical evidence, i.e. validate them, and as long as those methodologies would be validated by their supervisors. Compared to a previous version of the proposed Directive, the stronger wording

of paragraph 78 now suddenly means that what has been developed is not good enough. It would oblige banks to rebuild their models that they have been so far developing to calculate LGD estimates and will not provide any incentives to go for the most advanced approach.

Amendment 295
Annex VII, Part 4, paragraph 79

79. For the specific case of exposures already in default, the credit institution shall use its best estimate of expected loss for each exposure given current economic circumstances and exposure status.	79. For the specific case of exposures already in default, the credit institution shall use ***the sum of*** its best estimate of expected loss for each exposure given current economic circumstances and exposure status ***and the possibility of additional unexpected losses during the recovery period***.

Justification

The Council amendment, bringing the text into line with the Basel Framework Agreement as regards the UL/EL Approach, is hereby endorsed.

Amendment 296
Annex VII, Part 4, paragraph 81

81. Estimates of LGD shall be based on data over a minimum of ***seven*** years for at least one data source. If the available observation period spans a longer period for any source, and the data is relevant, this longer period shall be used.	81. Estimates of LGD shall be based on data over a minimum of ***four*** years for at least one data source. If the available observation period spans a longer period for any source, and the data is relevant, this longer period shall be used.

Justification

The aim is to prevent excessive divergence of exposures between the basic approach and the progressive IRB approach.

Amendment 297
Annex VII, Part 4, paragraph 85

85. Estimates of LGD shall be based on data over a minimum of five years. Notwithstanding paragraph 73, a credit institution needs not give equal importance to historic data if it can demonstrate to its	85. Estimates of LGD shall be based on data over a minimum of five years. Notwithstanding paragraph 73, a credit institution needs not give equal importance to historic data if it can demonstrate to its

competent authority that more recent data is a better predictor of loss rates.	competent authority that more recent data is a better predictor of loss rates. ***Member States may allow credit institutions to have, when they implement the IRB Approach, relevant data covering a period of two years. The period to be covered shall increase by one year each year until relevant data cover a period of five years.***

Justification

See Amendment to Article 154(5).

Amendment 298
Annex VII, Part 4, paragraph 86

86. Credit institutions shall estimate conversion factors by facility grade or pool on the basis of the average realised conversion factors by facility grade or pool using all observed defaults within the data sources (default weighted average).	86. Credit institutions shall estimate conversion factors by facility grade or pool on the basis of the average ***expected*** realised conversion factors by facility grade or pool using all observed defaults within the data sources (default weighted average).

Justification

The clarification proposed by the Council is hereby endorsed.

Amendment 299
Annex VII, Part 4, paragraph 92

92. Estimates of conversion factor shall be based on data over a minimum of ***seven*** years for at least one data source. If the available observation period spans a longer period for any source, and the data is relevant, this longer period shall be used.	92. Estimates of conversion factor shall be based on data over a minimum of ***four*** years for at least one data source. If the available observation period spans a longer period for any source, and the data is relevant, this longer period shall be used.

Justification

The aim is to prevent excessive divergence of exposures between the basic approach and the progressive IRB approach.

Amendment 300
Annex VII, Part 4, paragraph 94

94. Estimates of conversion factors shall be based on data over a minimum of five years. Notwithstanding paragraph 86, a credit institution need not give equal importance to historic data if it can demonstrate to its competent authority that more recent data is a better predictor of draw downs.	94. Estimates of conversion factors shall be based on data over a minimum of five years. Notwithstanding paragraph 86, a credit institution need not give equal importance to historic data if it can demonstrate to its competent authority that more recent data is a better predictor of draw downs. ***Member States may allow credit institutions to have, when they implement the IRB Approach, relevant data covering a period of two years. The period to be covered shall increase by one year each year until relevant data cover a period of five years.***

Justification

See Amendment to Article 154(5).

Amendment 301
Annex VII, Part 4, paragraph 97

97. Credit institutions shall have clearly specified criteria for the types of guarantors they recognise for the calculation of risk weighted ***exposures***.	97. Credit institutions shall have clearly specified criteria for the types of guarantors they recognise for the calculation of risk weighted ***exposure amounts***.

Justification

Cross reference / Typographical error.

Amendment 302
Annex VII, Part 4, paragraph 100

100. A credit institution shall have clearly specified criteria for adjusting grades, pools or LGD estimates, and in the case of retail and eligible purchased receivables, the process of allocating exposures to grades or pools, to reflect the impact of guarantees for the calculation of risk weighted ***assets***. These criteria shall comply with the minimum requirements set out in paragraphs 18 to 30.	100. A credit institution shall have clearly specified criteria for adjusting grades, pools or LGD estimates, and in the case of retail and eligible purchased receivables, the process of allocating exposures to grades or pools, to reflect the impact of guarantees for the calculation of risk weighted ***exposure amounts***. These criteria shall comply with the minimum requirements set out in paragraphs 18 to 30.

Justification

Cross reference / Typographical error.

Amendment 303
Annex VII, Part 4, paragraph 123

123. All material aspects of the rating and estimation processes shall be approved by the credit institution's ***board of directors*** or a designated committee thereof and senior management. These parties shall possess a general understanding of the credit institution's rating systems and detailed comprehension of its associated management reports.	123. All material aspects of the rating and estimation processes shall be approved by the credit institution's ***management body referred to in Article 11*** or a designated committee thereof and senior management. These parties shall possess a general understanding of the credit institution's rating systems and detailed comprehension of its associated management reports.

Justification

The Council's amendment, to improve consistency in the text, is hereby endorsed.

Amendment 304
Annex VII, Part 4, paragraph 124

124. Senior management shall provide notice to the ***board of directors*** or a designated committee thereof of material changes or exceptions from established policies that will materially impact the operations of the credit institution's rating systems.	124. Senior management shall provide notice to ***the management body referred to in Article 11*** or a designated committee thereof of material changes or exceptions from established policies that will materially impact the operations of the credit institution's rating systems.

Justification

The Council's amendment, to improve consistency in the text, is hereby endorsed.

Amendment 305
Annex VII, Part 4, paragraph 130

130. Internal audit shall review at least annually the credit institution's rating systems and its operations, including the operations of the credit function and the estimation of PDs, LGDs, ELs and	130. Internal audit ***or another comparable independent auditing unit*** shall review at least annually the credit institution's rating systems and its operations, including the operations of the credit function and the

conversion factors. Areas of review shall include adherence to all applicable minimum requirements.	estimation of PDs, LGDs, ELs and conversion factors. Areas of review shall include adherence to all applicable minimum requirements.

Justification

The possibility of authorising an auditing unit other than the internal audit to carry out the review should be provided for, to allow for the eventuality of the internal audit's not possessing the necessary capabilities to review the credit institution's rating systems.

Amendment 306
Annex VIII, Part 1, paragraph 7, subparagraph 1, point (c a) (new)

	(ca) The competent authorities may recognise as eligible collateral physical items of a type other than those types indicated above if satisfied as to the following:
	(i) the existence of liquid markets for disposal of the collateral in an expeditious and economically efficient manner;
	(ii) the existence of well-established, publicly available market prices for the collateral. The institution must be able to demonstrate that there is no evidence that the net prices it receives when collateral is realised deviates significantly from these market prices.

Justification

The category "other collateral" includes liens on ships and aircraft. The market values of these collateral assets are readily determined, producing effective reduction of risk. But their credit risk mitigation effect is recognised only in the IRB approach. Our hope is that these types of collateral, which are quite widely used in the credit market, can go towards reducing capital charges for banks adopting the Standardised approach as well.

Amendment 307
Annex VIII, Part 1, paragraph 7, subparagraph 2, point (i)

(i) debt securities issued by regional governments or local authorities exposures to which are treated as exposures to the	(i) debt securities issued by regional governments or local authorities exposures to which are treated as exposures to the

central government in whose jurisdiction they are established under ***Annex VI***;	central government in whose jurisdiction they are established under ***Articles 78 to 83***;

Justification

Cross reference / Typographical error.

Amendment 308
Annex VIII, Part 1, paragraph 7, subparagraph 2, point (i a) (new)

	(ia) debt securities issued by public sector entities which are treated as exposures to central governments in accordance with paragraph 15a of part 1 of Annex VI.

Justification

Follows from amendment 111 of the Radwan draft report.

Amendment 309
Annex VIII, Part 1, paragraph 7, subparagraph 3, point (iii)

(iii) debt securities issued by multilateral development banks other than those to which a 0% risk weight is applied under;	(iii) debt securities issued by multilateral development banks other than those to which a 0% risk weight is applied under ***Articles 78 to 83***;

Justification

Cross reference / Typographical error.

Amendment 310
Annex VIII, Part 1, paragraph 10a (new)

	Receivables
	10a. The competent authorities may recognise as eligible collateral amounts receivable linked to a commercial transaction or transactions with an original maturity of less than or equal to one year. Eligible receivables do not include those associated with securitisations, sub-participations or credit derivatives or

amounts owed by affiliated parties.

Justification

See justification to Amendment to Annex VIII, part 1, paragraph 10 a (new).

Amendment 311
Annex VIII, Part 1, paragraph 10b (new)

Other physical collateral

10b. The competent authorities may recognise as eligible collateral physical items of a type other than those types indicated in paragraphs 11 to 17 if they are satisfied as to the following:

a) the existence of liquid markets for disposal of the collateral in an expeditious and economically efficient manner; and

b) the existence of well-established, publicly available market prices for the collateral. The institution must be able to demonstrate that there is no evidence that the net prices it receives when collateral is realised deviates significantly from these market prices.

Justification

See justification to Amendment to Annex VIII, part 1, paragraph 10 a (new).

Amendment 312
Annex VIII, Part 1, paragraph 13, introductory part

13. Residential real estate property which is or will be occupied or let by the owner and commercial real estate i.e. offices and other commercial premises may be recognised as eligible collateral where the following conditions are met:	13. Residential real estate property which is or will be occupied or let by the owner ***or the beneficial owner in the case of personal investment companies*** and commercial real estate i.e. offices and other commercial premises may be recognised as eligible collateral where the following conditions are met:

Justification

In the high net worth market many individuals purchase their properties through Special Purpose Vehicles for a number of reasons. Failure to allow these SPVs to be treated as retail exposures penalises credit institutions (i.e. requires higher capital) especially small banks who tend to specialise in the high net worth market.

Amendment 313
Annex VIII, Part 1, paragraph 13, point (a)

(a) The value of the property does not materially depend upon the credit quality of the obligor. This requirement ***is*** not ***intended to*** preclude situations where purely macro-economic factors affect both the value of the property and the performance of the borrower.	(a) The value of the property does not materially depend upon the credit quality of the obligor. This requirement ***does*** not preclude situations where purely macro-economic factors affect both the value of the property and the performance of the borrower.

Justification

Cross reference / Typographical error.

Amendment 314
Annex VIII, Part 1, paragraph 13, point (b)

(b) The risk of the borrower does not materially depend upon the performance of the underlying property or project, but rather on the underlying capacity of the borrower to repay the debt from other sources. ***As such, repayment of the facility does not materially depend on any cash flow generated by the underlying property serving as collateral.***	(b) The risk of the borrower does not materially depend upon the performance of the underlying property or project, but rather on the underlying capacity of the borrower to repay the debt from other sources ***in addition to the real estate cash flow***.

Justification

Persons with substantial own funds often purchase property via personal investment companies although these are not really undertakings. Private property loans are often based on the property cash-flow as a source of redemption. This must continue to be possible under the IRB approach.

Amendment 315
Annex VIII, Part 1, paragraph 17

17. The competent authorities of the Member States may waive the requirement	17. The competent authorities of the Member States may waive the requirement

for their institutions to comply with condition (b) in paragraph 13 for commercial real estate property situated within the territory of that Member State, if the competent authorities have evidence that the relevant market is well-developed and long-established and that loss-rates stemming from lending secured by commercial real estate property satisfy the following conditions:	for their ***credit*** institutions to comply with condition (b) in paragraph 13 for commercial real estate property situated within the territory of that Member State, if the competent authorities have evidence that the relevant market is well-developed and long-established and that loss-rates stemming from lending secured by commercial real estate property satisfy the following conditions:
(a) up to 50 % of the market value (or where applicable and if lower 60 % of the mortgage-lending-value) ***does*** not exceed 0.3 % of the outstanding loans ***secured*** by commercial real estate property in any given year;	(a) ***losses stemming from lending collateralised by commercial real estate property*** up to 50 % of the market value (or where applicable and if lower 60 % of the mortgage-lending-value) ***do*** not exceed 0.3 % of the outstanding loans ***collateralised*** by commercial real estate property in any given year;
(b) overall losses stemming from lending ***secured*** by commercial real estate ***does*** not exceed 0.5 % of the outstanding loans in any given year.	(b) overall losses stemming from lending ***collateralised*** by commercial real estate ***property do*** not exceed 0.5 % of the outstanding loans ***collateralised by commercial real estate property*** in any given year.

Justification

Cross reference / Typographical error.

Amendment 316
Annex VIII, Part 1, paragraph 19

19. The competent authorities of a Member State, ***which do not use the waiver in paragraph 17,*** may recognise as eligible commercial real estate property recognised as eligible in another Member State by virtue of the waiver.	19. The competent authorities of a Member State, may recognise as eligible commercial real estate property recognised as eligible in another Member State by virtue of the waiver ***in paragraph 17***.

Justification

The Council's proposed clarification is hereby endorsed.

Amendment 317
Annex VIII, Part 1, paragraph 21, introductory part

21. The competent authorities ***may*** recognise as eligible collateral physical items of a type other than those types indicated in paragraphs 13 to 19 if satisfied as to the following:	21. The competent authorities ***shall*** recognise as eligible collateral physical items of a type other than those types indicated in paragraphs 13 to 19 if satisfied as to the following:

Justification

Abolishes national authorities' discretionary power.

Amendment 318
Annex VIII, Part 1, paragraph 21, points (a) and (b)

(***a***) the existence of liquid markets for disposal of the collateral in an expeditious and economically efficient manner; and (***b***) the existence of ***well-established,*** publicly available market prices for the collateral. The institution must be able to demonstrate that there is no evidence that the net prices it receives when collateral is realised deviates significantly from these market prices.	(***i***) the existence of liquid markets for disposal of the collateral in an expeditious and economically efficient manner; and (***ii***) the existence of publicly available market prices for the collateral. The ***credit*** institution must be able to demonstrate that there is no evidence that the net prices it receives when collateral is realised deviates significantly from these market prices.

Justification

Cross reference / Typographical error.

Amendment 319
Annex VIII, Part 1, paragraph 26, introductory part

26. The following parties may be recognised as eligible providers of unfunded protection:	26. The following parties may be recognised as eligible providers of unfunded ***credit*** protection:

Justification

Cross reference / Typographical error.

Amendment 320
Annex VIII, Part 1, paragraph 26, point (e)

(e) public sector entities, claims on which are treated by the competent authorities as	(e) public sector entities, claims on which are treated by the competent authorities as

claims on institutions under Articles 78 to 83;	claims on institutions ***or central governments*** under Articles 78 to 83;

Justification

Follows from amendment 111 of the Radwan draft report.

Amendment 321
Annex VIII, Part 1, paragraph 26, point (g a) (new)

	(ga) natural persons.

Justification

As long as private individuals have a rating that has been assigned via a validated model, private individuals should be recognised as eligible providers of unfunded protection.

Amendment 322
Annex VIII, Part 2, paragraph 3, point (a)

(a) they must ***have a well-founded legal basis and*** be legally enforceable ***under applicable law***, including in the event of the insolvency or bankruptcy of a counterparty;	(a) they must be legally ***effective and*** enforceable ***in all relevant jurisdictions***, including in the event of the insolvency or bankruptcy of a counterparty;

Justification

The Council's amendment, to improve consistency in the text, is hereby endorsed.

Amendment 323
Annex VIII, Part 2, paragraph 4, point (a)

(a) ***have a well founded legal basis and*** be legally enforceable ***under applicable law***, including in the event of the bankruptcy or insolvency of the counterparty	(a) be legally ***effective and*** enforceable ***in all relevant jurisdictions***, including in the event of the bankruptcy or insolvency of the counterparty

Justification

The Council's amendment, to improve consistency in the text, is hereby endorsed.

Amendment 324
Annex VIII, Part 2, paragraph 6, point (a), subparagraph 2

Securities issued by the obligor, or any related group entity are not eligible.	Securities issued by the obligor, or any related group entity are not eligible. ***This notwithstanding, the obligor's own issues of covered bonds falling within the terms of Annex VI, paragraphs 65 to 67 may be recognised as eligible when they are posted as collateral for repurchase transactions, provided that the first subparagraph of this point is complied with.***

Justification

The Council amendment is hereby endorsed.

Amendment 325
Annex VIII, Part 2, paragraph 8, point (a), the sole subparagraph

The mortgage or charge shall be legally enforceable in all ***relevant*** jurisdictions, and the mortgage or charge shall be properly filed on a timely basis. The arrangements shall reflect a perfected lien (i.e. all legal requirements for establishing the pledge shall been fulfilled). The protection agreement and the legal process underpinning it shall enable the credit institution to realise the value of the protection within a reasonable timeframe.	The mortgage or charge shall be legally enforceable in all jurisdictions ***which are relevant at the time of the conclusion of the credit agreement***, and the mortgage or charge shall be properly filed on a timely basis. The arrangements shall reflect a perfected lien (i.e. all legal requirements for establishing the pledge shall been fulfilled). The protection agreement and the legal process underpinning it shall enable the credit institution to realise the value of the protection within a reasonable timeframe.

Justification

Point (a) needs clarifying so that credit institutions do not have to check all 25 jurisdictions at the time of concluding a credit agreement. Rather they need only check the jurisdictions that are relevant to the checking situation concerned.

Amendment 326
Annex VIII, Part 2, paragraph 8, point (b), subparagraph 1

The value of the property shall be monitored on a frequent basis and at a minimum once every year. More frequent monitoring shall be carried out where the market is subject to significant changes in conditions. Statistical methods may be used to monitor the value of the property and to identify property that needs revaluation. The property shall be ***valued*** by an independent valuer when information indicates that the value of the property may have declined materially relative to general market prices. For loans exceeding EUR 3 million or 5% of the own funds of the credit institution, the property shall be ***evaluated*** by an independent valuer at least every three years.	The value of the property shall be monitored on a frequent basis and at a minimum once every year ***for commercial real estate and once every three years for residential real estate***. More frequent monitoring shall be carried out where the market is subject to significant changes in conditions. Statistical methods may be used to monitor the value of the property and to identify property that needs revaluation. The property ***valuation*** shall be ***reviewed*** by an independent valuer when information indicates that the value of the property may have declined materially relative to general market prices. For loans exceeding EUR 3 million or 5% of the own funds of the credit institution, the property ***valuation*** shall be ***reviewed*** by an independent valuer at least every three years.

Justification

Your rapporteur endorses the Council's amendment increasing the minimum valuation review period for residential real estate from one to three years.

Furthermore, as the Council proposes, loans in excess of EUR 3 million or 5% of the own capital of a credit institution, should be exempted from the requirement of a three-yearly valuation by an external assessor, and it should first be established whether a revaluation is in fact necessary.

Amendment 327
Annex VIII, Part 2, paragraph 9, point (a), point (iv)

(iv) The collateral arrangements must be properly documented, with a clear and robust procedure for the timely collection of collateral. Credit institutions procedures shall ensure that any legal conditions required for declaring the default of the ***customer*** and timely collection of collateral are observed. In the event of the borrower's financial distress or default, the credit institution shall have legal authority	(iv) The collateral arrangements must be properly documented, with a clear and robust procedure for the timely collection of collateral. Credit institutions procedures shall ensure that any legal conditions required for declaring the default of the ***borrower*** and timely collection of collateral are observed. In the event of the borrower's financial distress or default, the credit institution shall have legal authority

to sell or assign the receivables to other parties without consent of the receivables obligors.	to sell or assign the receivables to other parties without consent of the receivables obligors.

Justification

The Council's proposed clarification and improvement in the consistency of the text is hereby endorsed.

Amendment 328
Annex VIII, Part 2, paragraph 9, point (b), point (ii)

(ii) The margin between the amount of the exposure and the value of the receivables must reflect all appropriate factors, including the cost of collection, concentration within the receivables pool pledged by an individual borrower, and potential concentration risk within the credit institution's total exposures beyond that controlled by the credit institution's general methodology. The credit institution must maintain a continuous monitoring process appropriate to the receivables. ***Observance of the credit institution's overall concentration limits shall be monitored.*** Additionally, compliance with loan covenants, environmental restrictions, and other legal requirements shall be reviewed on a regular basis.	(ii) The margin between the amount of the exposure and the value of the receivables must reflect all appropriate factors, including the cost of collection, concentration within the receivables pool pledged by an individual borrower, and potential concentration risk within the credit institution's total exposures beyond that controlled by the credit institution's general methodology. The credit institution must maintain a continuous monitoring process appropriate to the receivables. Additionally, compliance with loan covenants, environmental restrictions, and other legal requirements shall be reviewed on a regular basis.

Justification

For netting and funded credit protection, it is irrelevant who has provided the collateral. In 99% of cases it will be provided by the client itself. Furthermore, though there can be concentrations in the underlying parties on whom a bank's client has a claim, it is impossible for an international bank with many different legal entities and systems to combine the data of the receivable issuers to identify these concentrations. In addition, this is a double default issue and we note that the issue of double default is being examined by the Basel/IOSCO Trading Book.

Amendment 329
Annex VIII, Part 2, paragraph 10, point (a)

(a) The collateral arrangement shall be	(a) The collateral arrangement shall be

legally enforceable ***under all applicable laws*** and shall enable the credit institution to realise the value of the property within a reasonable timeframe.	legally ***effective and*** enforceable ***in all relevant jurisdictions*** and shall enable the credit institution to realise the value of the property within a reasonable timeframe.

Justification

The Council's proposed clarification and improvement in the consistency of the text is hereby endorsed.

Amendment 330
Annex VIII, Part 2, paragraph 10, point (f)

(f) The credit institution's credit policies with regard to the transaction structure shall address appropriate collateral requirements relative to the exposure amount, the ability to liquidate the collateral readily, the ability to establish objectively a price or market value, the frequency with which the value can readily be obtained (including a professional appraisal or valuation), and the volatility of the value of the collateral.	(f) The credit institution's credit policies with regard to the transaction structure shall address appropriate collateral requirements relative to the exposure amount, the ability to liquidate the collateral readily, the ability to establish objectively a price or market value, the frequency with which the value can readily be obtained (including a professional appraisal or valuation)**,** and the volatility ***or a proxy of the volatility*** of the value of the collateral.

Justification

While it is common practice for a credit institution's credit policy to address the type of exposure and to whom it is made, including taking into account collateral values, this requirement may lead to misinterpretation. Indeed, while for some types of assets such as motor cars and aircrafts for example an institution is able to be aware of value fluctuations, for others this is difficult to determine.

Amendment 331
Annex VIII, Part 2, paragraph 11, point (b)

(b) There shall be robust risk management on the part of the lessor with respect to the ***location of the asset,*** the use to which ***it*** is put, its age, and planned ***obsolescence***;	(b) There shall be robust risk management on the part of the lessor with respect to the use to which ***the leased asset*** is put, its age, and planned ***duration of use, including appropriate monitoring of the value of the security***;

Justification

The lessor cannot keep constant track of the asset's location but as property owner can find the location only within a specific period of notice.

Amendment 332
Annex VIII, Part 2, paragraph 11, point (d)

(d) The difference between the ***rate of depreciation of the physical asset and the rate of amortisation of the lease payments*** must not be so large as to overstate the credit risk mitigation attributed to the leased assets.	(d) ***where this has not already been ascertained in calculating the LGD level,*** the difference between the ***value of the unamortised amount and the market value of the security*** must not be so large as to overstate the credit risk mitigation attributed to the leased assets.

Justification

The value of the unamortised amount should not deviate too far from the market value. Also the requirement is effective only if the risk of the basic asset value has not already been taken into account when calculating the LGD.

Amendment 333
Annex VIII, Part 2, paragraph 12, point (a)

(a) The borrower's claim against the third party institution is openly pledged or assigned to the lending credit institution;	(a) The borrower's claim against the third party institution is openly pledged or assigned to the lending credit institution ***and such pledge or assignment is legally effective and enforceable in all relevant jurisdictions***;

Justification

The Council's proposed clarification and improvement in the consistency of the text is hereby endorsed.

Amendment 334
Annex VIII, Part 2, paragraph 13, point (c)

(c) the company providing the life insurance is notified of the pledge or assignment and as a result may not ***cancel the contract or*** pay amounts payable under the contract without the consent of the lending credit	(c) the company providing the life insurance is notified of the pledge or assignment and as a result may not pay amounts payable under the contract without the consent of the lending credit institution;

institution;

Justification

Cancelling the insurance contract cannot be made dependent upon the consent of the lending credit institution, since the reasons for cancellation naturally derive from the relationship between insured and insurer.

Amendment 335
Annex VIII, Part 2, paragraph 13, point (d)

(d) the policy ***must have a declared surrender value which*** is ***a*** non-reducible ***amount;***	(d) the ***declared surrender value of the*** policy is non-reducible;

Justification

Point 13(d) needs amending since as a rule the insurance policy does not contain details of the surrender value.

Amendment 336
Annex VIII, Part 2, paragraph 13, point (g)

(g) the credit protection must be provided for the maturity of the loan; and	(g) the credit protection must be provided for the maturity of the loan. ***Where this is not possible because the insurance relationship ends before the loan relationship expires, the credit institution must ensure that the amount deriving from the insurance contract serves the credit institution as security until the end of the duration of the credit agreement***; and

Justification

As a rule the terms of the insurance contract and the credit agreement are not congruent. The addition takes this fact into account.

Amendment 337

Annex VIII, Part 2, paragraph 13, point (h)

(h) the pledge must be legally enforceable in all relevant jurisdictions.	(h) the pledge ***or assignment*** must be legally ***effective and*** enforceable in all relevant jurisdictions ***relevant at the time of the conclusion of the credit agreement***.

Justification

The Council's proposed clarification and improvement in the consistency of the text is hereby endorsed.

Amendment 338
Annex VIII, Part 2, paragraph 14, point (d)

(d) It must be legally enforceable in all relevant jurisdictions.	(d) It must be legally ***effective and*** enforceable in all relevant jurisdictions ***relevant at the time of the conclusion of the credit agreement***.

Justification

The Council's proposed clarification and improvement in the consistency of the text is hereby endorsed.

Amendment 339
Annex VIII, Part 2, paragraph 16, introductory part

16. Where an exposure is protected by a guarantee which is counter-guaranteed by a central government or central bank, a regional government or local authority claims on which are treated as claims ***on the sovereign*** in whose jurisdiction they are established under Articles 78 to 83, a multi-lateral development bank to which a 0% risk weight is applied under or by virtue of Articles 78 to 83, or a public sector entity claims on which are treated as claims on credit institutions under Articles 78 to 83, the exposure may be treated as protected by a guarantee provided by the entity in question provided the following conditions are satisfied:	16. Where an exposure is protected by a guarantee which is ***directly or indirectly*** counter-guaranteed by a central government or central bank, a regional government or local authority ***or a public sector entity*** claims on which are treated as claims ***on the central government*** in whose jurisdiction they are established under Articles 78 to 83, a multi-lateral development bank to which a 0% risk weight is applied under or by virtue of Articles 78 to 83, or a public sector entity claims on which are treated as claims on credit institutions under Articles 78 to 83, the exposure may be treated as protected by a guarantee provided by the entity in question provided the following conditions are satisfied:

Justification

The way in which eligible counter-guarantors operate in the various Member States is not homogeneous. In some countries the eligible counter-guarantor guarantees directly the guarantor. In others, it guarantees the guarantor indirectly via a technical means which is normally a guarantee fund. It is important that the directive maintains a neutral stance vis à vis *the technique eligible guarantors choose to operate with due to the specific conditions prevailing in a given national market. The three conditions specified at the end of the paragraph, and in particular the requirement for competent authorities to be satisfied ensures in all admissible cases that any chosen technical means does not create any prudential concern.*

Amendment 340
Annex VIII, Part 2, paragraph 17, point (a)

(a) On the qualifying default/non-payment ***of*** the counterparty, the lending credit institution shall have the right to pursue, in a timely manner, the guarantor for any monies due under the claim in respect of which the protection is provided. Payment by the guarantor shall not be subject to the lending credit institution first having to pursue the obligor.	(a) On the qualifying default ***of and/or*** non-payment ***by*** the counterparty, the lending credit institution shall have the right to pursue, in a timely manner, the guarantor for any monies due under the claim in respect of which the protection is provided. Payment by the guarantor shall not be subject to the lending credit institution first having to pursue the obligor. ***In the case of unfunded credit protection covering residential mortgage loans, the requirements in paragraph 14(c) (iii) and 17(a) have only to be satisfied within an overall period of 24 months.***

Justification

The Council's proposed clarification and improvement in the consistency of the text is hereby endorsed.

Amendment 341
Annex VIII, Part 2, paragraph 18, introductory part

18. In the case of guarantees provided in the context of mutual guarantee schemes recognised for these purposes by the competent authorities or provided by or counter-guaranteed by entities referred to in paragraph 16, the requirements in	18. In the case of guarantees provided in the context of mutual guarantee schemes recognised for these purposes by the competent authorities or provided by or counter-guaranteed by entities referred to in paragraph 16, the requirements in

paragraph (a) ***may*** be considered to be satisfied where either of the following conditions are met:	paragraph ***17*** (a) ***shall*** be considered to be satisfied where either of the following conditions are met:

Justification

The Council's amendment abolishing the national discretionary power is hereby endorsed. Correction of paragraph reference.

Amendment 342
Annex VIII, Part 2, paragraph 18, point (a)

(a) ***the competent authorities are satisfied that*** the lending credit institution has the right to obtain in a timely manner a provisional payment by the guarantor calculated to represent a robust estimate of the amount of the economic loss, including losses resulting from the non-payment of interest and other types of payment which the borrower is obliged to make, likely to be incurred by the lending credit institution proportional to the coverage of the guarantee;	(a) the lending credit institution has the right to obtain in a timely manner a provisional payment by the guarantor calculated to represent a robust estimate of the amount of the economic loss, including losses resulting from the non-payment of interest and other types of payment which the borrower is obliged to make, likely to be incurred by the lending credit institution proportional to the coverage of the guarantee;

Justification

The Council's amendment abolishing the national discretionary power is hereby endorsed.

Amendment 343
Annex VIII, Part 2, paragraph 18, point (b)

(b) the ***competent authorities are otherwise satisfied as to*** the loss-protecting effects of the guarantee, including losses resulting from the non-payment ***of interest and other types of payment*** which the borrower is obliged to make.	(b) the ***lending credit institution can demonstrate that*** the loss-protecting effects of the guarantee, including losses resulting from the non-payment which the borrower is obliged to make***, justify such treatment***.

Justification

Analogous to the justification relating to paragraph 16.

Amendment 344
Annex VIII, Part 2, paragraph 19, point (a), point (i)

(i) the failure to pay the amounts due under the terms of the underlying obligation that are in effect at the time of such failure (with a grace period that is closely in line with or shorter than the grace period in the underlying obligation); ***and***	(i) the failure to pay the amounts due under the terms of the underlying obligation that are in effect at the time of such failure (with a grace period that is closely in line with or shorter than the grace period in the underlying obligation);

Justification

Cross reference / Typographical error.

Amendment 345
Annex VIII, Part 2, paragraph 19, point (b)

(b) Where the credit events specified under the credit derivative do not include restructuring of the underlying obligation as described in ***the third indent of*** (a), the credit protection may nonetheless be recognised subject to a reduction in the recognised value as specified in part 3, paragraph 84.	(b) Where the credit events specified under the credit derivative do not include restructuring of the underlying obligation as described in ***point (iii) of subparagraph*** (a), the credit protection may nonetheless be recognised subject to a reduction in the recognised value as specified in part 3, paragraph 84.

Justification

Cross reference / Typographical error.

Amendment 346
Annex VIII, Part 3, paragraph 1

1. Subject to parts 4 to 6, where the provisions in parts 1 and 2 are satisfied, the calculation of risk-weighted exposure amounts under ***Subsection 1*** Articles 78 to 83 and the calculation of risk-weighted exposure amounts and expected loss amounts under Articles 84 to 89 may be modified in accordance with the provisions of this part.	1. Subject to parts 4 to 6, where the provisions in parts 1 and 2 are satisfied, the calculation of risk-weighted exposure amounts under Articles 78 to 83 and the calculation of risk-weighted exposure amounts and expected loss amounts under Articles 84 to 89 may be modified in accordance with the provisions of this part.

Justification

Cross reference / Typographical error.

Amendment 347
Annex VIII, Part 3, paragraph 6

6. The net position in each type of security shall be calculated by subtracting from the	6. The net position in each type of security ***or commodity*** shall be calculated by

total value of the securities of that type lent, sold or provided under the master netting agreement, the total value of securities of that type borrowed, purchased or received under the agreement.	subtracting from the total value of the securities ***or commodities*** of that type lent, sold or provided under the master netting agreement, the total value of securities ***or commodities*** of that type borrowed, purchased or received under the agreement.

Justification

The Council's proposed amendments on the treatment of commodity transactions are hereby endorsed.

Amendment 348
Annex VIII, Part 3, paragraph 12

12. As an alternative to using the Supervisory volatility adjustments approach or the Own Estimates volatility adjustments approach in calculating the fully adjusted exposure value (E*) ***resulting from the application of an eligible master netting agreement covering*** repurchase transactions, securities or commodities lending or borrowing transactions, and/or other capital market driven transactions other than derivative transactions, ***credit institutions may be permitted to use an internal models approach which takes*** into account correlation effects between security positions ***subject to the master netting agreement*** as well as the liquidity of the instruments concerned. ***Internal models used in this approach shall provide estimates of the potential change in value of the unsecured exposure amount (∑E - ∑C).***	12. As an alternative to using the Supervisory volatility adjustments approach or the Own Estimates volatility adjustments approach in calculating the fully adjusted exposure value (E*)***, credit institutions may be permitted to use an internal models approach for*** repurchase transactions, securities or commodities lending or borrowing transactions, and/or other capital market driven transactions other than derivative transactions. ***Internal models must assess potential change in exposure subject to minimum standards set out below and in particular should take*** into account correlation effects between security positions as well as the liquidity of the instruments concerned. ***Models may reflect netting, but only where such netting is permissible in view of master netting agreements covering the positions.***

Justification

The draft proposed by the Commission could imply that internal models can only be used if all transactions are covered by a netting agreement. Credit institutions should be allowed to take account of diversification across their market risk positions with a given counterparty regardless of the applicability of netting. Netting and diversification are distinct concepts. The existence of a netting agreement reduces both the current and future exposure to a counterparty. Diversification, which is recognised in internal models, limits future exposure

without the need for a netting agreement being in place.

Amendment 349
Annex VIII, Part 3, paragraph 13

13. A credit institution may choose to use an internal models approach independently of the choice it has made between ***the Standardised Approach and the IRB Foundation Approach to credit risk***. However, if a credit institution seeks to use an internal models approach, it must do so for all counterparties and securities, excluding immaterial portfolios where it may use the Supervisory volatility adjustments approach or the Own estimates volatility adjustments approach as set out in paragraphs 5 to 11.	13. A credit institution may choose to use an internal models approach independently of the choice it has made between ***Articles 78 to 83 and Articles 84 to 89 for the calculation of risk-weighted exposure amounts***. However, if a credit institution seeks to use an internal models approach, it must do so for all counterparties and securities, excluding immaterial portfolios where it may use the Supervisory volatility adjustments approach or the Own estimates volatility adjustments approach as set out in paragraphs 5 to 11.

Justification

Cross reference / Typographical error.

Amendment 350
Annex VIII, Part 3, paragraph 17, point (c)

(c) a 5-day equivalent liquidation period, except in the case of transactions other than repurchase transactions or securities ***or commodities*** lending or borrowing transactions when a 10-day equivalent liquidation period shall be used;	(c) a 5-day equivalent liquidation period, except in the case of transactions other than ***securities*** repurchase transactions or securities lending or borrowing transactions when a 10-day equivalent liquidation period shall be used;

Justification

The Council amendment is hereby endorsed.

Amendment 351
Annex VIII, Part 3, paragraph 19

19. The competent authorities may allow credit institutions to use empirical correlations within risk categories and across risk categories if they are satisfied that the institution's system for measuring correlations is sound and implemented with	19. The competent authorities may allow credit institutions to use empirical correlations within risk categories and across risk categories if they are satisfied that the ***credit*** institution's system for measuring correlations is sound and implemented with

integrity`.	integrity`.

Or. en

Justification

Cross reference / Typographical error.

Amendment 352
Annex VIII, Part 3, paragraph 21, subparagraph 3

Where risk-weighted exposure amounts are calculated under ***Subsection 1*** Articles 78 to 83, E is the exposure value for each separate exposure under the agreement that would apply in the absence of the credit protection.	Where risk-weighted exposure amounts are calculated under Articles 78 to 83, E is the exposure value for each separate exposure under the agreement that would apply in the absence of the credit protection.

Justification

*Cross reference / Typographical error.*Amendment 353
Annex VIII, Part 3, paragraph 21, subparagraph 5

C is the ***current market*** value of the securities borrowed, purchased or received or the cash borrowed or received in respect of each such exposure.	C is the value of the securities borrowed, purchased or received or the cash borrowed or received in respect of each such exposure.

Justification

The Council amendment is hereby endorsed.

Amendment 354
Annex VIII, Part 3, paragraph 22

22. In calculating ***capital requirements*** using internal models, credit institutions shall use the previous business day's model output.	22. In calculating ***risk-weighted exposure amounts*** using internal models, credit institutions shall use the previous business day's model output.

Justification

The Council amendment is hereby endorsed.

Amendment 355
Annex VIII, Part 3, Title preceding paragraph 24

IRB ***Foundation*** Approach	IRB Approach

Justification

The Council amendment is hereby endorsed.

Amendment 356
Annex VIII, Part 3, paragraph 27

27. The risk weight that would apply under Articles 78 to 83 if the lender had a direct exposure to the collateral instrument shall apply to those portions of claims collateralised by the market value of recognised collateral. The risk weight ***on*** the collateralised portion shall be a minimum of 20% except as specified in paragraphs 28 to 30. The remainder of the exposure shall receive the risk weight that would be applied to an unsecured exposure to the counterparty under Articles 78 to 83.	27. The risk weight that would apply under Articles 78 to 83 if the lender had a direct exposure to the collateral instrument shall apply to those portions of claims collateralised by the market value of recognised collateral. The risk weight ***of*** the collateralised portion shall be a minimum of 20% except as specified in paragraphs 28 to 30. The remainder of the exposure shall receive the risk weight that would be applied to an unsecured exposure to the counterparty under Articles 78 to 83.

Justification

Cross reference / Typographical error.

Amendment 357
Annex VIII, Part 3, paragraph 34, subparagraph 8

E is the exposure value as would be determined under Articles 78 to 83 or Articles 84 to 89 as appropriate if the exposure was not collateralised.	E is the exposure value as would be determined under Articles 78 to 83 or Articles 84 to 89 as appropriate if the exposure was not collateralised. ***For this purpose, for credit institutions calculating risk-weighted exposure amounts under Articles 78 to 83, the exposure value of off-balance sheet items listed in Annex II shall be 100% of its value rather than the percentages indicated in Article 78(1), and for credit institutions calculating risk-weighted exposure amounts under Articles 84 to 89, the exposure value of the items listed in Annex VII, Part 3, paragraphs 11 to 13 shall be calculated using a conversion factor of 100% rather than the conversion factors or percentages indicated in those paragraphs.***

Justification

The Council amendment, bringing the text into line with the Basel Framework Agreement, is hereby endorsed.

Amendment 358
Annex VIII, Part 3, paragraph 37, Table 5, column 2, row 2

20 day liquidation period (%)	***10*** day liquidation period (%)

Justification

Cross reference / Typographical error.

Amendment 359
Annex VIII, Part 3, paragraph 40

40. For non-eligible securities lent or sold under repurchase transactions or securities lending or borrowing transactions, the volatility adjustment is the same as for non-main index equities listed on a recognised exchange.	40. For non-eligible securities ***or for commodities*** lent or sold under repurchase transactions or securities ***or commodities*** lending or borrowing transactions, the volatility adjustment is the same as for non-main index equities listed on a recognised exchange.

Justification

The Council's amendment to include commodity loan transactions is hereby endorsed.

Amendment 360
Annex VIII, Part 3, paragraph 41

41. For eligible units in collective investment undertakings the volatility adjustment is the ***highest*** volatility adjustment that would ***be*** apply, having regard to the liquidation period of the transaction as specified in paragraph 38, to any of the assets in which the fund has the right to invest.	41. For eligible units in collective investment undertakings the volatility adjustment is the ***weighted average*** volatility adjustment***s*** that would apply, having regard to the liquidation period of the transaction as specified in paragraph 38, ***to the assets in which the fund has invested. If the assets in which the fund has invested are not known to the credit institution, the volatility adjustment is the highest volatility adjustment that would apply*** to any of the assets in which the fund has the right to invest.

Justification

The Council amendment is hereby endorsed.

Amendment 361
Annex VIII, Part 3, paragraph 43

43. The competent authorities ***may*** permit institutions complying with the requirements set out in paragraphs 48 to 57 to use their own estimates of volatility for calculating the volatility adjustments to be applied to collateral and exposures.	43. The competent authorities ***shall*** permit ***credit*** institutions complying with the requirements set out in paragraphs 48 to 57 to use their own estimates of volatility for calculating the volatility adjustments to be applied to collateral and exposures.

Justification

Alignment with Council proposal. Replaces amendment 200 of the Radwan draft report.

Amendment 362
Annex VIII, Part 3, paragraph 59, subparagraph 1

59. In relation to repurchase transactions and securities lending or borrowing transactions, where a credit institution uses the Supervisory volatility adjustments approach or the Own Estimates approach and where the conditions set out in points (a) to (h) are satisfied, ***the competent authorities may allow*** credit institutions ***not to apply*** the volatility adjustments calculated under paragraphs 35 to 58 ***and to instead*** apply a 0% volatility adjustment. This option is not available in respect of credit institutions using the internal models approach set out in paragraphs 12 to 22.	59. In relation to repurchase transactions and securities lending or borrowing transactions, where a credit institution uses the Supervisory volatility adjustments approach or the Own Estimates approach and where the conditions set out in points (a) to (h) are satisfied, credit institutions ***may, instead of applying*** the volatility adjustments calculated under paragraphs 35 to 58**,** apply a 0% volatility adjustment. This option is not available in respect of credit institutions using the internal models approach set out in paragraphs 12 to 22.

Justification

The Council's amendment abolishing this national discretionary power is hereby endorsed.

Amendment 363
Annex VIII, Part 3, paragraph 59, point (a)

(a) Both the exposure and the collateral are cash or securities ***falling*** within Part 1, paragraph 7(b);	(a) Both the exposure and the collateral are cash or ***debt*** securities ***issued by central governments or central banks*** within ***the meaning of*** Part 1, paragraph 7(b) ***and eligible for a 0% risk weight under Articles 78 to 83***;

Justification

The Council amendment, bringing the text into line with the Basel Framework Agreement, is hereby endorsed.

Amendment 364
Annex VIII, Part 3, paragraph 59, point (h), introductory part

(h) The counterparty is considered a 'core market participant' by the competent authorities. Core market participants ***may*** include the following entities:	(h) The counterparty is considered a 'core market participant' by the competent authorities. Core market participants ***shall*** include the following entities:

Justification

The Council's amendment abolishing this national discretionary power is hereby endorsed.

Amendment 365
Annex VIII, Part 3, paragraph 61

61. E* as calculated under paragraph 34 shall be taken as the exposure value for the purposes of Article 80.	61. E* as calculated under paragraph 34 shall be taken as the exposure value for the purposes of Article 80. ***In the case of off-balance sheet items listed in Annex II, E* shall be taken as the value at which the percentages indicated in Article 78(2) shall be applied to arrive at the exposure value.***

Justification

The Council's amendment, clarifying the text and bringing it into line with the Basel Framework Agreement, is hereby endorsed.

Amendment 366
Annex VIII, Part 3, Title preceding paragraph 62,

IRB ***Foundation*** Approach	IRB Approach

Justification

The Council's clarifying amendment is hereby endorsed.

Amendment 367
Annex VIII, Part 3, paragraph 62, subparagraph 2

LGD* = ***Max {0,*** LGD x [(E*/E]***}***	LGD* = LGD x (E*/E)

Justification

The Council's amendment is hereby endorsed.

Amendment 368
Annex VIII, Part 3, paragraph 62, subparagraph 5

E is the exposure value under ***Articles 84 to 89***;	E* is the exposure value ***as calculated*** under ***paragraph 34***.

Justification

The Council's amendment is hereby endorsed.

Amendment 369
Annex VIII, Part 3, paragraph 71

71. Where the ratio of the value of the collateral to the exposure value exceeds a second, higher threshold level of C** (i.e. the required level ofcollateralisation to receive full LGD recognition) as laid down in Table 6, LGD* shall be that prescribed in ***the following table***.	71. Where the ratio of the value of the collateral to the exposure value exceeds a second, higher threshold level of C** (i.e. the required level ofcollateralisation to receive full LGD recognition) as laid down in Table 6, LGD* shall be that prescribed in ***Table 6***.

Justification

Cross reference / Typographical error.

Amendment 370
Annex VIII, Part 3, paragraph 73, subparagraph 2, introductory part

By way of derogation, until 31 December 2012 ***the competent authorities may***, subject to the indicated levels of collateralization	By way of derogation, until 31 December 2012, subject to the indicated levels of collateralization

Justification

This requirement will have a negative impact on individual borrowers or SMEs. Indeed, these types of borrowers often receive finance in cases where the amount of the exposure is the same as the value of the collateral, i.e. 100% of the purchase price of an asset is often financed by the credit institution. Given a degree of collateralisation of 140%, the institution may only grant a part of the necessary sum. The borrower would therefore either be faced with a higher cost of lending or have to provide other types of collateral.

Amendment 371
Annex VIII, Part 3, paragraph 73, subparagraph 2, point (a)

(a) ***allow*** credit institutions ***to*** assign a 30% LGD for senior exposures in the form of Commercial Real Estate leasing; and	(a) credit institutions ***may*** assign a 30% LGD for senior exposures in the form of Commercial Real Estate leasing; and

Justification

This requirement will have a negative impact on individual borrowers or SMEs. Indeed, these types of borrowers often receive finance in cases where the amount of the exposure is the same as the value of the collateral, i.e. 100% of the purchase price of an asset is often financed by the credit institution. Given a degree of collateralisation of 140%, the institution may only grant a part of the necessary sum. The borrower would therefore either be faced with a higher cost of lending or have to provide other types of collateral.

Amendment 372
Annex VIII, Part 3, paragraph 73, subparagraph 2, point (b)

(b) ***allow*** credit institutions ***to*** assign a 35% LGD for senior exposures in the form of equipment leasing.	(b) credit institutions ***may*** assign a 35% LGD for senior exposures in the form of equipment leasing.

Justification

This requirement will have a negative impact on individual borrowers or SMEs. Indeed, these types of borrowers often receive finance in cases where the amount of the exposure is the same as the value of the collateral, i.e. 100% of the purchase price of an asset is often financed by the credit institution. Given a degree of collateralisation of 140%, the institution may only grant a part of the necessary sum. The borrower would therefore either be faced with a higher cost of lending or have to provide other types of collateral.

Amendment 373

Annex VIII, Part 3, paragraph 73, subparagraph 2, point (b a) (new)

	(ba) allow credit institutions to assign a 30% LGD for senior exposures secured by residential or commercial real estate.

Justification

The Council amendment, seeking to obtain equal treatment as between, on the one hand, loans secured on residential and commercial real estate and, on the other hand, loans secured on leased commercial real estate, is hereby endorsed.

Amendment 374
Annex VIII, Part 3, paragraph 74

74. Subject to the requirements of this ***paragraphs*** and paragraph 75 and as an alternative to the treatment in paragraphs 69 to 73, the competent authorities of a Member State may authorise credit institutions to apply a 50% risk weighting to the part of the exposure fully collateralised by residential real estate property or commercial real estate property situated within the territory of the Member State if they have evidence that the relevant markets are well-developed and long-established with loss-rates from lending collateralised by residential real estate property or commercial real estate property respectively that do not exceed the following limits:	74. Subject to the requirements of this ***paragraph*** and paragraph 75 and as an alternative to the treatment in paragraphs 69 to 73, the competent authorities of a Member State may authorise credit institutions to apply a 50% risk weighting to the part of the exposure fully collateralised by residential real estate property or commercial real estate property situated within the territory of the Member State if they have evidence that the relevant markets are well-developed and long-established with loss-rates from lending collateralised by residential real estate property or commercial real estate property respectively that do not exceed the following limits:
(a) up to 50 % of the market value (or where applicable and if lower 60 % of the mortgage-lending-value) ***must*** not exceed 0.3 % of the outstanding ***residential real estate and/or commercial real estate loans*** in any given year.	(a) ***losses stemming from lending collateralised by residential real estate property or commercial real estate property respectively*** up to 50 % of the market value (or where applicable and if lower 60 % of the mortgage-lending-value) ***do*** not exceed 0.3 % of the outstanding ***loans collateralised by that form of real estate property*** in any given year.
(b) overall losses stemming from lending collateralised by residential real estate property or commercial real estate property respectively ***must*** not exceed 0.5 % of the outstanding loans collateralised by that form of real estate property in any given year.	(b) overall losses stemming from lending collateralised by residential real estate property or commercial real estate property respectively ***do*** not exceed 0.5 % of the outstanding loans collateralised by that form of real estate property in any given year.

Justification

Cross reference / Typographical error.

Amendment 375
Annex VIII, Part 3, paragraph 76

76. The competent authorities**,** which do not authorise the treatment in ***paragraph 73***, may authorise credit institutions to apply the risk weights permitted under this treatment in respect of exposures collateralised by residential real estate property of commercial real estate property respectively located in the territory of those Member States the competent authorities of which authorise this treatment subject to the same conditions as apply in that Member State.	76. The competent authorities which do not authorise the treatment in ***paragraph 74***, may authorise credit institutions to apply the risk weights permitted under this treatment in respect of exposures collateralised by residential real estate property of commercial real estate property respectively located in the territory of those Member States the competent authorities of which authorise this treatment subject to the same conditions as apply in that Member State.

Justification

Cross reference / Typographical error.

Amendment 376
Annex VIII, Part 3, paragraph 84

84. The value of unfunded credit protection (G) shall be the amount that the protection provider has undertaken to pay in the event of the default or non-payment of the borrower or on the occurrence of other specified credit events. In the case of credit derivatives which do not include as a credit event restructuring of the underlying obligation involving forgiveness or postponement of principal, interest or fees that result in a credit loss event (e.g. value adjustment, the making of a value adjustment or other similar debit to the profit and loss account), ***the value of the credit protection calculated under the first sentence of this paragraph shall be reduced by 40%.***	84. The value of unfunded credit protection (G) shall be the amount that the protection provider has undertaken to pay in the event of the default or non-payment of the borrower or on the occurrence of other specified credit events. In the case of credit derivatives which do not include as a credit event restructuring of the underlying obligation involving forgiveness or postponement of principal, interest or fees that result in a credit loss event (e.g. value adjustment, the making of a value adjustment or other similar debit to the profit and loss account),

Justification

Brings text into line with amendments to Annex VIII, Part 3, paragraph 84, subparagraphs a) and b).

Amendment 377
Annex VIII, Part 3, paragraph 84, point (a) (new)

(a) where the amount that the protection provider has undertaken to pay is not higher than the exposure value, the value of the credit protection calculated under the first sentence of this paragraph shall be reduced by 40%;

Justification

The Council amendment, bringing the text into line with the Basel Framework Agreement, is hereby endorsed.

Amendment 378
Annex VIII, Part 3, paragraph 84, point (b) (new)

(b) where the amount that the protection provider has undertaken to pay is higher than the exposure value, the value of the credit protection shall be no higher than 60% of the exposure value.

Justification

The Council amendment, bringing the text into line with the Basel Framework Agreement, is hereby endorsed.

Amendment 379
Annex VIII, Part 3, paragraph 90

90. The competent authorities may extend the treatment provided for in Annex VI, paragraphs 4 to 6 to exposures or portions of exposures guaranteed by the central government or central bank, where the guarantee is denominated in the domestic currency of the borrower and the exposure is funded in that currency.	90. The competent authorities may extend the treatment provided for in Annex VI***, part 1***, paragraphs 4 to 6 to exposures or portions of exposures guaranteed by the central government or central bank, where the guarantee is denominated in the domestic currency of the borrower and the exposure is funded in that currency.

Justification

Cross reference / Typographical error.

Amendment 380
Annex VIII, Part 3, subheading 2.2.3., Title

IRB ***Foundation*** Approach	IRB Approach

Amendment 381
Annex IX, Part 1, Title

part 1 - Definitions for purposes of ***Annex X***	part 1 - Definitions for purposes of ***Annex IX***

Justification

Cross reference / Typographical error.

Amendment 382
Annex IX, Part 2, paragraph 4

4. For clarity, paragraph 3 refers to the entire pool of exposures included in the securitisation. Subject to paragraphs 5 to 8, the originator credit institution is required to calculate risk-weighted exposure amounts in respect of all tranches in the securitisation in accordance with the provisions of ***part IV*** including those relating to the recognition of credit risk mitigation. For example, where a tranche is transferred by means of unfunded credit protection to a third party, the risk weight of that third party shall be applied to the tranche in the calculation of the originator credit institution's risk-weighted exposure amounts.	4. For clarity, paragraph 3 refers to the entire pool of exposures included in the securitisation. Subject to paragraphs 5 to 8, the originator credit institution is required to calculate risk-weighted exposure amounts in respect of all tranches in the securitisation in accordance with the provisions of ***part 4*** including those relating to the recognition of credit risk mitigation. For example, where a tranche is transferred by means of unfunded credit protection to a third party, the risk weight of that third party shall be applied to the tranche in the calculation of the originator credit institution's risk-weighted exposure amounts.

Justification

Cross reference / Typographical error.

Amendment 383
Annex IX, Part 2, paragraph 5

5. For the purposes of calculating risk-weighted exposure amounts in accordance with paragraph 3, any maturity mismatch between the credit protection by which the tranching is achieved and the securitised exposures shall be taken into consideration in accordance with paragraphs 6 to 8. ***The maturity of the securitised exposures shall be taken to be the longest maturity of any of those exposures subject to a maximum of***	5. For the purposes of calculating risk-weighted exposure amounts in accordance with paragraph 3, any maturity mismatch between the credit protection by which the tranching is achieved and the securitised exposures shall be taken into consideration in accordance with paragraphs 6 to 8.

five years.

Justification

Cross reference / Typographical error.

Amendment 384
Annex IX, Part 2, paragraph 6

6. The maturity of the *securitied* exposures shall be taken to be the ***longest*** maturity ***of any*** of those exposures subject to a maximum of five years. The maturity of the credit protection shall be determined in accordance with Annex VIII .	6. The maturity of the *securitised* exposures shall be taken to be the ***weighted average*** maturity of those exposures subject to a maximum of five years. The maturity of the credit protection shall be determined in accordance with Annex VIII.

Or. en

Justification

See justification for amendment to Annex IX, part 2, paragraph 5.

Amendment 385
Annex IX, Part 2, paragraph 7, introductory part

7. ***Where an*** originator credit institution ***uses Part 4, paragraphs 6 to 35 for the calculation of risk-weighted exposure amounts, it*** shall ignore any maturity mismatch in calculating risk-weighted exposure amounts for tranches ***that are unrated or rated below investment grade***. For all other tranches the maturity mismatch treatment set out in Annex VIII shall be applied in accordance with the following formula:	7. ***An*** originator credit institution shall ignore any maturity mismatch in calculating risk-weighted exposure amounts for tranches ***appearing pursuant to Part 4 with a risk weighting of 1 250 %***. For all other tranches the maturity mismatch treatment set out in Annex VIII shall be applied in accordance with the following formula:

Justification

This amendment is a consequence of the Ecofin proposal to delete paragraph 8 in Annex IX, Part 4 without replacement. As a result, tranches rated below investment grade are no longer automatically provided with a risk weighting of 1 250 % . Hence the question of the need for

calculating a maturity mismatch should cease to depend on the investment grade criterion. Instead, the (more stringent) exception should, in the spirit of the original intention and by analogy to treatment in the IRB approach, only apply to tranches with a risk weighting of 1 250 %. Amending the first sentence enables securitisation to be treated equally in the Standard approach and the IRB approach. The German translation of 'shall' is 'hat ... zu' and not 'kann'.

Amendment 386
Annex IX, Part 2, paragraph 8

8. Where an originator credit institution uses Part 4, paragraphs 36 to 74 for the calculation of risk-weighted exposure amounts, it shall ignore any maturity mismatch in calculating risk-weighted exposure amounts for tranches or parts of tranches which are associated with a risk weight of 1250% under those paragraphs. For all other tranches or parts of tranches the maturity mismatch treatment set out in Annex VIII shall be applied in accordance with the formula in paragraph 7.	***deleted***

Justification

As a result of the amendment to Annex IX, Part 2, point 7 the requirements in point 8 can be included in point 7, so point 8 can be deleted.

Amendment 387
Annex IX, Part 3, paragraph 1, point (b)

(b) ***It shall be available publicly to the market.*** Credit assessments are considered to be publicly available only if they have been published in a publicly accessible forum and they are included in the ECAI's transition matrix. Credit assessments that are made available only to a limited number of entities shall ***not*** be considered to be publicly available.	(b) ***If the securitisation takes place by means of a public securities offering, the ECAI credit quality assessment shall be publicly available.*** Credit assessments are considered to be publicly available only if they have been published in a publicly accessible forum and they are included in the ECAI's transition matrix. Credit assessments that are ***issued as part of a private placement and*** made available only to a limited number of entities shall ***only*** be considered to be publicly available ***if ECAI credit assessments have been issued and checked in a way which is comparable with***

publicly disclosed transactions.

Justification

If the securitisation does not take place via a public offering there is a need to ensure that the credit quality assessment is publicly disclosed. But the wording safeguards the necessary transparency and reliability of the credit quality assessment for investors.

Amendment 388
Annex IX, Part 3, paragraph 5

5**.** In cases where a ***position*** has two credit assessments by nominated ECAIs, the credit institution shall use the less favourable credit assessment.	5. In cases where a ***tranche*** has two credit assessments by nominated ECAIs, the credit institution shall use the less favourable credit assessment.

Justification

This requirement may have the unintended consequence of reducing the competitive landscape of the ECAI market. Competition adds depth to market expertise and helps enhance best practice standards. The use of different ECAIs for different tranches should not be construed as evidence of cherry picking, rather reflective of the economics of transactions, the dynamic nature of the securitisation market and differentiated expertise of ECAIs.

Amendment 389
Annex IX, Part 3, paragraph 6

6. In cases where a ***position*** has more than two credit assessments by nominated ECAIs, the two most favourable credit assessments shall be used. If the two most favourable assessments are different, the least favourable of the two shall be used.	6. In cases where a ***tranche*** has more than two credit assessments by nominated ECAIs, the two most favourable credit assessments shall be used. If the two most favourable assessments are different, the least favourable of the two shall be used.

Justification

This requirement may have the unintended consequence of reducing the competitive landscape of the ECAI market. Competition adds depth to market expertise and helps enhance best practice standards. The use of different ECAIs for different tranches should not be construed as evidence of cherry picking, rather reflective of the economics of transactions, the

dynamic nature of the securitisation market and differentiated expertise of ECAIs.

Amendment 390
Annex IX, Part 4, paragraph 6

6. Subject to paragraph ***8 and*** 9, the risk-weighted exposure amount of a rated securitisation position shall be calculated by applying to the exposure value the risk weight associated with the credit quality step with which the credit assessment has been determined to be associated by the competent authorities in accordance with Article 98 as laid down in the following tables 1 and 2.	6. Subject to paragraph 9, the risk-weighted exposure amount of a rated securitisation position shall be calculated by applying to the exposure value the risk weight associated with the credit quality step with which the credit assessment has been determined to be associated by the competent authorities in accordance with Article 98 as laid down in the following tables 1 and 2.

Justification

The Council amendment correcting the cross-reference is hereby endorsed

Amendment 391
Annex IX, Part 4, paragraph 8

8. Originator credit institutions and sponsor credit institutions shall apply a risk weight of 1250% to all retained and repurchased securitisation positions which have a credit assessment by a nominated ECAI which has been determined by the competent authorities to be associated with a credit quality step below credit quality step 3. In determining whether a position has such a credit assessment the provisions of Part 3, paragraphs 2 to 7 shall apply.	***deleted***

Justification

The Council amendment aimed at the equal treatment of originator credit institutions under the Standard Approach and the IRB Approach in connection with securitisation is hereby endorsed.

Amendment 392
Annex IX, Part 4, paragraph 10

10. ***Competent authorities may permit a c***redit institution having an unrated securitisation position ***to*** apply the treatment set out in paragraph 11 for calculating the risk-weighted exposure amount for that position provided the composition of the pool of exposures securitised is known at all times.	10. ***C***redit institution***s*** having an unrated securitisation position ***may*** apply the treatment set out in paragraph 11 for calculating the risk-weighted exposure amount for that position provided the composition of the pool of exposures securitised is known at all times.

Justification

The Council's amendment seeking to abolish this national discretionary power is welcomed.

Amendment 393
Annex IX, Part 4, paragraph 16

16. To determine its exposure value, a conversion figure of 0% may be applied to the nominal amount of a liquidity facility that is unconditionally cancellable provided that ***the conditions set out at paragraph 14 are satisfied and that*** repayment of draws on the facility are senior to any other claims on the cash flows arising from the securitised exposures.	16. To determine its exposure value, a conversion figure of 0% may be applied to the nominal amount of a liquidity facility that is unconditionally cancellable provided that repayment of draws on the facility are senior to any other claims on the cash flows arising from the securitised exposures.

Justification

The Commission proposal requires cash advance facilities to meet all the requirements of eligible liquidity facilities. This will cause many cash advance facilities to be ineligible; it is super-equivalent to paragraph 582 of the Basel Framework and creates an un-level playing field.

Amendment 394
Annex IX, Part 4, paragraph 20

20. For these purposes, 'originator's interest' means the ***nominal amount*** of that notional part of a pool of drawn amounts sold into a securitisation, the proportion of which in relation to the amount of the total pool sold into the structure determines the proportion	20. For these purposes, 'originator's interest' means the ***exposure value*** of that notional part of a pool of drawn amounts sold into a securitisation, the proportion of which in relation to the amount of the total pool sold into the structure determines the proportion

of the cashflows generated by principal and interest collections and other associated amounts which are not available to make payments to those having securitisation positions in the securitisation.	of the cashflows generated by principal and interest collections and other associated amounts which are not available to make payments to those having securitisation positions in the securitisation.
To qualify as such the originator's interest may not be subordinate to the investors' interest.	To qualify as such the originator's interest may not be subordinate to the investors' interest.
'Investors' interest' means the ***nominal amount*** of the remaining notional part of the pool of drawn amounts.	'Investors' interest' means the ***exposure value*** of the remaining notional part of the pool of drawn amounts.

Justification

Alignment with amendment of Annex IX, part 4, para 68

Amendment 395
Annex IX, Part 4, paragraph 22, point (a)

(a) Securitisations of revolving exposures whereby investors remain fully exposed to all future draws by borrowers so that the risk on the underlying facilities does not return to the originator credit institution even after an early amortisation event has occurred ***are exempt from the early amortisation treatment***, and	(a) Securitisations of revolving exposures whereby investors remain fully exposed to all future draws by borrowers so that the risk on the underlying facilities does not return to the originator credit institution even after an early amortisation event has occurred, and

Justification

Cross reference / Typographical error.

Amendment by Jonathan Evans

Amendment 396
Annex IX, Part 4, paragraph 26, point (b)

(b) Throughout the duration of the transaction there is pro-rata sharing between the originator's interest and the investor's interest of payments of interest and principal, expenses, losses and recoveries based on the ***beginning of the month*** balance of receivables outstanding.	(b) Throughout the duration of the transaction there is pro-rata sharing between the originator's interest and the investor's interest of payments of interest and principal, expenses, losses and recoveries based on the balance of receivables outstanding ***at one or more reference points during each month***.

Justification

Sharing between originator and investor is based on the balance of receivables outstanding each month, but not necessarily at the beginning of each month. The proposed change is more in line with general market practice.

Amendment 397
Annex IX, Part 4, paragraph 30 a (new)

30a. In the case of securitisations subject to an early amortisation provision of retail exposures which are uncommitted and unconditionally cancellable without prior notice and where the early amortisation is triggered by a quantitative value in respect of something other than the three months average excess spread, the competent authorities may apply a treatment which approximates closely to that prescribed in paragraphs 27 to 30 for determining the conversion figure indicated.

Justification

The Council amendment, transferring this provision from Article 100(3) to Annex IX, Part 4, paragraph 30a (new), is hereby endorsed.

Amendment 398
Annex IX, Part 4, paragraph 30 b (new)

30b. Where a competent authority intends to apply a treatment in accordance with paragraph 3 in respect of a particular securitisation, it shall first inform the relevant competent authorities of all the other Member States. Before the application of such a treatment becomes part of the general policy approach of the competent authority to securitisations containing early amortisation clauses of the type in question, the competent authority shall consult the relevant competent authorities of all the other

	Member States and take into consideration the views expressed. The views expressed in such consultation and the treatment adopted shall be publicly disclosed by the competent authority in question.

Justification

The Council amendment, transferring this provision from Article 100(3) to Annex IX, Part 4, paragraph 30b (new) is hereby endorsed.

Amendment 399
Annex IX, Part 4, paragraph 36

36. For the purposes of Article 96, the risk-weighted exposure amount of a securitisation positions shall be calculated in accordance with ***paragraphs 36*** to 74.	36. For the purposes of Article 96, the risk-weighted exposure amount of a securitisation positions shall be calculated in accordance with ***paragraphs 37*** to 74.

Justification

Cross reference / Typographical error.

Amendment 400
Annex IX, Part 4, paragraph 42, point (d)

(d) In developing its internal assessment methodology the credit institution shall take into consideration ***all*** published ratings methodologies of eligible ECAIs ***for the rating of securities backed by the exposures of the type securitised***. This consideration shall be documented by the credit institution and updated ***at least once a year***.	(d) In developing its internal assessment methodology the credit institution shall take into consideration ***relevant*** published ratings methodologies of ***the*** eligible ECAIs ***that rate the commercial paper of the ABCP programme***. This consideration shall be documented by the credit institution and updated ***regularly, as outlined in paragraph 42(g)***.

Justification

It would be virtually impossible to take "all" ratings methodologies into consideration in the development of an internal assessment methodology. At the very least it should be limited to ECAIs that rate the ABCP programme's commercial paper.

Amendment 401

Annex IX, Part 4, paragraph 45, subparagraph 1

45. Under the Ratings Based Method, the risk-weighted exposure amount of a rated securitisation position shall be calculated by applying to the exposure value the risk weight associated with the credit quality step with which the credit assessment has been determined to be associated by the competent authorities in accordance with Article 98 as set out in the Tables 4 and 5.	45. Under the Ratings Based Method, the risk-weighted exposure amount of a rated securitisation position shall be calculated by applying to the exposure value the risk weight associated with the credit quality step with which the credit assessment has been determined to be associated by the competent authorities in accordance with Article 98 as set out in the Tables 4 and 5 ***multiplied by 1.06***.

Justification

The Council's adaptation of the scaling factor following the EL/UL decision is hereby endorsed.

Amendment 402
Annex IX, Part 4, paragraph 45, subparagraph 1 a (new) (after Table 5)

	Once new empirical data become available the risk weight associated with the credit quality step must be recalibrated and changed accordingly in the tables 4 and 5 .

Justification

The risk weight in tables 4 and 5 have been calibrated against US high yield bond spreads, which has no connection with securitised asset transactions. Therefore once EU competent authorities have more empirical evidence on history of securitised asset the risk weight must be recalibrated and reinserted in the annex.

Amendment 403
Annex IX, Part 4, paragraph 46

46. Subject to paragraph 47, the risk weights in column A of each table shall be applied where the position is in the most senior tranche of a securitisation. When determining whether a tranche is the most senior for these purposes, it is not required	46. Subject to paragraph***s 46a and*** 47, the risk weights in column A of each table shall be applied where the position is in the most senior tranche of a securitisation. When determining whether a tranche is the most senior for these purposes, it is not

take into consideration amounts due under interest rate or currency derivative contracts, fees due, or other similar payments.	required take into consideration amounts due under interest rate or currency derivative contracts, fees due, or other similar payments.

Justification

The Council's proposed adjustment to the cross-reference is hereby endorsed.

Amendment 404
Annex IX, Part 4, paragraph 46 a (new)

	46a. A risk weight of 6% may be applied to a position which is a position in the most senior tranche of a securitisation where that tranche is senior in all respects to another tranche of the securitisation positions which would receive a risk weight of 7% under paragraph 45, provided that:
	(a)the competent authority is satisfied that this is justified due to the loss absorption qualities of subordinate tranches in the securitisation; and
	(b) either the position has an external credit assessment which has been determined to be associated with credit quality step 1 in Table 4 or 5 or, if it is unrated, requirements (a) to (c) in paragraph 41 are satisfied where 'reference positions' are taken to mean positions in the subordinate tranche which would receive a risk weight of 7% under paragraph 45.

Justification

The Council's amendment adjusting the risk weighting of the most senior tranche is hereby endorsed.

Amendment 405
Annex IX, Part 4, paragraph 51, subparagraph 5a (new)

	(5a) see below

$$
\begin{aligned}
h &= (1 - Kirbr / ELGD)^{N} \\
c &= Kirbr /(1 - h) \\
v &= \frac{(ELGD - Kirbr) Kirbr + 0.25 (1 - ELGD) Kirbr}{N} \\
f &= \left(\frac{v + Kirbr^{2}}{1 - h} - c^{2} \right) + \frac{(1 - Kirbr) Kirbr - v}{(1 - h)\tau} \\
g &= \frac{(1 - c)c}{f} - 1 \\
a &= g \cdot c \\
b &= g \cdot (1 - c) \\
d &= 1 - (1 - h) \cdot (1 - Beta [Kirbr ; a, b]) \\
K[x] &= (1 - h) \cdot ((1 - Beta [x; a, b]) x + Beta [x; a + 1, b] c).
\end{aligned}
$$

Justification

Typographical error/ in agreement with the Council
to be inserted after the word 'where' in the 7th line which comes after the formula

$$
S[x] = \begin{cases} x & when \quad x \le Kirbr \\ Kirbr + K[x] - K[Kirbr] + (d \cdot Kirbr/\omega)\left(1 - e^{\omega(Kirbr - x)/Kirbr}\right) & when \ Kirbr < x \end{cases}
$$

Amendment 406
Annex IX, Part 4, paragraph 53

53. The provisions in paragraphs 54 ***and 55*** apply for the purposes of determining the exposure value of an unrated securitisation position in the form of certain types of liquidity facility.	53. The provisions in paragraphs 54 ***to 57*** apply for the purposes of determining the exposure value of an unrated securitisation position in the form of certain types of liquidity facility.

Justification

The Council amendment correcting the cross-reference is hereby endorsed.

Amendment 407

Annex IX, Part 4, paragraph 56

56. When it is not practical for the credit institution to calculate the risk-weighted exposure amounts for the securitised exposures as if they had not been securitised, a credit institution may, on an exceptional basis and subject to the consent of the competent authorities, temporarily be allowed to apply the following method for the calculation of risk-weighted exposure amounts for an unrated securitisation position in the form of a liquidity facility.	56. When it is not practical for the credit institution to calculate the risk-weighted exposure amounts for the securitised exposures as if they had not been securitised, a credit institution may, on an exceptional basis and subject to the consent of the competent authorities, temporarily be allowed to apply the following method for the calculation of risk-weighted exposure amounts for an unrated securitisation position in the form of a liquidity facility ***that meets the conditions to be an 'eligible liquidity facility' set out in paragraph 14 or that falls within the terms of paragraph 54***.

Justification

The Council's amendment bringing the text into line with the Basel Framework Agreement is hereby endorsed.

Amendment 408
Annex IX, Part 4, paragraph 57

57. The ***highest*** risk weight that would be applied under Articles 78 to 83 to any of the securitised exposures had they not been securitised may be applied to the securitisation position represented by the liquidity facility. To determine the exposure value of the position a conversion figure of 50% may be applied to the nominal amount of the liquidity facility if the facility has an original maturity of one year or less. If the liquidity facility complies with the conditions in paragraph 54 a conversion figure of 20% may be applied.	57. The ***average*** risk weight that would be applied under Articles 78 to 83 to any of the securitised exposures had they not been securitised may be applied to the securitisation position represented by the liquidity facility. To determine the exposure value of the position a conversion figure of 50% may be applied to the nominal amount of the liquidity facility if the facility has an original maturity of one year or less. If the liquidity facility complies with the conditions in paragraph 54 a conversion figure of 20% may be applied. ***In other cases a conversion factor of 100% shall be applied.***

Justification

The Council's amendment bringing the text into line with the Basel Framework Agreement is hereby endorsed.

Amendment 409
Annex IX, Part 4, paragraph 68, subparagraph 1, point (a)

(a) the ***nominal amount*** of that notional part of a pool of drawn amounts sold into a securitisation, the proportion of which in relation to the amount of the total pool sold into the structure determines the proportion of the cashflows generated by principal and interest collections and other associated amounts which are not available to make payments to those having securitisation positions in the securitisation; plus	(a) the ***exposure value*** of that notional part of a pool of drawn amounts sold into a securitisation, the proportion of which in relation to the amount of the total pool sold into the structure determines the proportion of the cashflows generated by principal and interest collections and other associated amounts which are not available to make payments to those having securitisation positions in the securitisation; plus

Justification

If in the case of undrawn amounts the aim were on the nominal value, as the Commission proposal stipulates, this would lead to an unjustified higher capital requirement compared to the text proposed in Basel, because the conversion factors under Annex VII, Part 3, point 11 would not be taken into account. This can be prevented by basing it not on the nominal value but on the exposure value (equivalent to 'Exposure at Default' in the Basel framework agreement), which also takes account of any conversion factors.

Amendment 410
Annex IX, Part 4, paragraph 68, subparagraph 1, point (b)

(b) the ***nominal amount*** of that part of the pool of undrawn amounts of the credit lines, the drawn amounts of which have been sold into the securitisation, the proportion of which to the total amount of such undrawn amounts is the same as the proportion of the ***nominal amount*** described in point (a) to the ***nominal amount*** of the pool of drawn amounts sold into the securitisation.	(b) the ***exposure value*** of that part of the pool of undrawn amounts of the credit lines, the drawn amounts of which have been sold into the securitisation, the proportion of which to the total amount of such undrawn amounts is the same as the proportion of the ***exposure value*** described in point (a) to the ***exposure value*** of the pool of drawn amounts sold into the securitisation.

Justification

See justification to amendment to paragraph 68, subparagraph 1, point (a) by A. Radwan.

Amendment 411
Annex IX, Part 4, paragraph 68, subparagraph 3

"Investors' interest" means the ***nominal amount*** of the notional part of the pool of drawn amounts not falling within point (a) plus the ***nominal amount*** of that part of the pool of undrawn amounts of credit lines, the drawn amounts of which have been sold into the securtisation, not falling within point (b).	"Investors' interest" means the ***exposure value*** of the notional part of the pool of drawn amounts not falling within point (a) plus the ***exposure value*** of that part of the pool of undrawn amounts of credit lines, the drawn amounts of which have been sold into the secur***i***tisation, not falling within point (b).

Justification

See justification to amendment to paragraph 68, subparagraph 1, point (a) by A. Radwan.

Amendment 412
Annex IX, Part 4, paragraph 73, introductory part

73. For the purposes of ***paragraph 73***	73. For the purposes of ***paragraph 72***

Justification

Cross reference / Typographical error.

Amendment 413
Annex X, Part 1, paragraph 3

3. The three-year average is calculated on the basis of the last ***six*** twelve-monthly observations ***at the middle and*** at the end of the financial year. When audited figures are not available, business estimates may be used.	3. The three-year average is calculated on the basis of the last ***three*** twelve-monthly observations at the end of the financial year. When audited figures are not available, business estimates may be used.

Justification

The Council's amendment, seeking to reduce the number of observations required for the calculation of the relevant indicator, is hereby endorsed.

Amendment 414

Annex X, Part 1, paragraph 6, Table 1, point 3

3 Income from ***securities:*** ***a) from*** shares and other variable-yield securities ***b) from participating interests*** ***c) from shares in affiliated undertakings***	3. Income from shares and other variable***/fixed***-yield securities

Justification

The Council's amendment, seeking to prevent double payments of profit dividends within a single group, is hereby endorsed.

Amendment 415
Annex X, Part 1, paragraph 7

7. The indicator shall be calculated before the deduction of any provisions and operating expenses.	7. The indicator shall ***in principle*** be calculated before the deduction of any provisions and operating expenses. ***Operating expenses shall include fees paid for outsourcing services rendered by third parties which are not a parent or subsidiary of the credit institution or a subsidiary of a parent which is also the parent of the credit institution. Expenditure on the outsourcing of services rendered by third parties may reduce the indicator if the expenditure is incurred by an undertaking subject to supervision within the meaning of this Directive.***

Justification

The Council amendment is based on the view that outsourcing does not of itself reduce the operational risk. However, in order to prevent the multiple investment of Op-Risk capital in outsourcing with undertakings not belonging to the group but subject to individual supervision, thus rendering them more expensive than unsupervised (non-EU) undertakings, it should be laid down that a credit institution which carries out outsourcing is entitled to deduct from gross yield its expenditure on the service provider, where such service provider is an undertaking subject to supervision in accordance with EU legislation/ Basel II.

Amendment 416
Annex X, Part 2, paragraph 1

1. Under the Standardised Approach, the capital requirement for operational risk is the simple sum of the capital requirements calculated for each of the business lines in table 2.	1. Under the Standardised Approach, the capital requirement for operational risk is the simple sum of the capital requirements calculated for each of the business lines in table 2. ***In each year, a negative capital requirement in one business line, resulting from a negative gross yield, may be imputed to the whole. However, where the aggregate capital charge across all business lines within a given year is negative, then the input to the numerator for that year shall be zero .***

Justification

Replaces amendment 227 of the Radwan draft report.

Amendment 417
Annex X, Part 2, paragraph 3

3. The indicator is calculated for each business line individually.	3. The ***relevant*** indicator is calculated for each business line individually.

Justification

The clarification proposed by the Council is hereby endorsed.

Amendment 418
Annex X, Part 2, paragraph 4

4. For each business line, the relevant indicator is the average over three years of the sum of net interest income, and ***annual*** net non-interest income, as defined in part 1, paragraphs 5 to 9.	4. For each business line, the relevant indicator is the average over three years of the sum of net interest income, and net non-interest income, as defined in part 1, paragraphs 5 to 9.

Justification

Cross reference / Typographical error.

Amendment 419
Annex X, Part 2, paragraph 5

5. The three-year average is calculated on	5. The three-year average is calculated on

the basis of the last ***six*** twelve-monthly observations ***at the middle and*** at the end of the financial year. When audited figures are not available, business estimates may be used.	the basis of the last ***three*** twelve-monthly observations at the end of the financial year. When audited figures are not available, business estimates may be used.

Justification

The Council's amendment seeking to reduce the frequency of observation in the context of establishing the three-year average, is hereby endorsed.

Amendment 420
Annex X, Part 2, paragraph 6, subparagraph 1

6. If for any given observation, the sum of net interest income and net non-interest income is negative, this figure shall be assigned the value zero.	***deleted***

Justification

Brings text into line with amendment to Annex X, Part 2, paragraph 1.

Amendment 421
Annex X, Part 2, paragraph 6, Table 2, column 1, row 4

Retail brokerage (Activities with a individual physical persons or with small and medium sized entities meeting the criteria set out in ***Article 55*** for the retail exposure class)	Retail brokerage (Activities with a individual physical persons or with small and medium sized entities meeting the criteria set out in ***Article 79*** for the retail exposure class)

Justification

Cross reference / Typographical error.

Amendment 422
Annex X, Part 2, paragraph 8, introductory part

8. Credit institutions must develop and document specific policies and criteria for mapping the indicator for current business lines and activities into the standardised framework. The criteria must be reviewed and adjusted as appropriate for new or	8. Credit institutions must develop and document specific policies and criteria for mapping the ***relevant*** indicator for current business lines and activities into the standardised framework. The criteria must be reviewed and adjusted as appropriate for

changing business activities and risks. The principles for business line mapping are :	new or changing business activities and risks. The principles for business line mapping are :

Justification

The Council amendment is hereby endorsed.

Amendment 423
Annex X, Part 2, paragraph 8, point (d)

(d) Credit institutions may use internal pricing methods to allocate the indicator between business lines. Costs generated in one business line which are imputable to a different business line may be reallocated to the business line to which they pertain, for instance by using a treatment based on internal transfer costs between the two business lines.	(d) Credit institutions may use internal pricing methods to allocate the ***relevant*** indicator between business lines. Costs generated in one business line which are imputable to a different business line may be reallocated to the business line to which they pertain, for instance by using a treatment based on internal transfer costs between the two business lines.

Justification

The Council amendment is hereby endorsed.

Amendment 424
Annex X, Part 2, paragraph 11

11. For the retail banking business line, the loans and advances shall consist of the total drawn amounts in the ***following*** credit portfolios***: retail, SMEs treated as retail, and purchased retail receivables***.	11. For the retail ***and commercial*** banking business line***s***, the loans and advances shall consist of the total drawn amounts in the ***corresponding*** credit portfolios***. For the commercial banking business line, securities held in the non trading book shall also be included***.

Justification

The Council's rewording is hereby endorsed.

Amendment 425
Annex X, Part 2, paragraph 12

12. For the commercial banking business line, the loans and advances shall consist of the drawn amounts in the following credit portfolios: Corporate, Sovereign, Institutions, Specialised Lending, SMEs treated as Corporate and Purchased Corporate Receivables. Securities held in the non-trading book shall also be included.	***deleted***

Justification

Brings text into line with Annex X, Part 2, paragraph 11.

Amendment 426
Annex X, Part 2, paragraph 15

15. The credit institution is overwhelmingly active in retail and commercial banking activities, which shall account for at least 90% of its income.	15. The credit institution is overwhelmingly active in retail and***/or*** commercial banking activities, which shall account for at least 90% of its income.

Justification

The Council's proposed clarification is hereby endorsed.

Amendment 427
Annex X, Part 2, paragraph 16

16. The credit institution is able to demonstrate to the competent authorities ***that the significant proportion of its retail and/or commercial banking activities comprise loans associated with high probability of default, and*** that the alternative standardised approach provides an improved basis for assessing the operational risk.	16. The credit institution is able to demonstrate to the competent authorities that the alternative standardised approach provides an improved basis for assessing the operational risk.

Justification

For determination of capital cost's operational risk the Directive allows to use bank's income

indicator, and - if necessary- credit volume indicator, as an alternative indicator. Application of income indicator leads unfair results for CEE-banks, but the current 16th paragraph preclude the use of alternative indicator.

Amendment 428
Annex X, Part 2, paragraph 17, introductory part

17. Credit institutions must meet the following qualifying criteria listed below, in addition to the general risk management standards set out in Article 22 and Annex V.	17. Credit institutions must meet the following qualifying criteria listed below, in addition to the general risk management standards set out in Article 22 and Annex V. ***Satisfaction of these criteria shall be determined having regard to the size and scale of activities of the credit institution and to the principle of proportionality.***

Justification

The Council amendment is hereby endorsed. It makes clear that the proportionality principle also applies to the own capital backing of operational risks in the Standard Approach.

Amendment 429
Annex X, Part 3, paragraph 14

14. Credit institutions must be able to map their historical internal loss data into the business lines defined in part 2 and into the event types defined in part 5, and to provide these data to competent authorities upon request. There must be documented, objective criteria for allocating losses to the specified business lines and event types. The operational risk losses that are related to credit risk and have historically been included in the internal credit risk databases must be ***recorded in the operational risk databases and be*** separately identified. Such losses will not be subject to the operational risk charge, as long as they continue to be treated as credit risk for the purposes of calculating minimum capital requirements. Operational risk losses that are related to market risks shall be included in the scope of the capital requirement for operational risk.	14. Credit institutions must be able to map their historical internal loss data into the business lines defined in part 2 and into the event types defined in part 5, and to provide these data to competent authorities upon request. There must be documented, objective criteria for allocating losses to the specified business lines and event types. The operational risk losses that are related to credit risk***, which are material*** and have historically been included in the internal credit risk databases must be separately identified. Such losses will not be subject to the operational risk charge, as long as they continue to be treated as credit risk for the purposes of calculating minimum capital requirements. Operational risk losses that are related to market risks shall be included in the scope of the capital requirement for operational risk.

Justification

There is no need to require credit risk related losses to be entered in the operational riskdata base, where it is ignored for capital calculation. It could be a flag on the event in the credit risk data base. IT system design should be left to firms.

Amendment 430
Annex X, Part 3, paragraph 15

15. The credit institution's internal loss data must be comprehensive in that it captures all material activities and exposures from all appropriate sub-systems and geographic locations. Credit institutions must be able to justify that any excluded activities or exposures, both individually and in combination, would not have a material impact on the overall risk estimates. ***An appropriate*** minimum loss ***threshold*** for internal loss data collection must be defined.	15. The credit institution's internal loss data must be comprehensive in that it captures all material activities and exposures from all appropriate sub-systems and geographic locations. Credit institutions must be able to justify that any excluded activities or exposures, both individually and in combination, would not have a material impact on the overall risk estimates. ***Appropriate*** minimum loss ***thresholds*** for internal loss data collection must be defined.

Justification

The draft proposed by the Commission only allows for a single threshold which is impractical. The approach in the Basel Framework, which allows for variable thresholds, is preferred.

Amendment 431
Annex X, Part 3, Title 2 (following paragraph 24)

2. Impact of insurance	2. Impact of insurance ***and other risk transfer mechanisms***

Justification

The management of operational risks is still a domain in rapid evolution and generally accepted best practices are still to be defined. Therefore, the title should allow for new risk mitigation techniques or risk transfer mechanisms.

Amendment 432
Annex X, Part 3, paragraph 25

25. Credit institutions shall be able to recognise the impact of insurance subject to the conditions set out in paragraphs 26 to 29.	25. Credit institutions shall be able to recognise the impact of insurance subject to the conditions set out in paragraphs 26 to 29 ***and other risk transfer mechanisms in their internal AMA model provided a noticeable risk mitigating effect is achieved.***

Justification

The management of operational risks is still a domain in rapid evolution and generally accepted best practices are still to be defined. There, overprescriptive rules will restrain a constant improvement in the risk management technique. Risk mitigation will not be limited to insurance products. For instance, financial market products will probably be created, which have a return associated to the non-materialisation of operational risks. Therefore, the title "Impact of insurance" should be amended to "Risk mitigation" or to "Impact of insurance and other risk transfer mechanisms", and paragraph 25 should be enlarged, aiming not to inhibit market developments, and to allow new risk mitigation techniques or risk transfer mechanisms.

Amendment 433
Annex X, Part 3, paragraph 26

26. The provider is authorised to provide insurance or re-insurance.	26. The provider is authorised to provide insurance or re-insurance ***and the provider has a minimum claims paying ability rating by an eligible ECAI which has been determined by the competent authority to be associated with credit quality step 3 or above under the rules for the risk weighting of exposures to credit institutions under Articles 78 to 83***.

Justification

Cross reference / Typographical error.

Amendment 434
Annex X, Part 3, paragraph 27, introductory part

27. ***The provider has a minimum claims paying ability rating of A (or equivalent);***	27. ***The insurance and the credit institutions' insurance framework shall meet the following conditions:***

Justification

Cross reference / Typographical error.

Amendment 435
Annex X, Part 3, paragraph 27, point (a)

(a) The insurance policy must have an initial term of no less than one year. For policies with a residual term of less than one year, the credit institution must make residual term of the policy, up to a full 100% haircut for policies with a residual term of 90 days or less.	(a) The insurance policy must have an initial term of no less than one year. For policies with a residual term of less than one year, the credit institution must make residual term of the policy, up to a full 100% haircut for policies with a residual term of 90 days or less. ***The above provision shall not apply in the case of policies subjected to an automatic and irrevocable renewal at maturity.***

Justification

In respect of lower capital charges by virtue of insurance policies of more than a year's duration, it is standard practice to renew operational risk insurance annually. Thus on any given observation date for the capital requirement, the residual life of a policy may be less than a year. For policies that are not one-off, but stipulated on a continuing basis, the provision in point a) of paragraph 27 with less than one year of residual life should not apply.

Amendment 436
Annex XI, paragraph 1, point (b)

(b) the exposure to and management of ***liquidity risk and*** concentration risk by the credit institutions, including their compliance with the requirements laid down in Articles 108 to 118;	(b) the exposure to and management of concentration risk by the credit institutions, including their compliance with the requirements laid down in Articles 108 to 118;

Justification

The Council amendment is hereby endorsed.

Amendment 437
Annex XI, paragraph 1, point (d a) (new)

(da) the exposure to and management of liquidity risk by the credit institutions;

Justification

The Council amendment is hereby endorsed.

Amendment 438
Annex XI, paragraph 1, point (d b) (new)

(db) the impact of diversification effects and how such effects are factored into the risk measurement system.

Justification

Diversification is one of the key principles in risk and portfolio management and a crucial factor for determining economic capital. Since there is no recognition of diversification effects in the calculation of regulatory capital requirements, diversification effects should be recognised within the Supervisory Review Process.

Amendment 439
Annex XII, Part 1, paragraph 5

5. The disclosure requirement in Part 2, ***paragraph 4, letter (f)*** shall be provided pursuant to Article 72 (1) and (2).	5. The disclosure requirement in Part 2, ***paragraphs 3 and 4*** shall be provided pursuant to Article 72 (1) and (2).

Justification

Adjustment to reference, taking into account the deletion of Annex XII, Part 2, paragraph 4, subparagraph f (Council).

Amendment 440
Annex XII, Part 2, paragraph 3, point (c)

(c) the total amount of additional own funds, and own funds as defined in [***Annex V*** of Directive 93/6/EEC];	(c) the total amount of additional own funds, and own funds as defined in [***Chapter IV*** of Directive 93/6/EEC];

Justification

Cross reference / Typographical error.

Amendment 441
Annex XII, Part 2, paragraph 4, point (c), point (i)

(i) each of the approaches provided in Annex VII, part 1, paragraphs 15 ***to 25***;	(i) each of the approaches provided in Annex VII, part 1, paragraphs 15 ***to 24***;

Justification

Cross reference / Typographical error.

Amendment 442
Annex XII, Part 2, paragraph 4, point (f)

(f) the solvency ratios calculated on the basis of total own funds and original own funds.	***deleted***

Justification

The Council's amendment deleting the reference to solvency ratios is hereby endorsed, since the Directive no longer refers to them.

Amendment 443
Annex XII, Part 2, paragraph 9, introductory part

9. The following information shall be disclosed by each credit institution which calculates its capital requirements in accordance with [***Annex VIII*** of Directive 93/6/EEC]:	9. The following information shall be disclosed by each credit institution which calculates its capital requirements in accordance with [***Annex V*** of Directive 93/6/EEC]:

Justification

Cross reference / Typographical error.

Amendment 444
Annex XII, Part 3, paragraph 14, point (d)

(d) the exposure values for each of the exposure classes specified in Article 86. Exposures to central governments and central banks, ***credit*** institutions and corporates where credit institutions use own estimates of LGDs or conversion factors for the calculation of risk-weighted	(d) the exposure values for each of the exposure classes specified in Article 86. Exposures to central governments and central banks, institutions and corporates where credit institutions use own estimates of LGDs or conversion factors for the calculation of risk-weighted exposure

exposure amounts shall be disclosed separately from exposures for which the credit institutions do not use such estimates;	amounts shall be disclosed separately from exposures for which the credit institutions do not use such estimates;

Amendment 445
Annex XII, Part 3, paragraph 14, point (f)

(f) for the retail exposure class and for each of the categories as defined ***under (c)*** above, either the disclosures outlined under (e) above (if applicable, on a pooled basis), or an analysis of exposures (outstanding loans and exposure values for undrawn commitments) against a sufficient number of EL grades to allow for a meaningful differentiation of credit risk (if applicable, on a pooled basis);	(f) for the retail exposure class and for each of the categories as defined ***under (c)(iv)*** above, either the disclosures outlined under (e) above (if applicable, on a pooled basis), or an analysis of exposures (outstanding loans and exposure values for undrawn commitments) against a sufficient number of EL grades to allow for a meaningful differentiation of credit risk (if applicable, on a pooled basis);

Justification

Cross reference / Typographical error.

Amendment 446
Annex XII, Part 3, paragraph 14, point (g)

(g) the actual value adjustments in the preceding period for each exposure class (for retail, for each of the categories as defined ***under (c)*** above) and how this differs from past experience;	(g) the actual value adjustments in the preceding period for each exposure class (for retail, for each of the categories as defined ***under (c)(iv)*** above) and how this differs from past experience;

Justification

Cross reference / Typographical error.

Amendment 447
Annex XII, Part 3, paragraph 14, point (i)

(i) the credit institution's estimates against actual outcomes over a longer period. At a minimum, this shall include information on estimates of losses against actual losses in each exposure class (for retail, for each of the categories as defined ***under (c)*** above) over a period sufficient to allow for a meaningful assessment of the performance of the internal rating processes for each exposure class (for retail for each of the categories as defined ***under (c)*** above).	(i) the credit institution's estimates against actual outcomes over a longer period. At a minimum, this shall include information on estimates of losses against actual losses in each exposure class (for retail, for each of the categories as defined ***under (c)(iv)*** above) over a period sufficient to allow for a meaningful assessment of the performance of the internal rating processes for each exposure class (for retail for each of the categories as defined ***under (c)(iv)*** above).

Where appropriate, the credit institutions shall further decompose this to provide analysis of PD and, for the credit institutions using own estimates of LGDs and/or conversion factors, LGD and conversion factor outcomes against estimates provided in the quantitative risk assessment disclosures above.	Where appropriate, the credit institutions shall further decompose this to provide analysis of PD and, for the credit institutions using own estimates of LGDs and/or conversion factors, LGD and conversion factor outcomes against estimates provided in the quantitative risk assessment disclosures above.

Justification

Cross reference / Typographical error.

Amendment 448
Annex XIV, Correlation Table

Text proposed by the Commission

This Directive	Directive 2000/12/EC	Directive 2000/28/EC	***Directive 2001/87/EC***	Directive 2004/69/EC	Directive 2004/xx/EC
Article 1	Article 2(1) and (2)				
Article ***2(1)***	Article 2(3) Act of Accession				
Article ***2(2)***	Article 2(4)				
Article 3	Article 2(5) and (6)				
Article 3 (1) final sentence					Article 3.2
Article ***4.1*** (1)	Article 1(1)				
Article ***4.1*** (2) to (5)		Article 1(2) to (5)			
Article ***4.1*** (7) to (9)		Article 1(6) to (8)			
Article ***4 .1*** (10)			Article 29.1 (a)		
Article ***4.1*** (11) to (14)	Article 1 (10), (12) and (13)				
Article ***4.1*** (21) and (22)			Article 29.1 (b)		
Article ***4.1*** (23)	Article 1 (23)				
Article ***4.1*** (45***)*** to (47)	Article 1 (25***)*** to (27)				
Article 4 .2	***Article 1(1) second sub-***				

	paragraph	
Article 5	Article 3	
Article 6	Article 4	
Article 7	Article 8	
Article 8	Article 9	
Article 9 (1)	Article 5(1) and 1(11)	
Article 9 (2)	Article 5(2)	
Article 10	Article 5 (3) to (7)	
Article 11	Article 6	
Article 12	Article 7	
Article 13	Article 10	
Article 14	Article 11	
Article 15 (1)	Article 12	
Article 15 (2) and (3)		Article 29.2
Article 16	Article 13	
Article 17	Article 14	
Article 18	Article 15	
Article 19 (1)	Article 16 (1)	
Article 19 (2)		Article 29.3
Article 20	Article 16(3)	
Article 21	Article 16 (4) to (6)	
Article 22	Article 17	
Article 23	Article 18	
Article 24 (1)	Article 19 paragraphs (1) to (3)	
Article 24 (2)	Article 19 paragraph (6)	
Article 24 (3)	Article 19 paragraph (4)	
Article 25 (1) to (3)	Article 20 (1) to (3) 1 and 2 sub-paragraph	
Article 25 (3)	Article 19 paragraph (5)	
Article 25 (4)	Article 20 (3) 3 sub-paragraph	

Article 26	Article 20 (4) to (7)	
Article 27	Article 1 (3) final clause	
Article 28	Article 21	
Article 29	Article 22	
Article 30	Article 22 (2) to (4)	
Article 31	Article 22 (5)	
Article 32	Article 22 (6)	
Article 33	Article 22 (7)	
Article 34	Article 22 (8)	
Article 35	Article 22 (9)	
Article 36	Article 22 (10)	
Article 37	Article 22 (11)	
Article 38	Article 24	
Article 39 (1) and (2)	Article 25	
Article 39 (2)		Article 3.8
Article 40	Article 26	
Article 41	Article 27	
Article 42	Article 28	
Article 43	Article 29	
Article 44	Article 30(1) to (3)	
Article 45	Article 30(4)	
Article 46	Article 30(3)	
Article 47	Article 30(5)	
Article 48	Article 30(6) and (7)	
Article 49	Article 30(8)	
Article 50	Article 30(9) 1 and 2 paragraphs	
Article 51	Article	

	30(9) 3 paragraph	
Article 52	Article 30(10)	
Article 53	Article 31	
Article 54	Article 32	
Article 55	Article 33	
Article 56	Article 34(1)	
Article 57	Article 34(2) 1 paragraph Article ***34(1)*** point 2 final sentence	Article 29.4(a)
Article 58		Article 29.4 (b)
Article 59		Article 29.4 (b)
Article 60		Article 29.4 (b)
Article 61	Article 34(3) and (4)	
Article 63	Article 35	
Article 64	Article 36	
Article 65	Article 37	
Article 66 (1) and (2)	Article 38 (1) and (2)	
Article 67	Article 39	
Article 73	Article 52(3)	
Article 106	Article 1(24)	
Article 107	Article 1(1) 3 sub-paragraph	
Article 108	Article 48(1)	
Article 109	Article 48 (4) 1 paragraph	
Article 110	Article 48(2) to (4)2 sub-paragraph	
Article 111	Article 49	

	(1) to (5)	
Article 113 (1) to (3)	Article 49 (4) (6) and (7)	
Article 115 (1) and (2)	Article 49(8) and (9)	
Article 116	Article 49(10)	
Article 117	Article 49(11)	
Article 118	Article 50	
Article 120	Article 51(1)(2)(5)	
Article 121	Article 51(4)	
Article 122 (1) and (2)	Art. 51 (6)	Article 29(5)
Article 125	Article 53(1) and (2)	
Article 126	Article 53 (3)	
Article 128	Article 53(5)	
Article 133 (1)	Article 54(1)	Article 29(7)(a)
Article 133 (2) and (3)	Article 54 (2) and (3)	
Article 134(1)	Article 54(4) first paragraph	
Article 134 (2)	Article 54(4) second paragraph	
Article 135		Article 29(8)
Article 137	Article 55(1) and (2)	
Article 138		Article 29(9)
Article 139	Article 56(1) to (3)	
Article 140	Article 56(4) to (6)	
Article 141	Article 56	Article

	(7)		29(10)		
Article 142	Article 56(8)				
Article 143			Article 29(11)		Art. 3.10
Article 150	Article 60(1)				
Article 151	Article 60(2)				Art. 3.10
Article 158	Art. 67				
Article 159	Art. 68				
Article 160	Article 69				
Annex I	Annex I				
Annex I final clause				Article 68	
Annex II	Annex II				
Annex III	Annex III				
Annex IV	Annex IV				

Amendment by Parliament

This Directive	Directive 2000/12/EC	Directive 2000/28/EC	***Directive 2002/87/EC***	Directive 2004/69/EC	Directive 2004/xx/EC
Article 1	Article 2(1) and (2)				
Article ***2***	Article 2(3) Act of Accession				
Article ***2***	Article 2(4)				
Article 3	Article 2(5) and (6)				
Article 3 (1) final sentence					Article 3.2
Article ***4*** (1)	Article 1(1)				
Article ***4*** (2) to (5)		Article 1(2) to (5)			
Article ***4*** (7) to (9)		Article 1(6) to (8)			
Article ***4*** (10)			Article 29.1 (a)		
Article ***4*** (11) to (14)	Article 1 (10), (12) and (13)				
Article ***4*** (21) and (22)			Article 29.1 (b)		
Article ***4*** (23)	Article 1 (23)				

Article ***4*** (45***)*** to (47)	Article 1 (25***)*** to (27)	
deleted	***deleted***	
Article 5		
Article 6	Article 4	
Article 7	Article 8	
Article 8	Article 3	
Article 9 (1)	Article 5(1) and 1(11)	
Article 9 (2)	Article 5(2)	
Article 10	Article 5 (3) to (7)	
Article 11	Article 6	
Article 12	Article 7	
Article 13	Article 10	
Article 14	Article 11	
Article 15 (1)	Article 12	
Article 15 (2) and (3)		Article 29.2
Article 16	Article 13	
Article 17	Article 14	
Article 18	Article 15	
Article 19 (1)	Article 16 (1)	
Article 19 (2)		Article 29.3
Article 20	Article 16(3)	
Article 21	Article 16 (4) to (6)	
Article 22	Article 17	
Article 23	Article 18	
Article 24 (1)	Article 19 paragraphs (1) to (3)	
Article 24 (2)	Article 19 paragraph (6)	
Article 24 (3)	Article 19 paragraph (4)	
Article 25 (1) to (3)	Article 20 (1) to (3) 1 and 2 sub-paragraph	
Article 25 (3)	Article 19 paragraph (5)	
Article 25 (4)	Article 20	

	(3) 3 sub-paragraph	
Article 26	Article 20 (4) to (7)	
Article 27	Article 1 (3) final clause	
Article 28	Article 21	
Article 29	Article 22	
Article 30	Article 22 (2) to (4)	
Article 31	Article 22 (5)	
Article 32	Article 22 (6)	
Article 33	Article 22 (7)	
Article 34	Article 22 (8)	
Article 35	Article 22 (9)	
Article 36	Article 22 (10)	
Article 37	Article 22 (11)	
Article 38	Article 24	
Article 39 (1) and (2)	Article 25	
Article 39 (2)		Article 3.8
Article 40	Article 26	
Article 41	Article 27	
Article 42	Article 28	
Article 43	Article 29	
Article 44	Article 30(1) to (3)	
Article 45	Article 30(4)	
Article 46	Article 30(3)	
Article 47	Article 30(5)	
Article 48	Article 30(6) and (7)	
Article 49	Article 30(8)	
Article 50	Article 30(9) 1 and 2	

	paragraphs	
Article 51	Article 30(9) 3 paragraph	
Article 52	Article 30(10)	
Article 53	Article 31	
Article 54	Article 32	
Article 55	Article 33	
Article 56	Article 34(1)	
Article 57	Article 34(2) 1 paragraph Article ***34(2)*** point 2 final sentence	Article 29.4(a)
Article 58		Article 29.4 (b)
Article 59		Article 29.4 (b)
Article 60		Article 29.4 (b)
Article 61	Article 34(3) and (4)	
Article 63	Article 35	
Article 64	Article 36	
Article 65	Article 37	
Article 66 (1) and (2)	Article 38 (1) and (2)	
Article 67	Article 39	
Article 73	Article 52(3)	
Article 106	Article 1(24)	
Article 107	Article 1(1) 3 sub-paragraph	
Article 108	Article 48(1)	
Article 109	Article 48 (4) 1 paragraph	
Article 110	Article 48(2) to (4)2 sub-	

	paragraph	
Article 111	Article 49 (1) to (5)	
Article 113 (1) to (3)	Article 49 (4) (6) and (7)	
Article 115 (1) and (2)	Article 49(8) and (9)	
Article 116	Article 49(10)	
Article 117	Article 49(11)	
Article 118	Article 50	
Article 120	Article 51(1)(2)(5)	
Article 121	Article 51(4)	
Article 122 (1) and (2)	Art. 51 (6)	Article 29(5)
Article 125	Article 53(1) and (2)	
Article 126	Article 53 (3)	
Article 128	Article 53(5)	
Article 133 (1)	Article 54(1)	Article 29(7)(a)
Article 133 (2) and (3)	Article 54 (2) and (3)	
Article 134(1)	Article 54(4) first paragraph	
Article 134 (2)	Article 54(4) second paragraph	
Article 135		Article 29(8)
Article 137	Article 55(1) and (2)	
Article 138		Article 29(9)
Article 139	Article 56(1) to (3)	
Article 140	Article	

	56(4) to (6)			
Article 141	Article 56 (7)	Article 29(10)		
Article 142	Article 56(8)			
Article 143		Article 29(11)		Art. 3.10
Article 150	Article 60(1)			
Article 151	Article 60(2)			Art. 3.10
Article 158	Art. 67			
Article 159	Art. 68			
Article 160	Article 69			
Annex I	Annex I			
Annex I final clause			Article 68	
Annex II	Annex II			
Annex III	Annex III			
Annex IV	Annex IV			

Cross reference / Typographical error.

2. DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a directive of the European Parliament and of the Council re-casting Council Directive 93/6/EEC of 15 March 1993 on the capital adequacy of investment firms and credit institutions
(COM(2004)0486 – C6-0144/2004 – 2004/0159(COD))

(Codecision procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to the European Parliament and the Council (COM(2004)0486)[1],

– having regard to Article 251(2) and Article 47(2) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0144/2004),

– having regard to Rule 51 of its Rules of Procedure,

– having regard to the report of the Committee on Economic and Monetary Affairs and the opinion of the Committee on Legal Affairs (A6-0257/2005),

1. Approves the Commission proposal as amended;

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 and Commission.

Text proposed by the Commission	Amendments by Parliament
	Amendment 449 Recital 9 a (new)
	(9a) The Commission communication of 11 May 1999, entitled 'Implementing the framework for financial markets: Action Plan', listed a number of goals that need to be achieved in order to complete the internal market in financial services. The Lisbon European Council of 23 and 24 March 2000 set the goal of implementing the action plan by 2005. Recasting of the provisions on own funds

[1] Not yet published in OJ.

is a key element of the action plan.

Justification

The rapporteur believes that the Financial Services Action Plan should be mentioned, since he considers recasting of the provisions on own founds to be vitally important.

Amendment 450
Recital 19 a (new)

(19a) The capital requirements for commodity dealers, including those currently exempt from the requirements of Directive 2004/39/EC will be reviewed as appropriate in conjunction with the review of the above exemption, as set out in Article 65(3) of Directive 2004/39/EC.

Justification

The rapporteur favours the amendment proposed by the Council, referring as it does to the exemption arrangement for commodity dealers.

Amendment 451
Recital 19 b (new)

(19b) The goal of liberalisation of gas and electricity markets is both economically and politically important for the Community. With this in mind, the capital requirements, and other prudential rules, to be applied to firms active in those markets need to be proportionate and should not unduly interfere with achievement of the goal of liberalisation. This goal should, in particular, be kept in mind when the reviews referred to in Recital 19a are carried out.

Justification

The rapporteur favours the amendment proposed by the Council, referring as it does to the exemption arrangement for commodity dealers.

Amendment 452
Recital 27 a (new)

(27a) In order for the internal market in banking to operate effectively the Committee of European Banking Supervisors should contribute to the consistent application of this Directive and to the convergence of supervisory practices throughout the Community. The Committee of European Banking Supervisors should report to the European Banking Committee on a yearly basis on the progress made with regard to the convergence of supervisory practices.

Justification

The rapporteur believes that recital 48 of the Commission recast of Directive 2002/12/EC, incorporating the Council's proposed addition, should be reproduced in the above recital.

Amendment 453
Recital 32

(32) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission[1].	(32) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission[1]. ***It should be ensured that, when adopting implementing measures, the Commission is prohibited from altering the provisions of this Directive and acts in accordance with the principles laid down therein.***

Justification

The rapporteur believes the above addition to be necessary in order to safeguard Parliament's rights.

Amendment 454
Recital 32 a (new)

	(32a) The adoption of the necessary implementing measures and the use of the powers delegated to the Commission under this Directive should be subject to the full respect by all European institutions of the existing political agreement based on the European Parliament resolution of 5 February 2002 on the implementation of financial services legislation[1], on the solemn declaration made before Parliament on the same day by the Commission and on Mr Bolkenstein's letter of 2 October 2001[2] with regard to the safeguards for Parliament's role in this process. It is important to ensure the rights of Parliament as provided for in Article I-36 of the Treaty establishing a Constitution for Europe. Therefore the provisions conferring implementing powers on the Commission should not enter into force until an inter-institutional agreement codifies the existing agreement.

1. OJ C 284 E, 21.11.2002, p. 115.
2. OJ C 284 E, 21.11.2002, p. 83.

Justification

Amendment 455
Article 1, paragraph 1

1. This directive lays down the capital adequacy requirements applying to investment firms and credit institutions, the rules for their calculation and the rules for their prudential supervision. Member States shall apply the requirements of this Directive to investment firms and credit institutions as defined in ***Article 2***.	1. This directive lays down the capital adequacy requirements applying to investment firms and credit institutions, the rules for their calculation and the rules for their prudential supervision. Member States shall apply the requirements of this Directive to investment firms and credit institutions as defined in ***Article 3***.

Justification

Cross reference / Typographical error.

Amendment 456

Article 2, paragraph 1, subparagraph 1

1. Subject to Articles 18, 20, ***28*** to 32, 34 and 39 of this Directive, Articles 68 to 73 of Directive [2000/12/EC] shall apply *mutatis mutandis* to investment firms.	1. Subject to Articles 18, 20, ***22*** to 32, 34 and 39 of this Directive, Articles 68 to 73 of Directive [2000/12/EC] shall apply *mutatis mutandis* to investment firms. ***In applying Articles 70 to 72 of Directive [2000/12/EC] to investment firms, every reference to a parent credit institution in a Member State shall be construed as a reference to a parent investment firm in a Member State and every reference to an EU parent credit institution shall be construed as a reference to an EU parent investment firm.***

Justification

The rapporteur favours the change proposed by the Council to bring the text into line with the Commission recast of Directive 2000/12/EC as regards scope, as well as the correction to the cross-reference.

Amendment 457
Article 2, paragraph 1, subparagraph 2, introductory part

In addition, Articles 71 to 73 of Directive [2000/12/EC] shall apply in the following situations:	***deleted***

Justification

See amendments to points (a) and (b) of Article 2(1), subparagraph 2. The rapporteur favours the new wording proposed by the Council.

Amendment 458
Article 2, paragraph 1, subparagraph 2, point (a)

(a) an investment firm has as a parent a parent credit institution in a Member State;	***Where a credit institution has as a parent undertaking a parent investment firm in a Member State only that parent investment firm shall be subject to requirements on a consolidated basis in accordance with Articles 71 to 73 of Directive [2000/12/EC].***

Justification

See amendments to subparagraph 2 of Article 2(1).

Amendment 459
Article 2, paragraph 1, subparagraph 2, point (b)

(b) a credit institution has as a parent a parent investment firm in a Member State.	***Where an investment firm has as a parent undertaking a parent credit institution in a Member State only that parent credit institution shall be subject to requirements on a consolidated basis in accordance with Articles 71 to 73 of Directive [2000/12/EC].***

Justification

See amendments to subparagraph 2 of Article 2(1).

Amendment 460
Article 3, paragraph 1, subparagraph 1, point (f)

(f) parent investment firm in a Member State means an investment firm which has an institution or ***another*** financial institution as a subsidiary or which holds a participation in such entities, and which is not itself a subsidiary of another institution authorised in the same Member State, or of a financial holding company set up in the same Member State***, and in which no other institution authorised in the same Member State holds a participation***;	(f) *'*parent investment firm in a Member State*'* means an investment firm which has an institution or financial institution as a subsidiary or which holds a participation in such entities, and which is not itself a subsidiary of another institution authorised in the same Member State, or of a financial holding company set up in the same Member State;

Justification

The rapporteur favours the amendment proposed by the Council.

Amendment 461
Article 3, paragraph 1, subparagraph 1, point (g)

(g) EU parent investment firm means a parent investment firm in a Member State which is not a subsidiary of another	(g) *'*EU parent investment firm*'* means a parent investment firm in a Member State which is not a subsidiary of another

institution authorised in any Member State, or of a financial holding company set up in any Member State***, and in which no other institution authorised in any Member State holds a participation***;	institution authorised in any Member State, or of a financial holding company set up in any Member State;

Justification

The rapporteur favours the amendment proposed by the Council.

Amendment 462
Article 3, paragraph 1, subparagraph 2

For the purposes of applying supervision on a consolidated basis, the term investment firm shall include ***recognised*** third-country investment firms.	For the purposes of applying supervision on a consolidated basis, the term *'*investment firm*'* shall include third-country investment firms.

Justification

The rapporteur favours the amendment proposed by the Council.

Amendment 463
Article 15, paragraph 1, introductory part

Illiquid assets as referred to in point (d) of ***Article 12(2)*** shall include the following:	Illiquid assets as referred to in point (d) of ***Article 13(2)*** shall include the following:

Justification

Cross reference / Typographical error.

Amendment 464
Article 15, paragraph 1, point (b)

(b) holdings in, including subordinated claims on, credit or financial institutions which may be included in the own funds of those institutions, unless they have been deducted under points (l) to (p) of Article 57 of Directive [2000/12/EC] or under ***Article 15(d)*** of this Directive;	(b) holdings in, including subordinated claims on, credit or financial institutions which may be included in the own funds of those institutions, unless they have been deducted under points (l) to (p) of Article 57 of Directive [2000/12/EC] or under ***Article 16(d)*** of this Directive;

Justification

Cross reference / Typographical error.

Amendment 465
Article 15, paragraph 1, point (g)

(g) physical stocks, unless they are already subject to capital requirements at least as stringent as those set out in ***Articles 18 to 20***.	(g) physical stocks, unless they are already subject to capital requirements at least as stringent as those set out in ***Articles 18 and 20***.

Justification

Cross reference / Typographical error.

Amendment 466
Article 16, point (b)

(b) the exclusion referred to in point (a) of ***Article 12(2)*** shall not cover those components of points (l) to (p) of Article 57 of Directive [2000/12/EC] which an investment firm holds in respect of undertakings included in the scope of consolidation as defined in Article 2 (1) of this Directive;	(b) the exclusion referred to in point (a) of ***Article 13(2)*** shall not cover those components of points (l) to (p) of Article 57 of Directive [2000/12/EC] which an investment firm holds in respect of undertakings included in the scope of consolidation as defined in Article 2 (1) of this Directive;

Justification

Cross reference / Typographical error.

Amendment 467
Article 19, paragraph 1

1. For the purposes of paragraph 14 of Annex I, subject to national discretion, a 0% weighting can be assigned to debt securities issued by the ***same*** entities ***and*** denominated and funded in domestic currency.	1. For the purposes of paragraph 14 of Annex I, subject to national discretion, a 0% weighting can be assigned to debt securities issued by the entities ***listed in Annex I, Table 1, where these debt securities are*** denominated and funded in domestic currency.

Justification

The rapporteur favours the Council's proposed clarification.

Amendment 468
Article 20, paragraph 3, point (a)

(a) investment firms that deal on own account for the purpose of fulfilling or executing a client order or for the purpose of gaining entrance to a clearing and	(a) investment firms that deal on own account ***only*** for the purpose of fulfilling or executing a client order or for the purpose of gaining entrance to a clearing and

settlement system or a recognised exchange when acting in an agency capacity or executing a client order;	settlement system or a recognised exchange when acting in an agency capacity or executing a client order;

Justification

The rapporteur favours the Council's proposed clarification.

Amendment 469
Article 20, paragraph 4 a (new)

	4a. Article 21 shall apply only to investment firms to which Article 20(2) or (3) applies and in the manner specified therein.

Justification

The change proposed by the Council is to be welcomed, since it clarifies the intention underlying Article 21.

Amendment 470
Article 22, paragraph 1, subparagraph 1, point (a)

(a) each investment firm in such a group uses the definition of own funds given in Article 16;	(a) each ***EU*** investment firm in such a group uses the definition of own funds given in Article 16;

Justification

The rapporteur favours the Council proposal, since its purpose is to clarify what requirements are to be laid down for non-EU investment firms.

Amendment 471
Article 22, paragraph 1, subparagraph 1, point (c)

(c) each investment firm in such a group meets the requirements imposed in Articles 18 and 20 on an individual basis and at the same time deducts from its own funds any contingent liability in favour of investment firms, financial institutions, asset management companies and ancillary services undertakings which would	(c) each ***EU*** investment firm in such a group meets the requirements imposed in Articles 18 and 20 on an individual basis and at the same time deducts from its own funds any contingent liability in favour of investment firms, financial institutions, asset management companies and ancillary services undertakings which would

otherwise be consolidated;	otherwise be consolidated;

Justification

See amendment to point (a) of Article 22(1), subparagraph 1.

Amendment 472
Article 22, paragraph 1, subparagraph 2

Where the criteria in the first *sub-paragraph* are met, each investment firm shall have in place systems to monitor and control the sources of capital and funding of all financial holding companies, investment firms, financial institutions, asset management companies and ancillary services undertakings within the group.	Where the criteria in the first *subparagraph* are met, each ***EU*** investment firm shall have in place systems to monitor and control the sources of capital and funding of all financial holding companies, investment firms, financial institutions, asset management companies and ancillary services undertakings within the group.

Justification

See amendment to point (a) of Article 22(1), subparagraph 1.

Amendment 473
Article 22, paragraph 2

2. By derogation to paragraph 1, competent authorities may permit financial holding companies which are the parent of an investment firm in such a group to use a value lower than the value calculated under point (d) of paragraph 1, but no lower than the sum of the requirements imposed in Article 18 and 20 on an individual basis to investment firms, financial institutions, asset management companies and ancillary services undertakings which would otherwise be consolidated, and the total amount of any contingent liability in favour of investment firms, financial institutions, asset management companies and ancillary services undertakings which would otherwise be consolidated. For the purposes of this paragraph the capital requirement for financial institutions, asset management	2. By derogation to paragraph 1, competent authorities may permit financial holding companies which are the parent of an investment firm in such a group to use a value lower than the value calculated under point (d) of paragraph 1, but no lower than the sum of the requirements imposed in Article 18 and 20 on an individual basis to investment firms, financial institutions, asset management companies and ancillary services undertakings which would otherwise be consolidated, and the total amount of any contingent liability in favour of investment firms, financial institutions, asset management companies and ancillary services undertakings which would otherwise be consolidated. For the purposes of this paragraph the capital requirement for ***investment undertakings of third countries,***

companies and ancillary services undertakings is a notional capital requirement.	financial institutions, asset management companies and ancillary services undertakings is a notional capital requirement.

Justification

Translation error in the French version. See last sentences: ..... investment undertakings of third countries.

Amendment 474
Article 23, paragraph 3

Where the competent authorities waive the ***obligation of supervision*** on a consolidated basis provided for in Article 22, the requirements of Title V, Chapter 5 of Directive [2000/12/EC] shall ***continue to*** apply on an individual basis and the requirements of Article 124 of Directive [2000/12/EC] shall ***continue to*** apply to the supervision of investment firms on an individual basis.	Where the competent authorities waive the ***application of capital requirements*** on a consolidated basis provided for in Article 22, the requirements of ***Article 123 and*** Title V, Chapter 5 of Directive [2000/12/EC] shall apply on an individual basis and the requirements of Article 124 of Directive [2000/12/EC] shall apply to the supervision of investment firms on an individual basis.

Justification

The rapporteur favours the Council proposal, since it serves to clarify the text and bring it into line with the Commission recast of Directive 2000/12/EC.

Amendment 475
Article 24, paragraph 2, introductory part

Where the requirements of the first *sub-paragraph* are met, ***the*** parent investment firm shall be required to provide own funds which are always more than or equal to the higher of the following two ***consolidated requirements***, calculated ***as set out in*** Section 3 of this Chapter:	Where the requirements of the first *paragraph* are met, ***a*** parent investment firm ***in a Member State*** shall be required to provide own funds ***at a consolidated level*** which are always more than or equal to the higher of the following two ***amounts***, calculated ***on the basis of the parent investment firm's consolidated financial position and in compliance with*** Section 3 of this Chapter:

Justification

The rapporteur favours the Council proposal, since it serves to clarify the text and bring it into line with the Commission recast of Directive 2000/12/EC.

Amendment 476
Article 24, paragraph 2 a (new)

	Where the requirements of the first paragraph are met, an investment firm controlled by a financial holding company shall be required to provide own funds at a consolidated level which are always more than or equal to the higher of the following two amounts, calculated on the basis of the financial holding company's consolidated financial position and in compliance with Section 3 of this Chapter:
	(a) the sum of the capital requirements contained in points (a) to (c) of Article 75 of Directive [2000/12/EC];
	(b) the amount prescribed in Article 21.

Justification

The rapporteur favours the amendment proposed by the Council.

Amendment 477
Article 25, paragraph 2

Where the requirements of the first *sub-paragraph* are met, ***the*** parent investment firm shall be required to provide own funds which are always more than or equal to the sum of the ***consolidated capital*** requirements***, calculated as set out in Section 3 of this Chapter, of the requirements*** contained in points (a) to (c) of Article 75 of Directive [2000/12/EC] and the amount prescribed in Article 21 of this Directive.	Where the requirements of the first *paragraph* are met, ***a*** parent investment firm ***in a Member State*** shall be required to provide own funds ***at a consolidated level*** which are always more than or equal to the sum of the requirements contained in points (a) to (c) of Article 75 of Directive [2000/12/EC] and the amount prescribed in Article 21 of this Directive***, calculated on the basis of the parent investment firm's consolidated financial position and in compliance with Section 3 of this Chapter***.

Justification

The rapporteur favours the amendment proposed by the Council.

Amendment 478
Article 25, paragraph 2 a (new)

Where the requirements of the first paragraph are met, an investment firm controlled by a financial holding company shall be required to provide own funds at a consolidated level which are always more than or equal to the sum of the requirements contained in points (a) to (c) of Article 75 of Directive [2000/12/EC] and the amount prescribed in Article 21 of this Directive, calculated on the basis of the financial holding company's consolidated financial position and in compliance with Section 3 of this Chapter.

Justification

The rapporteur favours the amendment proposed by the Council.

Amendment 479
Article 30, paragraph 4

4. By derogation to paragraph 3 competent authorities may allow assets constituting claims and other exposures on recognised third-country investment firms and recognised clearing houses and exchanges in financial instruments to be subject to the same treatment accorded to those on institutions laid out in ***Articles 113(2)(i)***, 115(2) and 116 of Directive [2000/12/EC].	4. By derogation to paragraph 3 competent authorities may allow assets constituting claims and other exposures on recognised third-country investment firms and recognised clearing houses and exchanges in financial instruments to be subject to the same treatment accorded to those on institutions laid out in ***Articles 113(3)(i)***, 115(2) and 116 of Directive [2000/12/EC].

Justification

Cross reference / Typographical error.

Amendment 480
Article 34

Competent authorities shall require that every investment firm, as well as meeting	Competent authorities shall require that every investment firm, as well as meeting

the requirements in Article 13 of Directive 2004/39/EC, shall meet the requirements in ***Articles 22 and 123*** of Directive [2000/12/EC].	the requirements in Article 13 of Directive 2004/39/EC, shall meet the requirements in ***Article 22*** of Directive [2000/12/EC] ***and in Article 123 of Directive [2000/12/EC], subject to the provisions on level of application in Articles 68 to 73 of that Directive***.

Justification

The rapporteur favours the amendment proposed by the Council to bring the text into line with the Commission recast of Directive 2000/12/EC as regards inclusion of investment firms under the second pillar.

Amendment 481
Article 37, paragraph 1, introductory part

1. ***Articles 124 to 132, 136 and 144*** of Directive [2000/12/EC] shall apply *mutatis mutandis* to the supervision of investment firms in accordance with the following:	1. ***Title V, Chapter 4*** of Directive [2000/12/EC] shall apply *mutatis mutandis* to the supervision of investment firms in accordance with the following:

Justification

The rapporteur favours the amendment proposed by the Council.

Amendment 482
Article 37, paragraph 1, subparagraph 2

Where an EU parent financial holding company has as subsidiary both a credit institution and an investment firm, ***one competent authority responsible for supervision of the credit institution shall be identified to be responsible for consolidated supervision of the entities controlled by that parent.***	Where an EU parent financial holding company has as subsidiary both a credit institution and an investment firm, ***Title V, Chapter 4 of Directive [2000/12/EC] shall apply to the supervision of institutions as if references to credit institutions were institutions.***

Justification

The Commission text would require a consolidated group with a financial holding company parent to be subject to lead regulation by the supervisor of the bank within a group irrespective of the overall composition of the financial group. The automatic primacy of the

banking regulator neglects the fact that in some groups the overwhelming balance of business will be towards the investment firms. It is inappropriate for this outcome to be applied automatically.

In keeping with the principle of the Financial Conglomerates Directive [2002/87/EC] the regulations for consolidation and the allocation of responsibility for consolidated supervision to the competent authority should reflect the composition of the group on a case by case basis where a financial holding company has both a credit institution and investment firm as subsidiaries.

Amendment 483
Article 37, paragraph 2

2. The requirements set out in Article 129(2) of Directive [2000/12/EC] shall also apply to the recognition of internal models of institutions under Annex V of this Directive.	2. The requirements set out in Article 129(2) of Directive [2000/12/EC] shall also apply to the recognition of internal models of institutions under Annex V of this Directive ***where the application is submitted by an EU parent credit institution and its subsidiaries or an EU parent investment firm and its subsidiaries, or jointly by the subsidiaries of an EU parent financial holding company.***

Justification

The rapporteur favours the Council proposal to bring the text into line with the Commission recast of Directive 2000/12/EC.

Amendment 484
Article 42, paragraph 1, introductory part

1. The Commission shall decide on any ***amendments*** in the following areas in accordance with the procedure referred to in Article 43(2).	1. The Commission shall decide on any ***technical adaptations*** in the following areas in accordance with the procedure referred to in Article 43(2).

Justification

This amendment is similar to the amendment to Article 150(1) to the Commission recast of Directive 2000/12/EC in that 'amendments' is too sweeping a term to be used in connection with wide-ranging powers of execution, conferred on the Commission and should consequently be replaced, as likewise called for in the amendment to Article 150, by the term 'technical adaptations'.

Amendment 485
Article 42, paragraph 1, point (c)

(c) ***alteration*** of the amounts of initial capital prescribed in Articles 5 to 9 and the amount referred to in Article 18(2) to take account of developments in the economic and monetary field;	(c) ***adjustment*** of the amounts of initial capital prescribed in Articles 5 to 9 and the amount referred to in Article 18(2) to take account of developments in the economic and monetary field;

Justification

See amendment to the introduction to Article 42(1).

Amendment 486
Article 42, paragraph 1, point (d)

(d) ***amendment*** of the categories of investment firms in Articles 20(2) and (3) to take account of developments on financial markets;	(d) ***adjustment*** of the categories of investment firms in Articles 20(2) and (3) to take account of developments on financial markets;

Justification

See amendment to the introduction to Article 42(1).

Amendment 487
Article 42, paragraph 1, point (g)

(g) ***amendment*** of the technical provisions in Annexes I to VII ***in order to take account of*** developments in financial markets, risk measurement, accounting standards or requirements ***set out in*** Community legislation.	(g) ***adjustment*** of the technical provisions in Annexes I to VII ***as a result of*** developments in financial markets, risk measurement, accounting standards or requirements ***which take account of*** Community legislation ***or with regard to convergence of supervisory practices***.

Justification

Brings the text into line with amendments to the same effect to Article 150(1)(h) of the Commission recast of Directive 2000/12/EC.

See also amendment to the introduction to Article 42(1).

Amendment 488
Article 42, paragraph 1, point (g a) (new)

(ga) technical adaptations to take account of the outcome of the review referred to in Article 65(3) of Directive 2004/39/EC.

Justification

The rapporteur will accept the implementing provision proposed by the Council regarding the scope of the MiFID if, and only if, it is brought under the heading of 'technical adaptations'.

Amendment 489
Article 42, paragraph 1 a (new)

1a. None of the implementing measures adopted may alter the provisions of this Directive.

Justification

This provision needs to be added in order to safeguard Parliament's rights.

Amendment 490
Article 42a (new)

Article 42a

Article 42 shall not be applied until the conditions to which the powers of the Parliament, the Commission and the Council of the European Union are subject under Decision 1999/468/EC are modified along the lines of Article I - 36 of the Treaty establishing a Constitution for Europe.

Amendment 491
Article 43, paragraph 1

1. The Commission shall be assisted by ***a*** Committee.	1. The Commission shall be assisted by ***the European Banking Committee instituted by Commission Decision 2004/10/EC[1]***

(hereinafter referred to as 'the Committee').

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[1] OJ L 3, 7.1. 2004, p. 36.

Justification

Clarification and brings the text into line with Article 151(1) of the Commission recast of Directive 2000/12/EC.

Amendment 492
Article 43, paragraph 2

2. Where reference is made to this ***paragraph***, the procedure laid down in Article 5 of Decision 1999/468/EC shall apply, in compliance with Article 7(3) and Article 8 thereof.	2. Where reference is made to this ***Article***, the procedure laid down in Article 5 of Decision 1999/468/EC shall apply, in compliance with Article 7(3) and Article 8 thereof.

Justification

Clarification.

Amendment 493
Article 45 a (new)

Article 45a

1. Competent authorities may permit investment firms to exceed the limits concerning large exposures in Article 111 of Directive [2000/12/EC]. Any excesses need not be included by the investment firms in their calculation of capital requirements exceeding such limits, as set out in Article 75(b) of Directive [2000/12/EC]. This discretion may be exercised until 31 December 2010 or the date of coming into force of any amendments affecting the treatment of large exposures, pursuant to Article 119 of Directive [2000/12/EC], whichever is the earlier. For this discretion to be exercised,

either conditions (a) to (d) or condition (e) must be met:

(a) the investment firm provides investment services or investment activities related to the financial instruments listed in points 5, 6, 7, 9 and 10, Section C, Annex I of Directive 2004/39 EC;

(b) the investment firm does not provide such investment services or undertake such investment activities for, or on behalf of, retail clients;

(c) breaches of the limits referred to in paragraph 1 arise in connection with exposures resulting from contracts that are financial instruments listed in point (a) and relate to commodities or underlyings within the meaning of point 10, Section C, Annex I of Directive 2004/39/EC (MiFID) and are calculated in accordance with Annex III and IV of Directive [2000/12/EC], or from contracts concerning the delivery of commodities or emission allowances;

(d) the investment firm has a documented strategy for managing and, in particular, for controlling and limiting risks arising from the concentration of exposures. The investment firm must inform the competent authorities of this strategy and all material changes to this strategy without delay. The investment firm must make appropriate arrangements to ensure a continuous monitoring of the creditworthiness of borrowers, according to their impact on concentration risk. These arrangements must enable the investment firm to react adequately and sufficiently promptly to any deterioration in that creditworthiness;

(e) exposures exceeding the large exposure limits are cleared through a recognised clearing-house.

2. Where an investment firm exceeds the internal limits set according to the strategy referred to in point (d) of paragraph 1, it must notify the competent authority without

delay of the size and nature of the excess and the counterparty.

Justification

Translation error in para 1(c):"Basiswerte" means "underlyings" not "basic dimensions".

Amendment 494
Article 45 b (new)

Article 45b

By derogation to Article 20(1), until 31 December 2011 competent authorities may choose, on a case-by-case basis, not to apply the capital requirements arising from point (d) of Article 75 of Directive [2000/12/EC] in respect of investment firms to which Article 20(2) and (3) do not apply, whose total trading book positions never exceed EUR 50 million and whose average number of relevant employees during the financial year does not exceed 100.

Instead, the following treatment shall apply. The capital requirement shall be at least the lower of:
(a) the capital requirements arising from point (d) of Article 75 of Directive [2000/12/EC]; and
(b) 12/88 of the higher of the

following:
(i) the sum of the capital requirements contained in points (a) to (c) of Article 75 of Directive [2000/12/EC]; and
(ii) the amount laid down in Article 21, notwithstanding Article 20(5).

If point (b) of the second sub-paragraph applies, an incremental increase shall be applied on at least an annual basis. Applying this derogation shall not result in a decrease in the overall level of capital requirements for an investment firm, in comparison to the requirements at 31 December 2006, unless such a reduction is prudentially justified by a reduction in the size of the investment firm's business.

Before the expiration of the term, the European Commission shall review whether this derogation needs to be extended.

Justification

The rapporteur believes that the national authorities represented in the Committee of European Banking Supervisors should be allowed to use their discretion to lay down a temporary common ceiling for the increase in capital requirements needed to cover operating risks, if this is considered necessary and appropriate to the risks in question.

Amendment 495
Article 45 c (new)

Article 45c

1. The provisions on capital requirements as laid down in this Directive and Directive [2000/12/EC] shall not apply to investment firms whose main business consists exclusively of the provision of investment services or activities in relation to the financial instruments set out in Annex I section C points 5, 6, 7 and 10 of the Directive 2004/39/EC until the Commission has submitted, on the basis

	of public consultations and in the light of discussions with the competent authorities, a report on the issues outlined in paragraph 2 points (a) and (b) below, and related amendments have been adopted by the Parliament and the Council.
	2. The report referred to in paragraph 1 shall outline:
	(a) an appropriate regime for the prudential supervision of investment firms whose main business consists exclusively of the provision of investment services or activities in relation to the financial instruments set out in Annex I Section C points 5, 6, 7 and 10 of Directive 2004/39/EC ;
	(b) the desirability of amending Directive 2004/39/EC to create a further category of investment firm whose main business consists exclusively of the provision of investment services or activities in relation to the financial instruments set out in Annex I Section C points 5, 6, 7 and 10 of Directive 2004/39/EC.

Amendment 496
Article 46, paragraph 1, subparagraph 2

They shall apply those provisions from ***31 December 2006.***	They shall apply those provisions from ***1 January 2007.***

Amendment 497
Article 47, paragraph 1, point (a)

(a) References in Annex II paragraph 6 of Directive [2000/12/EC] shall be read as references to Directive 2000/12/EC as that Directive stood prior to the date referred to in Article 46;	(a) References in Annex II, paragraph 6 of ***this Directive to*** Directive [2000/12/EC] shall be read as references to Directive 2000/12/EC as that Directive stood prior to the date referred to in Article 46;

Justification

The rapporteur favours the amendment proposed by the Council.

Amendment 498
Article 47, paragraph 1 a (new)

1a. In relation to trading book positions, the date in Article 152(7) of Directive [2000/12/EC] shall be deemed to be 1 January 2009 or the date of coming into force of any revision to the treatment of counterparty risk, pursuant to Article 41 of this Directive, whichever is the earlier.

Justification

The rapporteur favours the Council's proposed amendment providing for a transitional period in which Article 41 could be reviewed.

Amendment 499
Article 47, paragraph 1, point (b)

(b) Annex II, paragraph 4.1, shall apply as it stood prior to the date referred to in Article 46.	(b) Annex II, paragraph 4.1 ***of Directive [93/6/EEC]***, shall apply as it stood prior to the date referred to in Article 46.

Justification

Cross reference / Typographical error.

Amendment 500
Article 47a (new)

Article 47a

Four years after the date referred to in Article 46(1) the Commission shall review and report on the application of this Directive and submit its report to the Parliament and the Council together with any appropriate proposals for amendment.

Justification

Amendment 501
Annex 1, Title preceding point 8 (new)

A. Treatment of the protection seller

Justification

Re-ordering is required to clarify the treatment of the main forms of credit derivatives, distinguishing between the capital charge applied to the protection seller and that applied to the protection buyer, as well as between single name and multiple name credit linked notes.

Amendment 502
Annex 1, paragraph 8, subparagraph 1

8. ***For credit derivatives***, unless specified differently, the notional amount of the credit derivative contract must be used. When calculating the capital requirement for the market risk of the party who assumes the credit risk (the "protection seller"), ***positions*** are determined as follows:	8. When calculating the capital requirement for market risk of the party who assumes the credit risk (the "protection seller"), unless specified differently, the notional amount of the credit derivative contract must be used. ***For the purpose of calculating the specific risk charge, other than for total return swaps, the maturity of the credit derivative contract is applicable instead of the maturity of the obligation. Positions*** are determined as follows:

Justification

Change necessary to ensure clarity and consistency between the Directive and the Basel Accord.

Amendment 503
Annex 1, paragraph 8, subparagraph 2

A total return swap creates a long position in the general market risk of the reference obligation and a short position in the general market risk of a government bond which is assigned a 0% risk weight under Annex VI of Directive [2000/12/EC]. It also creates a long position in the specific risk of the reference obligation.	***(i)*** A total return swap creates a long position in the general market risk of the reference obligation and a short position in the general market risk of a government bond ***with a maturity equivalent to the period until the next interest fixing and*** which is assigned a 0% risk weight under Annex VI of Directive [2000/12/EC]. It also creates a long position in the specific risk of the reference obligation.

Justification

Change necessary to ensure clarity and consistency between the Directive and the Basel Accord.

Amendment 504
Annex 1, paragraph 8, subparagraph 3

A credit default swap does not create a position for general market risk. For the purposes of specific risk, the institution must record a synthetic long position in an obligation of the reference entity. If premium or interest payments are due under the product, these cash flows must be represented as notional positions in a government ***bond with the appropriate fixed or floating rate***.	***(ii)*** A credit default swap does not create a position for general market risk. For the purposes of specific risk, the institution must record a synthetic long position in an obligation of the reference entity***, unless the derivative is rated and meets the conditions for qualifying debt, in which case a long position in the derivative is recorded***. If premium or interest payments are due under the product, these cash flows must be represented as notional positions in government ***bonds***.

Justification

Change necessary to ensure clarity and consistency between the Directive and the Basel Accord.

Amendment 505
Annex 1, paragraph 8, subparagraph 4

A credit linked note creates a long position in the general market risk of the note itself, as an interest product. For the purpose of specific risk, a synthetic long position is created in an obligation of the reference entity. ***In addition, a*** long position is created in the ***specific risk of the*** issuer of the note***.***	***(iii)*** A ***single name*** credit linked note creates a long position in the general market risk of the note itself, as an interest ***rate*** product. For the purpose of specific risk, a synthetic long position is created in an obligation of the reference entity. ***An additional*** long position is created in the issuer of the note***. Where the credit linked note has an external rating and meets the conditions for a qualifying debt item, a single long position with the specific risk of the note need only be recorded.***

Justification

Change necessary to ensure clarity and consistency between the Directive and the Basel Accord.

Amendment 506
Annex 1, paragraph 8, subparagraph 5

A first-asset-to-default basket creates a position for the notional amount in an obligation of each reference entity. If the size of the maximum credit event payment is lower than the capital requirement under the method in the first sentence of this sub-paragraph, the maximum payment amount may be taken as the capital requirement for specific risk.	***deleted***

Justification

Change necessary to ensure clarity and consistency between the Directive and the Basel Accord.

Amendment 507
Annex 1, paragraph 8, subparagraph 6

A second-asset-to-default basket product creates a position for the notional amount in an obligation of each reference entity less one (that with the lowest specific risk capital requirement). If the size of the maximum credit event payment is lower than the capital requirement under the method in the first sentence of this sub-paragraph, this amount may be taken as the capital requirement for specific risk.	***deleted***

Justification

Change necessary to ensure clarity and consistency between the Directive and the Basel Accord.

Amendment 508
Annex 1, paragraph 8, subparagraph 7

Where a credit linked note basket product has an external rating and meets the conditions for a qualifying debt item, a single long position with the specific risk of the note issuer may be recorded instead of the specific risk positions for all reference entities.	***deleted***

Justification

Change necessary to ensure clarity and consistency between the Directive and the Basel Accord.

Amendment 509
Annex 1, paragraph 8, subparagraph 8

A basket product providing proportional protection creates a position in each reference entity ***for the purposes of specific risk***, with the total notional amount of the contract assigned across the positions according to the proportion of the total notional amount that each exposure to a reference entity represents. Where more than one obligation of a reference entity can be selected, the obligation with the highest risk weighting determines the specific risk. ***The maturity of the credit derivative contract is applicable instead of the maturity of the obligation.***

(iv) In addition to a long position in the specific risk of the issuer of the note, a multiple name credit linked note providing proportional protection creates a position in each reference entity, with the total notional amount of the contract assigned across the positions according to the proportion of the total notional amount that each exposure to a reference entity represents. Where more than one obligation of a reference entity can be selected, the obligation with the highest risk weighting determines the specific risk.

Where a multiple name credit linked note has an external rating and meets the conditions for a qualifying debt item, a single long position with the specific risk of the note need only be recorded.

Justification

Change necessary to ensure clarity and consistency between the Directive and the Basel Accord.

Amendment 510
Annex 1, paragraph 8, subparagraph 8 a (new)

(v) A first-asset-to-default credit derivative creates a position for the notional amount in an obligation of each reference entity. If the size of the maximum credit event payment is lower than the capital requirement under the method in the first sentence of this sub-paragraph, the maximum payment amount may be taken as the capital requirement for specific risk.

A second-asset-to-default credit derivative creates a position for the notional amount in an obligation of each reference entity less one (that with the lowest specific risk capital requirement). If the size of the

maximum credit event payment is lower than the capital requirement under the method in the first sentence of this sub-paragraph, this amount may be taken as the capital requirement for specific risk.

If a first or second-asset to default derivative is externally rated and meets the conditions for a qualifying debt item, then the protection seller need only calculate one specific risk charge reflecting the rating of the derivative.

Justification

Change necessary to ensure clarity and consistency between the Directive and the Basel Accord.

Amendment 511
Annex 1, Title preceding paragraph 9,

B. Treatment of the protection buyer

Justification

Re-ordering is required to clarify the treatment of the main forms of credit derivatives, distinguishing between the capital charge applied to the protection seller and that applied to the protection buyer, as well as between single name and multiple name credit linked notes.

Amendment 512
Annex 1, paragraph 14, Table 1, column 1, row 2

Debt securities issued or guaranteed by central governments, issued by central banks, international organisations, multilateral development banks or Member States' regional government or local authorities which would receive a 0% risk weighting under the ***RSA*** or IRB *approaches*.	Debt securities issued or guaranteed by central governments, issued by central banks, international organisations, multilateral development banks or Member States' regional government or local authorities which would receive a 0% risk weighting under the ***Standardised Approach*** or IRB *approach*.

Justification

Cross reference / Typographical error.

Amendment 513
Annex 1, paragraph 14, Table 1, column 1, row 3, sentence 1

Debt securities issued or guaranteed by central governments, issued by central banks, international organisations, multilateral development banks or Member States' regional governments or local authorities which would receive a 20% or 50% risk weighting under the ***RSA***	Debt securities issued or guaranteed by central governments, issued by central banks, international organisations, multilateral development banks or Member States' regional governments or local authorities which would receive a 20% or 50% risk weighting under the ***Standardised Approach.***

Justification

Cross reference / Typographical error.

Amendment 514
Annex I, paragraph 15, point (d)

(d) ***they are, subject to competent*** *authorities'* ***discretion,*** long and short positions in assets issued by institutions subject to the capital adequacy requirements set forth in Directive [2000/12/EC]	(d) long and short positions in assets issued by institutions subject to the capital adequacy requirements set forth in Directive [2000/12/EC] ***(i) which are considered by the institutions concerned to be sufficiently liquid and (ii) whose investment quality is according to the institution's own view at least equivalent to that of the assets referred to under (a) above.***

Justification

The rapporteur favours the removal of national discretion, as proposed by the Council.

Amendment 515
Annex I, paragraph 46

46. In all cases not falling under paragraph 45, a specific risk capital charge will be assessed against both sides of the ***position***.	46. In all cases not falling under paragraph***s 43 to*** 45, a specific risk capital charge will be assessed against both sides of the ***positions***.

Justification

The rapporteur favours the clarification and the correction of the cross-references proposed by the Council.

Amendment 516
Annex II, paragraph 6, subparagraph 2

Annex IV to Directive [2000/12/EC] shall be considered to be amended to include after point 3***(d)*** the words 'and credit derivatives';	Annex IV to Directive [2000/12/EC] shall be considered to be amended to include after point 3 the words 'and credit derivatives';

Justification

The rapporteur favours the amendment proposed by the Council.

Amendment 517
Annex II, paragraph 6, subparagraph 3

Annex III to Directive [2000/12/EC] shall be considered to be amended to include after Table 1***(a)***:	Annex III to Directive [2000/12/EC] shall be considered to be amended to include after Table 1:

Justification

The rapporteur favours the amendment proposed by the Council.

Amendment 518
Annex II, paragraph 8

For the purposes of paragraph 5, in the case of repurchase transactions and securities or commodities lending or borrowing transactions, all financial instruments and commodities that are eligible to be included in the trading book may be recognised as eligible collateral. For exposures due to OTC derivative instruments booked in the trading book, commodities that are eligible to be included in the trading book may also be recognised as eligible collateral. For the purposes of calculating volatility adjustments where such financial	For the purposes of paragraph 5, in the case of repurchase transactions and securities or commodities lending or borrowing transactions ***booked in the trading book***, all financial instruments and commodities that are eligible to be included in the trading book may be recognised as eligible collateral. For exposures due to OTC derivative instruments booked in the trading book, commodities that are eligible to be included in the trading book may also be recognised as eligible collateral. For the purposes of calculating volatility

instruments or commodities are lent, sold or provided, or borrowed, purchased or received by way of collateral or otherwise under such a transaction such instruments and commodities shall be treated in the same way as non-main index equities listed on a recognised exchange.	adjustments where such financial instruments or commodities ***which are not eligible under Annex VIII of Directive [2000/12/EC]*** are lent, sold or provided, or borrowed, purchased or received by way of collateral, or otherwise under such a transaction***, and the institution is using the Supervisory volatility adjustments approach under Annex VIII, part 3 of Directive [2000/12/EC],*** such instruments and commodities shall be treated in the same way as non-main index equities listed on a recognised exchange. ***Where institutions are using the Own Estimates of Volatility Adjustments Approach under Annex VIII, part 3 of Directive [2000/12/EC] in respect of financial instruments or commodities which are not eligible under Annex VIII of Directive [2000/12/EC] volatility adjustments must be calculated for each individual item. Where institutions are using the Internal Models Approach defined at Annex VII, Part 3 of Directive [2000/12/EC], they may also apply this approach in the trading book.***

Justification

The proposed amendment makes the Directive consistent with paragraph 703 of the Basel Framework, which provides firms with the option to apply haircutting methodologies to collateral in the trading book. The ECOFIN supported the inclusion of the own estimates approach, but not the recognition of the Internal Models Approach. Although this area will probably be revisited by the Trading Book Review, it is important that this methodology should be an option available to firms.

Amendment 519
Annex II, paragraph 9, point (b)

(b) any items ***lent, sold or provided, or*** borrowed, purchased or received under the transactions may be recognised as eligible financial collateral under Title V, Chapter 2, Section 3, *Sub-section* 3 of Directive [2000/12/EC] without the application of	(b) any items borrowed, purchased or received under the transactions may be recognised as eligible financial collateral under Title V, Chapter 2, Section 3, *Subsection* 3 of Directive [2000/12/EC] without the application of paragraph 8 of

paragraph 8 of this Annex.	this Annex.

Justification

The rapporteur favours the amendment proposed by the Council for clarification.

Amendment 520
Annex V, paragraph 13, subparagraph 4

For CIUs the actual foreign exchange positions of the CIU shall be taken into account. Institutions may rely on third party reporting of the foreign exchange position in the CIU, where the correctness of this report is adequately ensured. If an institution is not aware of the foreign exchange positions in a CIU, ***it shall be assumed that the CIU is invested up to the maximum extent allowed under the CIU's mandate in foreign exchange and institutions shall, for trading book positions, take account of the maximum indirect exposure that they could achieve by taking leveraged positions through the CIU when calculating their capital requirement for foreign exchange risk. This shall be done by proportionally increasing the position in the CIU up to the maximum exposure to the underlying investment items resulting from the investment mandate. The assumed position of the CIU in foreign exchange shall be treated as a separate currency according to the treatment of investments in gold. If, however, the direction of the CIU's investment is available, the total long position may be added to that the total long open foreign exchange position and the total short position may be added to the total short open foreign exchange position. There would be no netting allowed between such positions prior to the calculation***.	For CIUs the actual foreign exchange positions of the CIU shall be taken into account. Institutions may rely on third party reporting of the foreign exchange position in the CIU, where the correctness of this report is adequately ensured. If an institution is not aware of the foreign exchange positions in a CIU. ***This position should be carved out and treated in accordance with Annex III, paragraph 2.1***.

Justification

The rapporteur favours the amendment proposed by the Council.

Amendment 521
Annex VII, Part B, paragraph 2, point (b)

(b) clear ***and independent (i.e. independent of front office)*** reporting lines for the department accountable for the ***valuation*** process.	(b) clear reporting lines for the department accountable for the ***verification*** process.

Justification

The requirement that there should be independent reporting lines appears to contradict the process whereby traders are responsible for marking positions in the first instance with independent price verification being carried out by a separate department as recognised in paragraph 7. The core concept is that a clear and robust verification process should exist. The requirement to demonstrate independence may compromise the ability of traders to function, without enhancing the risk management of the environment.

Amendment 522
Annex VII, Part B, paragraph 6, point (b)

(b) market inputs shall be sourced, where possible, in line with market prices, and the appropriateness of the market inputs of the particular position being valued and the parameters of the model shall be assessed on a ***daily*** basis;	(b) market inputs shall be sourced, where possible, in line with market prices, and the appropriateness of the market inputs of the particular position being valued and the parameters of the model shall be assessed on a ***frequent*** basis;

Justification

The rapporteur favours the amendment proposed by the Council.

EXPLANATORY STATEMENT

I. Introduction

On the basis of the document 'International Convergence of Capital Measurement and Capital Standards: a Revised Framework' (Basel II) published by the Basel Committee on Banking Supervision on 26 June 2004, on 14 July 2004 the Commission presented a proposal for a directive recasting Directives 2000/12 EC and 93/6/EEC on own funds. On 9 July 2003 the European Parliament had presented an own-initiative report in connection with the Commission's third discussion paper on capital requirements for credit institutions and investment firms.

The current European rules are based on the Basel Capital Accord of 1988 (Basel I). It emerged over time that there was an increasing divergence, in terms of both scale and composition, between the capital required by supervisors, i.e. regulatory capital, and economic capital, i.e. the capital held internally by banks which is actually regarded as necessary to cover risks. The following reasons are advanced for this:

- The current blanket underpinning of risk assets permits only limited differentiation in the consideration of capital requirements.
- The rules currently do not require capital underpinning for what is known as operational risk, although this is a significant risk factor.
- It is almost impossible to take new financial instruments and methods for managing credit risk into account in the current framework.
- In some areas, e.g. securitisations, capital arbitrage takes place, i.e. preference is given to types of business for which, in relation to other business entailing risks, regulatory capital requirements are too low or do not exist at all.

II. Purpose and structure of the new provisions on own funds

The Commission proposal recasting Directives 2000/12/EC and 93/6/EEC envisages setting regulatory capital requirements so that they are more dependent on the credit risk run, and taking more recent developments on the financial markets and in institutions' risk management practices into account, in order to achieve increased convergence between economic and regulatory capital. In addition, with regard to capital requirements, for the first time operational risks are to be taken into account in addition to credit (and market) risks, and provisions on securitisations and credit risk mitigation techniques also feature. As is the case at present both directives will be bindingly applicable to all credit institutions and investment firms, irrespective of their size, in the interests of the internal market and in order to prevent distortions of competition. A degree of national discretion is proposed, in order to take account of the structural differences in the financial markets of the 25 EU Member States and of the different sizes of the various institutions. Derogations are also provided for with regard to investment firms.

The proposal for a directive adopts the three-pillar model envisaged in the Basel Framework Agreement. The key element of the provisions is constituted by the quantitative minimum capital requirements defined in what is known as the First Pillar. A range of procedures of varying complexity can be chosen from here for measuring credit risk (Standardised Approach, Foundation and Advanced IRB (internal ratings-based) Approach) and operational risk (Basic Indicator Approach, Standardised Approach, Advanced Measurement Approach (AMA)). This 'evolutionary plan' is intended to ensure that the new capital requirements will not make excessive demands on smaller institutions, and that at the same time they will have the incentive and the opportunity to move in stages to more risk-sensitive procedures and thus continue to bring regulatory capital closer to economic capital. In addition to the quantitative measurement procedures in the First Pillar, which are regarded as being inadequate by themselves to guarantee bank solvency, there is to be enhanced qualitative banking supervision (what is known as Pillar II) and market discipline will be tightened by the provisions laid down in Pillar III.

III. Points for discussion

Unlike the European directive on own funds, which is binding on all banks and investment firms in the European Union, the Basel Framework Agreement is a non-binding recommendation for all banks which operate internationally. The aim is therefore not to jeopardise the international and European competitiveness of European groups which have cross-border operations. In this connection, however, fair competition at national level also has to be borne in mind. Different structures have to be taken into account here; there must be no preferential treatment of certain groups. In addition, at national level smaller institutions, in particular, which opt for the Standardised Approach fear disadvantages with regard to the recognition of loan collateral and high implementation costs relative to their size. At European level the large number of cases (nearly 150) in which national discretion is permitted gives cause for concern. On the other hand, it is in the interest of the vast majority of banks for the new rules to be implemented promptly. Corporate borrowers, especially small and medium-sized firms, demand appropriate transparency in the banks' ratings process. The most contentious points at issue are indicated below.

1. Scope of the Directive

The Commission has opted for an approach which diverges from Basel II where the scope of the provisions on own funds are concerned. The Basel Framework Agreement basically envisages application on a consolidated (group) basis for banks operating internationally. In addition, sub-consolidation must take place, i.e. the Framework Agreement must also be applied at each level within a banking group on a fully consolidated basis. To ensure investor protection the supervisory authorities are also required to examine whether the individual banks within a banking group also have sufficient capital by themselves. The Commission proposal basically envisages single-institution supervision (Article 68(1) of the Directive [2000/12/EC]). Furthermore, Article 69 provides for the possibility that national supervision of subsidiary credit institutions within a banking group may result in single-institution supervision being waived if certain requirements are met, in which case the capital of the domestic subsidiaries may be held at the level of the group parent.

While some call for the provisions to be applied across the board where the requirements laid down in Article 69 are met (abolition of discretion) and for the rules to be extended to European subsidiaries, others take a generally critical view, on grounds of risk, of the possibility of capital being held only at group level, and doubt whether an extension to European subsidiaries would be compatible with the Basel requirements, since in this case neither the single-institution supervision basically regarded in the European Union as being necessary nor the sub-consolidation and scrutiny at individual level envisaged in Basel II for banks 'operating internationally' would be effective.

The rapporteur takes the view that if the stringent requirements, in particular with regard to short-term transferability of own funds, are met the abolition of discretion should be considered, since this would enable a potential distortion of competition within the European Union to be avoided. However, in the light of the progress of EU integration a revision clause, whereby the preconditions for the extension of Article 69 are to be reviewed by the Commission after a certain period, is desirable.

2. Treatment of internal group lending

The treatment of internal group lending, i.e. lending relationships between the parent company and subsidiaries, and between subsidiaries in the same group, laid down in Article 80(7) is also controversial. The proposal for a directive provides that, at the discretion of the national authorities, domestic internal group lending may be assigned a risk weight of 0% provided that a banking group is concerned, the subsidiary is covered by full consolidation and there is central risk management.

Some, including the ECB, consider a zero weighting for internal group lending as generally inadequate in terms of risk assessment, and therefore unreliable. Others point out that zero weighting of internal group lending is actually already possible, and is already used in some Member States without being condemned. In the interest of the internal market an extension of this rule to internal group lending throughout Europe should be undertaken. There is also disagreement about the issue of the criteria which should be used for granting this privilege. The decisive factor here should be the risk profile.

The rapporteur takes the view that the principle should be that of treating the same risks in the same way, and that this should be a matter for the judgment of the national supervisor. Here again, in view of the current degree of integration of the European financial markets and of the legal framework a critical view should be taken of the possible extension of the rule to EU subsidiaries; however, a review of circumstances in five years' time is advocated.

3. Allocation of responsibilities between home country and host country supervisors

Article 129 of the Directive [2000/12/EC] strengthens the position of the supervisory authority responsible for consolidation (home country supervisory) *vis-à-vis* the host country supervisor by comparison with the current arrangements. Article 129 permits a single application for the IRB and AMA procedures, and market price risk models, by the group of institutions, as a result of which the supervisory authorities responsible for the members of the group are supposed to adopt a joint decision on authorising the procedures. If this does not happen within six months the Commission proposal provides for a single decision, binding on

all the supervisory authorities concerned, by the parent company's supervisor. The responsibility for supervision of subsidiaries has hitherto lain with the host country supervisor.
Some consider that the Commission proposal goes too far, in that it disregards the right of host country supervisors to be involved and leaves difficult legal issues unanswered. In addition, a critical view should be taken, especially where crises are concerned, of the possible collapse of national responsibility for a stable banking system and the performance of a significant slice of banking supervision by a foreign authority. Furthermore, there are reservations about competition, since in national financial markets which are heavily dominated by foreign banking groups the internal ratings systems of competing banks would be validated by different European supervisory authorities. The counter-argument is that without the provisions of Article 129, in a worst-case scenario banks operating throughout Europe would have to work with 24 additional models or sets of capital requirements, which would, not least, generate high costs; without the six-month deadline the system would scarcely be practicable. An extension of the powers of home country supervisors is claimed to be necessary with regard to the Second and Third Pillars.

The rapporteur takes the view that the provisions of Article 129 should basically be retained. The prerequisites for an extension of the powers of home country supervisors include a harmonised investment protection system, common administrative law and clarification of the issue of lender of last resort. Since progress is to be expected in these areas within the next few years, the revision clause proposed by the Council is to be welcomed. The same applies to the possibility of the stronger position of the supervisory authority responsible for consolidation failing to prove its worth.

IV. Comitology

This directive is not a Lamfalussy directive in the original sense. However, the Lamfalussy procedure is being proposed for these changes. Consequently, in order to safeguard the rights of Parliament the rapporteur takes the view that it is vital to include a suspension clause for Parliament.

8.6.2005

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS

for the Committee on Economic and Monetary Affairs

1. on the proposal for a directive of the European Parliament and of the Council re-casting Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions (COM(2004)0486 – C6-0141/2004 – 2004/0155(COD))

2. on the proposal for a directive of the European Parliament and of the Council re-casting Council Directive 93/6/EEC of 15 March 1993 on the capital adequacy of investment firms and credit institutions(COM(2004)0486 – C6-0144/2004 – 2004/0159(COD))

Draftswoman: Maria Berger

PA_Leg

SHORT JUSTIFICATION

The Basel Accord in 1988 (Basel I) led to the adoption of minimum capital requirements across over 100 countries. The European Union adopted, *inter alia*, Directive 2000/12/EC which consolidated previous directives regulating solvency ratios for credit institutions and addressed their risk arising from lending activities. Directive 93/6/EEC on the capital adequacy of investment firms and credit institutions extended both the credit risk and market risk rules to investment firms. The new proposals (implementing in the European Union the new Basel Accord - Basel II) aim at eliminating the shortcomings that were identified so far, ensuring that financial institutions' capital is more closely aligned with the risk they face, and specifies how the requirements apply to individual investment firms, groups of investment firms and mixed groups. Your rapporteur wishes to express her support for the major objectives of the proposals and the necessary updating of the rules in response to the significant advances in techniques for risk measurement and management in financial services.

However, the rapporteur would like to propose some amendments which can contribute to the simplification of the capital requirements system. Several of them relate to instances of national discretion that should be deleted in order to enhance regulatory harmonisation in the internal market. Many of those deletions are also recommended by the national supervisors in the CEBS.

The proposal applies the 're-casting technique', in accordance with Interinstitutional Agreement 2002/C 77/01, permitting substantive amendments to existing legislation without a self-standing amending directive. Your rapporteur takes the view that Article 47(2) of the

EC Treaty is properly chosen as the legal basis for this proposal. The principle of subsidiarity is respected, as the directive is the most appropriate instrument to achieve the objectives pursued. Having the directives confined to the necessary requirements, the principle of proportionality is also observed.

However, it must be noted that Basel II was agreed outside the legislative procedures of the European Community, which might justify doubts about the democratic mandate of the proposal. With regard to the re-casting of Directive 2000/12/EC, this is especially relevant for changes proposed to the powers of execution, where the Commission is entitled to amend Articles 56-67 regulating own funds (Section I of Chapter 2), among other issues. In the case of Directive 93/6/EEC, the Commission is entitled *inter alia* to amend the categories of investment firms in Article 20(2) and (3) as well as technical provisions in Annexes I to VII. In order to ensure proper control over the subsequent changes to the substantive regulation, it is thus necessary to introduce the appropriate comitology system, including the so-called 'sunset clause' already used, for example, in Directive 2003/6/EC on market abuse.

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following amendments in its report:

AMENDMENTS TO PROPOSAL 1

Text proposed by the Commission[1]	Amendments by Parliament

Amendment 1
Recital 63 a (new)

	(63a) The European Parliament should be given a period of three months from the first transmission of draft amendments and implementing measures to allow it to examine them and to give its opinion. However, in urgent and duly justified cases, it should be possible to shorten this period. If, within that period, a resolution is adopted by the European Parliament, the Commission should re-examine the draft amendments or measures,

Justification

This recital seeks to protect the powers of the European Parliament within the comitology procedure established by the amended Article 151.

Amendment 2
Article 89, paragraph 1, point (a)

(a) the exposure class referred to in point (a) of Article 86(1), where the number of material counterparties is limited ***and*** it would be unduly burdensome for the credit institution to implement a rating system for	(a) the exposure class referred to in point (a) of Article 86(1), where the number of material counterparties is limited ***or*** it would be unduly burdensome for the credit institution to implement a rating system for

[1] OJ C ... /Not yet published in OJ.

these counterparties;	these counterparties;

Justification

In view of the difficulty with developing fine-tuned ratings models even where there is a substantial number of counterparties in the exposure class referred to in Article 86(1)(a) (central governments and central banks), it should be possible for smaller credit institutions, in particular, to apply the Standardised Approach on a partial basis if either of the two conditions for such application exists.

Amendment 3
Article 129 paragraph 2

2. In the case of applications for the permissions referred to in Articles 84(1), 87(9) and 105, respectively, submitted by an EU parent credit institution and its subsidiaries, or jointly by the subsidiaries of an EU parent financial holding company, the competent authorities shall ***work together, in full consultation,*** to ***determine whether or not to grant*** the ***permission sought*** and to determine the terms and conditions, if any, to which such permission should be subject.	2. In the case of applications for the permissions referred to in Articles 84(1), 87(9) and 105, respectively, submitted ***to the competent authority referred to in paragraph 1*** by an EU parent credit institution and its subsidiaries, or jointly by the subsidiaries of an EU parent financial holding company, the competent authorities shall ***do everything within their power*** to ***reach a joint decision on*** the ***application within six months*** and to determine the terms and conditions, if any, to which such permission should be subject.
An application as referred to in the first subparagraph shall ***be submitted only to*** the competent authority referred to in paragraph 1.	***The period*** referred to in the first subparagraph shall ***begin on the date of receipt of the complete application by*** the competent authority referred to in paragraph 1***, which shall forward the complete application to the other competent authorities without delay. In the absence of a joint decision between the competent authorities within six months, the competent authority referred to in paragraph 1 shall make its own decision on the application, taking into account the views and reservations of the other competent authorities expressed during the six-month period.***
The competent authorities shall in a single document agree together, within no more than six months, their determination on the application. This document shall be provided to the	

applicant. In the absence of a determination within six months, the competent authority referred to in paragraph 1 shall make its own determination on the application.

A joint decision pursuant to the first subparagraph and a decision pursuant to the second subparagraph shall be drawn up, together with a full statement of reasons, by the competent authority referred to in paragraph 1 and furnished to the applicant and to the other competent authorities. Any applicant may appeal against a decision concerning itself. Save where otherwise provided by this Directive, applications submitted pursuant to the first subparagraph shall follow the legal provisions and procedures of the Member State in which the competent authority referred to in paragraph 1 is located. A decision taken pursuant to the first and second subparagraphs shall take unlimited effect, without further formalities, as soon it takes effect in the Member State whose authority has taken the decision.

Justification

The proposed changes are intended to clarify the parties to the procedure and their legal position, as well as the legal provisions under which the procedure is carried out, in the interests of legal certainty and consistency in transposition into the respective national legislative provisions.

Amendment 4
Article 145, paragraph 3 a (new)

3a. Credit institutions shall inform small and medium-sized enterprises which request financing of the key elements of their rating process. If national associations of credit institutions and of small and medium-sized enterprises do not agree by 31 December 2006 on a national voluntary information code, the competent authorities shall apply appropriate rules to ensure that the relevant information is

provided.

Justification

The transparency of the rating process is an important issue for SME. Banks should make public the most important features of their rating process to those applying for funding. This can best be done at national level.

Amendment 5
Article 151

1. The Commission shall be assisted by the European Banking Committee instituted by Commission Decision 2004/10/EC (hereinafter referred to as "the Committee").	1. The Commission shall be assisted by the European Banking Committee instituted by Commission Decision 2004/10/EC (hereinafter referred to as "the Committee").
2. Where reference is made to this Article, ***the "comitology" procedure laid down in Article 5*** of Decision 1999/468/EC shall apply***, in compliance with Article 7 (3) and*** Article 8 thereof.	2. Where reference is made to this Article, ***Articles 5 and 7*** of Decision 1999/468/EC shall apply***, having regard to the provisions of*** Article 8 thereof.
The period provided for in Article 5(6) of Decision 1999/468/EC shall be three months.	The period provided for in Article 5(6) of Decision 1999/468/EC shall be three months.
	2a. Without prejudice to the implementing measures already adopted, upon expiry of a four-year period following the entry into force of this Directive, the application of its provisions requiring the adoption of technical rules, amendments and decisions in accordance with paragraph 2 shall be suspended. Acting on a proposal from the Commission, the European Parliament and the Council may renew the provisions concerned in accordance with the procedure laid down in Article 251 of the Treaty and, to that end, they shall review them prior to the expiry of the period referred to above.

Justification

Democratic control over significant changes to the legislative act must be maintained. The sunset clause protects the powers of the European Parliament in case the relevant provisions enter into force with the Treaty establishing a Constitution for Europe.

Amendment 6
Article 154, paragraph 4

4. Until 31 December 2011, for corporate exposures the competent authorities of each Member State may set the number of days past due that all credit institutions in its jurisdiction shall abide by under the definition of default set out in Annex VII, Part 4, paragraph 44 for exposures to such counterparts situated within this Member State. The specific number shall fall within 90- up to a figure of 180 days if local conditions make it appropriate. For exposures to such counterparts situated in the territories of other Member States, the competent authorities shall set a number of days past due which is not higher than the number set by the competent authority of the respective Member State.	***deleted***

Justification

Drafting adjustment resulting from the deletion of the reference to Article 154(4) in Annex VII, Part 4, paragraph 44.

Amendment 7
Article 154, paragraph 4 a (new)

	4a. For the purposes of Annex VI, Part 1, paragraph 58, the competent authorities of each Member State may, until 31 December 2011, extend to a maximum of 180 days the period beyond which an activity will be considered void for the exposures indicated in Annex VI, part 1, paragraphs 13 to 18 and 39 to 41, where national conditions so permit. This period may vary in accordance with product lines.
	Competent authorities which do not make use of the option referred to in the first subparagraph, for exposures to counterparties located within their territory, may introduce a longer deadline for activities relating to counterparties situated in the territory of Member States whose competent authorities have exercised

	this option. The actual deadline must be between 90 days and the number of days fixed by the other competent authorities for exposures to counterparts situated within their respective territories.

Justification

The provisions included in this amendment were clearly overlooked during the recent negotiations in Basel, creating a clear imbalance between the IRB and the standard approach. Failure to correct the text could easily be interpreted as an imbalance in the entire new regulatory structure to the detriment of small banks which adopt the standard approach. A similar text was agreed moreover at the December 2004 European Council.

Amendment 8
Annex VI, Part 1, paragraph 5

5. When the discretion in paragraph 4 is exercised by the competent authorities of one Member State, the competent authorities of another Member State may also allow their credit institutions to apply the same risk weight to exposures to that central government or central bank denominated and funded in that currency.	***deleted***

Justification

This amendment is aimed at establishing a level playing field within one Member State.

Amendment 9
Annex VI, Part 1, paragraph 7, introductory phrase

7. ***A credit assessment by*** an Export Credit Agency ***may*** be recognised ***only*** if either of the following conditions are met:	7. An Export Credit Agency ***shall*** be recognised ***by the competent authorities*** if either of the following conditions are met:

Justification

A clarifying amendment.

Amendment 10
Annex VI, Part 1, paragraph 9

9. Without prejudice to paragraphs 10 to 12, exposures to regional governments and local authorities shall be *risk weighted* as exposures to institutions. ***Exercise of*** this discretion ***by competent authorities is independent of the exercise of discretion by competent authorities*** as specified in ***Article 80.*** The preferential treatment for *shortterm* exposures specified in paragraphs 30, 31and 36 shall not be applied.	9. Without prejudice to paragraphs 10 to 12, exposures to regional governments and local authorities shall be *risk-weighted* as exposures to institutions. This ***treatment is independent of the exercise of*** discretion as specified in ***Article 80(3).*** The preferential treatment for *short-term* exposures specified in paragraphs 30, 31and 36 shall not be applied.

Justification

A clarifying amendment.

Amendment 11
Annex VI, Part 1, paragraph 10

10. ***Subject to the discretion of competent authorities,*** exposures to regional governments and local authorities ***may*** be treated as exposures to the central government in whose jurisdiction they are established where there is no difference in risk between such exposures because of the specific revenue-raising powers of the former, and the existence of specific institutional arrangements the effect of which is to reduce their risk of default.	10. Exposures to regional governments and local authorities ***shall*** be treated as exposures to the central government in whose jurisdiction they are established where there is no difference in risk between such exposures because of the specific revenue-raising powers of the former, and the existence of specific institutional arrangements the effect of which is to reduce their risk of default. ***Competent authorities shall draw up and publish the list of the regional governments and local authorities to be risk-weighted in the same way as central governments.***

Justification

Several instances of national discretion should be deleted in order to enhance regulatory harmonisation in the internal market. Many of those deletions are also recommended by the national banking supervisors.

Amendment 12
Annex VI, Part 1, paragraph 11

11. When the discretion of paragraph 10 is exercised by the competent authorities of one Member State, the competent authorities of another Member States may also allow their credit institutions to apply the same risk weight to exposures to those regional governments and local authorities.	***deleted***

Justification

An amendment following the changes made to Annex VI, Part 1, paragraph 10 in order to establish a level playing field in one Member State.

Amendment 13
Annex VI, Part 1, paragraph 28

28. Exposures to institutions with an original effective maturity of more than three months for which a credit assessment by a nominated ECAI is available shall be assigned a risk weight according to Table 4 in accordance with the assignment by the competent authorities of the credit assessments of eligible ECAIs to six steps in a credit quality assessment scale.	***deleted***
Table 4	***deleted***

Justification

National discretion removed.

Amendment 14
Annex VI, Part 1, paragraph 29

29. Exposures to unrated institutions shall be assigned a risk weight of 50%.	***deleted***

Justification

National discretion removed.

Amendment 15
Annex VI, part 1, paragraph 30

30. ***Exposures to an institution with an***	30. ***If an interbank exposure which would***

original effective maturity of three months or less for which a credit assessment by a nominated ECAI is available shall receive a risk weight according to Table 5 in accordance with the assignment by the competent authorities of the credit assessments of eligible ECAIs to six steps in a credit quality assessment scale:

otherwise be assigned a risk weight in accordance with paragraph 6.3, point 26, has an original effective maturity of six months or less, the risk weight shall be assigned according to the scale set out in Table 5.

Table 5

Credit quality ***step***	1	2	3	4	5	6
Risk weight	20%	20%	20%	50%	50%	150%

Table 5

Level of credit quality ***assigned to central governments***	1	2	3	4	5	6
Risk weight ***for exposure***	20%	20%	20%	50%	50%	150%

Justification

With regard to the two options put forward for interbank exposures, it should be stressed that, unlike the method based on credit quality assessment, which we wish to see abolished, the method based on risk weighting for the central authorities of the country where the bank operates does not offer preferential treatment for short-term credit. In addition to requesting the introduction of this option, it is recommended that the definition of 'short-term' be broadened to include all credit with an original life of up to six months (instead of three).

Amendment 16
Annex VI, part 1, paragraph 31

31. Exposures to unrated institutions having an original effective maturity of three months or less shall be assigned a 20% risk weight.

deleted

Justification

With regard to the two options put forward for interbank exposures, it should be stressed that, unlike the method based on credit quality assessment, which we wish to see abolished, the method based on risk weighting for the central authorities of the country where the bank operates does not offer preferential treatment for short-term credit. In addition to requesting the introduction of this option, it is recommended that the definition of 'short-term' be

broadened to include all credit with an original life of up to six months (instead of three).

Amendment 17
Annex VI, Part 1, paragraph 39, introductory sentence

39. Exposures for which a credit assessment by a nominated ECAI is available shall be assigned a risk weight according to ***Table 5*** in accordance with the assignment by the competent authorities of the credit assessments of eligible ECAIs to six steps in a credit quality assessment scale.	39. Exposures for which a credit assessment by a nominated ECAI is available shall be assigned a risk weight according to ***the following table*** in accordance with the assignment by the competent authorities of the credit assessments of eligible ECAIs to six steps in a credit quality assessment scale.

Justification

Drafting clarification.

Amendment 18
Annex VI, Part 1, paragraph 41

41. Exposures that comply with the criteria listed in Article 79(2) ***may, subject to the discretion of competent authorities,*** be assigned a risk weight of 75%.	41. Exposures that comply with the criteria listed in Article 79(2) ***shall*** be assigned a risk weight of 75%.

Justification

Several instances of national discretion should be deleted in order to enhance regulatory harmonisation in the internal market. Many of those deletions are also recommended by the national banking supervisors in the Committee of European Banking Supervisors (CEBS).

Amendment 19
Annex VI, Part 1, paragraph 58, point (c)

(c) 50%, subject to the discretion of competent authorities, if value adjustments are no less than 50% of the unsecured part of the exposure gross of value adjustments.	***deleted***

Justification

Several instances of national discretion should be deleted in order to enhance regulatory harmonisation in the internal market. Many of those deletions are also recommended by the national banking supervisors.

Amendment 20
Annex VI, Part 1, paragraph 82

82. Member States may allow a risk weight of 10% for exposures to institutions specialising in the inter-bank and public-debt markets in their home Member States and subject to close supervision by the competent authorities where those asset items are fully and completely secured, to the satisfaction of the competent authorities of the home Member States, by a items assigned a 0% or a 20% risk weight and recognised by the latter as constituting adequate collateral.	***deleted***

Justification

Several instances of national discretion should be deleted in order to enhance regulatory harmonisation in the internal market. Many of those deletions are also recommended by the national banking supervisors.

Amendment 21
Annex VI, part 2, paragraph 9, point (c a) (new)

	(ca) the use by at least two banks of the ECIA rating for credit risk analysis or in the case of the issuing of bonds.

Justification

The aim of this amendment is to ensure that the procedure for the authorisation and recognition of the new ratings agency by the supervisory authority is more rigorous, so as to ensure reliability as regards credit quality assessment of the principal, with due regard for the principle of credibility. Market credibility is one of the basic requirements for recognition by the ratings agencies for the purposes of calculating capital requirements and is one of the most important tests of reliability.

Amendment 22
Annex VII, Part 4, paragraph 44, point (b)

(b) The obligor is past due more than 90 days on any material credit obligation to the	(b) The obligor is past due more than 90 days on any material credit obligation to the

credit institution, the parent undertaking or any of its subsidiaries.	credit institution, the parent undertaking or any of its subsidiaries.
Days past due commence once an obligor has breached an advised limit, has been advised a limit smaller than current outstandings, or has drawn credit without authorisation.	Days past due commence once an obligor has breached an advised limit, has been advised a limit smaller than current outstandings, or has drawn credit without authorisation.
An advised limit shall mean a limit which has been brought to the knowledge of the obligor.	An advised limit shall mean a limit which has been brought to the knowledge of the obligor.
In the case of retail exposures and exposures to public sector entities (PSE) the competent authorities shall set a number of days past due as specified in paragraph 48.	
In the case of corporate exposures the competent authorities may set a number of days past due as specified in Article 154, paragraph 4.	
In the case of retail exposures credit institutions may apply this definition at a facility level.	In the case of retail exposures credit institutions may apply this definition at a facility level.

Justification

Different definitions of 'default' mean an additional cost factor for credit institutions with cross-border operations and may also lead to substantial distortions of competition. It is therefore necessary to lay down a uniform definition of what constitutes default.

Amendment 23
Annex VII, Part 4, paragraph 48

48. For Retail and PSE exposures, the competent authorities of each Member States shall set the exact number of days past due that all credit institutions in its jurisdiction shall abide by under the definition of default set out in paragraph 44, for exposures to such counterparts situated within this Member State. The specific number shall fall within 90-180 days and may differ across product lines. For exposures to such counterparts situated in the territories of other Member	***deleted***

States, the competent authorities shall set a number of days past due which is not higher than the number set by the competent authority of the respective Member State.	

Justification

Drafting adjustment resulting from the deletion of the reference to paragraph 48 in Annex VII, Part 4, paragraph 44.

Amendment 24
Annex VIII, part 1, paragraph 7, point (c a) (new)

	(ca) Physical items of a type other than those mentioned above, accepted as eligible collateral by competent authorities, where the following conditions apply:
	(i) the existence of liquid markets for disposal of the collateral in an expeditious and economically efficient manner;
	(ii) the existence of well-established, publicly-accessible market prices for the collateral. The credit institution must be able to demonstrate that there is no evidence that the net price it receives when collateral is realised deviates significantly from these market prices.

Justification

The category 'other collateral' includes loans on ships or aircraft. As their market value can be readily determined, such collateral has an effective function as regards credit risk mitigation, which as yet is recognised solely in the IRB method. It is hoped that this type of collateral, which is quite widely used in the credit market, may equally contribute in future to reducing capital weightings for banks which adopt the standardised method.

Amendment 25
Annex VIII, Part 2, paragraph 16, point (c)

(c) the ***competent authority is satisfied*** that the cover is robust and that nothing in the historical evidence suggests that the coverage of the counter-guarantee is less than effectively equivalent to that of a direct guarantee by the entity in question.	(c) the ***credit institution can demonstrate*** that the cover is robust and that nothing in the historical evidence suggests that the coverage of the counter-guarantee is less than effectively equivalent to that of a direct guarantee by the entity in question.

Justification

The credit institutions should have the option of applying for compliance of counter-guarantees as risk-mitigating collateral.

Amendment 26
Annex VIII, Part 2, paragraph 18

18. In the case of guarantees provided in the context of mutual guarantee schemes recognised for these purposes by the competent authorities or provided by or counter-guaranteed by entities referred to in paragraph 16, the requirements in *paragraph* (a) ***may*** be considered to be satisfied where either of the following conditions are met:	18. In the case of guarantees provided in the context of mutual guarantee schemes recognised for these purposes by the competent authorities or provided by or counter-guaranteed by entities referred to in paragraph 16, the requirements in *point* (a) ***shall*** be considered to be satisfied where either of the following conditions are met:
(a) ***the competent authorities are satisfied that*** the lending credit institution has the right to obtain in a timely manner a provisional payment by the guarantor calculated to represent a robust estimate of the amount of the economic loss, including losses resulting from the non-payment of interest and other types of payment which the borrower is obliged to make, likely to be incurred by the lending credit institution proportional to the coverage of the guarantee;	(a) the lending credit institution has the right to obtain in a timely manner a provisional payment by the guarantor calculated to represent a robust estimate of the amount of the economic loss, including losses resulting from the non-payment of interest and other types of payment which the borrower is obliged to make, likely to be incurred by the lending credit institution proportional to the coverage of the guarantee;
(b) the ***competent authorities are otherwise satisfied as to*** the loss-protecting effects of the guarantee, including losses resulting from the non-payment ***of interest and other types of payment*** which the borrower is obliged to make.	(b) the ***lending credit institution can demonstrate that*** the loss-protecting effects of the guarantee, including losses resulting from the non-payment which the borrower is obliged to make***, justify such treatment***.

Justification

Analogous to the justification relating to paragraph 16.

Amendment 27
Annex VIII, Part 3, paragraph 43

43. The competent authorities ***may*** permit institutions complying with the requirements	43. The competent authorities ***shall*** permit institutions complying with the requirements

set out in paragraphs 48 to 57 to use their own estimates of volatility for calculating the volatility adjustments to be applied to collateral and exposures.	set out in paragraphs 48 to 57 to use their own estimates of volatility for calculating the volatility adjustments to be applied to collateral and exposures.

Justification

Deletion of national discretion.

Amendment 28
Annex VIII, Part 3, paragraph 59

59. In relation to repurchase transactions and securities lending or borrowing transactions, where a credit institution uses the *Supervisory* volatility adjustments approach or the Own Estimates approach and where the conditions set out ***in points (a) to (h***) are satisfied, ***the competent authorities may allow*** credit institutions not ***to*** apply the volatility adjustments ***calculated under paragraphs 35 to 58 and to*** instead apply a 0% volatility adjustment. This option is not available in respect of credit institutions using the internal models approach set out in paragraphs 12 to 22.	59. In relation to repurchase transactions and securities lending or borrowing transactions, where a credit institution uses the *supervisory* volatility adjustments approach or the Own Estimates approach and where the conditions set out ***below*** are satisfied, credit institutions ***shall*** not apply the volatility adjustments ***specified above and shall*** instead apply a 0% volatility adjustment. This option is not available in respect of credit institutions using the internal models approach set out in paragraphs 12 to 22.
(a) Both the exposure and the collateral are cash or securities falling within Part 1, paragraph 7(b);	(a) Both the exposure and the collateral are cash or securities falling within Part 1, paragraph 7(b);
(b) Both the exposure and the collateral are denominated in the same currency.	(b) Both the exposure and the collateral are denominated in the same currency.
(c) Either the maturity of the transaction is no more than one day or both the exposure and the collateral are subject to daily marking-to-market or daily remargining;	(c) Either the maturity of the transaction is no more than one day or both the exposure and the collateral are subject to daily marking-to-market or daily remargining;
(d) It is considered that the time between the last marking-to-market before a failure to remargin by the counterparty and the liquidation of the collateral shall be no more than four business days;	(d) It is considered that the time between the last marking-to-market before a failure to remargin by the counterparty and the liquidation of the collateral shall be no more than four business days;
(e) The transaction is settled across a settlement system proven for that type of transaction;	(e) The transaction is settled across a settlement system proven for that type of transaction;
(f) The documentation covering the	(f) The documentation covering the

agreement is standard market documentation for repurchase transactions or securities lending or borrowing transactions in the securities concerned;

(g) The transaction is governed by documentation specifying that if the counterparty fails to satisfy an obligation to deliver cash or securities or to deliver margin or otherwise defaults, then the transaction is immediately terminable;

(h) The counterparty is considered a 'core market participant' by the competent authorities. Core market participants ***may*** include the following entities:

– *The* entities mentioned in paragraph 7(b) of Part 1 exposures to which receive a 0% risk weight under Articles 78 to 83;

– institutions;

– other financial companies (including insurance companies) exposures to which receive a 20 % risk weight under Articles 78 to 83 or which, in the case of credit institutions calculating risk-weighted exposure amounts and expected loss amounts under Articles 83 to 89, do not have a credit assessment by a recognised ECAI and are internally rated as having a probability of default equivalent to that associated with the credit assessments of ECAIs determined by the competent authorities to be associated with credit quality step 2 or above under the rules for the risk weighting of exposures to corporates under Articles 78 to 83.

– regulated collective investment undertakings that are subject to capital or leverage requirements;

– regulated pension funds; and

– recognised clearing organisations.

agreement is standard market documentation for repurchase transactions or securities lending or borrowing transactions in the securities concerned;

(g) The transaction is governed by documentation specifying that if the counterparty fails to satisfy an obligation to deliver cash or securities or to deliver margin or otherwise defaults, then the transaction is immediately terminable;

(h) The counterparty is considered a 'core market participant' by the competent authorities. Core market participants ***shall*** include the following entities:

– *the* entities mentioned in paragraph 7(b) of Part 1 exposures to which receive a 0% risk weight under Articles 78 to 83;

– institutions;

– other financial companies (including insurance companies) exposures to which receive a 20 % risk weight under Articles 78 to 83 or which, in the case of credit institutions calculating risk-weighted exposure amounts and expected loss amounts under Articles 83 to 89, do not have a credit assessment by a recognised ECAI and are internally rated as having a probability of default equivalent to that associated with the credit assessments of ECAIs determined by the competent authorities to be associated with credit quality step 2 or above under the rules for the risk weighting of exposures to corporates under Articles 78 to 83***;***

– regulated collective investment undertakings that are subject to capital or leverage requirements;

– regulated pension funds; and

– recognised clearing organisations.

The competent authorities shall draw up and publish a list of those counterparties which they assess as core market participants.

Justification

Deletion of national discretion.

Amendment 29
Annex VIII, Part 3, paragraph 66

66. The value of the collateral shall be the market value or mortgage lending value reduced as appropriate to reflect the results of the monitoring required under Part 2, paragraph 8 and to take account of *the* any prior claims on the property.	66. The value of the collateral shall be the market value or mortgage lending value reduced as appropriate to reflect the results of the monitoring required under Part 2, paragraph 8 and to take account of any prior claims on the property ***and of any mismatches between the currency of the State in which the real estate is located and the currency of the underlying exposure***.

Justification

As is the case with financial collateral and guarantees haircuts (forex haircuts) must be undertaken in connection with the valuation of real estate collateral.

Amendment 30
Annex IX, Part 4, paragraph 8

8. 8. Originator credit institutions and sponsor credit institutions shall apply a risk weight of 1250% to all retained and repurchased securitisation positions which have a credit assessment by a nominated ECAI which has been determined by the competent authorities to be associated with a credit quality step below credit quality step 3. In determining whether a position has such a credit assessment the provisions of Part 3, paragraphs 2 to 7 shall apply.	***deleted***

Justification

Like the IRB Approach, the Standardised Approach should also ensure equal treatment across the board for originator credit institutions and sponsor institutions, on the one hand, and investors, on the other. There seems to be no justification for applying different risk weights to positions with a credit quality step below credit quality step 3, as provided for in the Standardised Approach.

Amendment 31
Annex IX, Part 4, paragraph 10

10. ***Competent authorities may permit a*** credit institution having an unrated securitisation position ***to*** apply the treatment set out in paragraph 11 for calculating the *riskweighted* exposure amount for that position provided the composition of the pool of exposures securitised is known at all times.	10. ***A*** credit institution having an unrated securitisation position ***may*** apply the treatment set out in paragraph 11 for calculating the *risk-weighted* exposure amount for that position provided ***that the credit institution demonstrates that*** the composition of the pool of exposures securitised is known at all times.

Justification

Remove the national discretion and make it an option for credit institutions.

Amendment 32
Annex X, part 3, paragraph 27, point (a)

(a) The insurance policy must have an initial term of no less than one year. For policies with a residual term of less than one year, the credit institution must make appropriate haircuts reflecting the declining residual term of the policy, up to a full 100% haircut for policies with a residual term of 90 days or less;	(a) The insurance policy must have an initial term of no less than one year. For policies with a residual term of less than one year, the credit institution must make appropriate haircuts reflecting the declining residual term of the policy, up to a full 100% haircut for policies with a residual term of 90 days or less; ***this provision shall not apply to contracts with automatic renewal;***

Justification

As regards the possibility of enjoying a reduction in capital weightings by virtue of insurance policies of a duration of more than one year, the most widespread practice is for policies on operational risks to be renewed annually with a range of different expiry dates. It is therefore possible that the residual term of insurance cover may be less than one year on the date of redemption of the capital requirement. It is not logical to reduce the effect of this cover pro quota just because it is due for renewal.

AMENDMENTS TO PROPOSAL 2

Text proposed by the Commission[1]	Amendments by Parliament

[1] OJ C ... /Not yet published in OJ.

Amendment 33
Article 20, paragraph 3

3. By derogation to paragraph 1, competent authorities may allow investment firms which hold initial capital as set out in Article 9, but which fall within the following categories, to provide own funds which are always more than or equal to the sum of the capital requirements calculated in accordance with the requirements contained in points (a) to (c) of Article 75 of Directive [2000/12/EC] and the amount prescribed in Article 21 of this Directive:	***deleted***
(a) investment firms that deal on own account for the purpose of fulfilling or executing a client order or for the purpose of gaining entrance to a clearing and settlement system or a recognised exchange when acting in an agency capacity or executing a client order;	
(b) investment firms:	
(i) that do not hold client money or securities;	
(ii) that undertake only dealing on own account;	
(iii) that have no external customers;	
(iv) he execution and settlement of whose transactions takes place under the responsibility of a clearing institution and are guaranteed by that clearing institution.	

Justification

Article 20(3) should be deleted because the specific derogation that it provides for, whereby certain investment firms would not be subject to the capital requirements for operational risk and, apart from own funds for credit and market risk, would have to ensure only a blanket coverage (25%) of the fixed joint costs from the preceding year, mixes market and operational risk in a technically incomprehensible manner and would potentially distort competition.

Amendment 34
Article 20, paragraph 4

4. Investment firms referred to in ***paragraphs*** 2 ***and 3*** shall remain subject to all other provisions regarding operational risk set out in Annex V of Directive [2000/12/EC].	4. Investment firms referred to in ***paragraph*** 2 shall remain subject to all other provisions regarding operational risk set out in Annex V of Directive [2000/12/EC].

Justification

Drafting adjustment resulting from the deletion of Article 20(3).

Amendment 35
Article 22, paragraph 1, point (b)

(b) all investment firms in such a group fall within the categories in ***paragraphs*** 2 ***and 3 of Article 20***;	(b) all investment firms in such a group fall within the categories in ***Article 20(2)***;

Justification

Drafting adjustment resulting from the deletion of Article 20(3).

Amendment 36
Article 25, paragraph 1

By derogation *to* Article 2(2), competent authorities may exempt investment firms from the consolidated capital requirement established there, provided that all the investment firms in the group fall within the investment firms referred to in ***Articles*** 20(2) ***and (3)***, and the group does not include credit institutions.	By derogation *from* Article 2(2), competent authorities may exempt investment firms from the consolidated capital requirement established there, provided that all the investment firms in the group fall within the investment firms referred to in ***Article*** 20(2), and the group does not include credit institutions.

Justification

Drafting adjustment resulting from the deletion of Article 20(3).

Amendment 37
Article 42, paragraph 1, point (d)

(d) amendment of the categories of investment firms in ***Articles*** 20(2) ***and (3)*** to take account of developments on financial	(d) amendment of the categories of investment firms in ***Article*** 20(2) to take account of developments on financial

markets;	markets;

Justification

Drafting adjustment resulting from the deletion of Article 20(3).

Amendment 38
Annex I, paragraph 15, point (d)

(d) ***they are, subject to competent*** *authorities* ***discretion,*** long and short positions in assets issued by institutions subject to the capital adequacy requirements set *forth* in Directive [2000/12/EC].	(d) long and short positions in assets issued by institutions subject to the capital adequacy requirements set *out* in Directive [2000/12/EC] ***and which meet the following criteria:*** ***(i) they are considered by the institutions concerned to be sufficiently liquid, and*** ***(ii) their investment quality is, according to the institutions' own discretion, at least equivalent to that of the assets referred to under point (a);***

Justification

Remove the national discretion, but add criteria on solvency and liquidity.

PROCEDURE

Title	1. Proposal for a directive of the European Parliament and of the Council re-casting Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions 2. Proposal for a directive of the European Parliament and of the Council re-casting Council Directive 93/6/EEC of 15 March 1993 on the capital adequacy of investment firms and credit institutions
References	1. COM(2004)0486 – C6 0141/2004 – 2004/0155(COD) 2. COM(2004)0486 – C6 0144/2004 – 2004/0159(COD)
Committee responsible	ECON
Committee asked for its opinion Date announced in plenary	JURI 14.4.2005
Enhanced cooperation	No
Draftsman Date appointed	Maria Berger 3.2.2005
Discussed in committee	23.5.2005
Date amendments adopted	6.6.2005
Result of final vote	for: 21 against: 0 abstentions: 0
Members present for the final vote	Maria Berger, Monica Frassoni, Giuseppe Gargani, Piia-Noora Kauppi, Kurt Lechner, Klaus-Heiner Lehne, Antonio López-Istúriz White, Antonio Masip Hidalgo, Aloyzas Sakalas, Francesco Enrico Speroni, Diana Wallis, Rainer Wieland, Nicola Zingaretti, Jaroslav Zvěřina, Tadeusz Zwiefka
Substitutes present for the final vote	Brian Crowley, Jean-Paul Gauzès, Evelin Lichtenberger, Manuel Medina Ortega, Marie Panayotopoulos-Cassiotou, József Szájer
Substitutes under Rule 178(2) present for the final vote	

PROCEDURE (1)

Title	Proposal for a directive of the European Parliament and of the Council re-casting Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions
References	COM(2004)0486 – C6 0141/2004 – 2004/0155(COD)
Legal basis	Articles 251(2) and 47(2) EC
Basis in Rules of Procedure	Rule 51
Date submitted to Parliament	15.7.2004
Committee responsible Date announced in plenary	ECON 14.4.2005
Committee(s) asked for opinion(s) Date announced in plenary	JURI 14.4.2005
Not delivering opinion(s) Date of decision	
Enhanced cooperation Date announced in plenary	
Rapporteur(s) Date appointed	Alexander Radwan 21.9.2004
Previous rapporteur(s)	
Simplified procedure Date of decision	
Legal basis disputed Date of JURI opinion	
Financial endowment amended Date of BUDG opinion	
European Economic and Social Committee consulted Date of decision in plenary	
Committee of the Regions consulted Date of decision in plenary	
Discussed in committee	22.10.2004 18.1.2005 29.3.2005 23.5.2005 14.6.2005
Date adopted	13.7.2005
Result of final vote	for: 36 against: 0 abstentions: 6
Members present for the final vote	Zsolt László Becsey, Pier Luigi Bersani, Bowles Sharon Margaret, Udo Bullmann, Ieke van den Burg, David Casa, Paolo Cirino Pomicino, Elisa Ferreira, Jean-Paul Gauzès, Robert Goebbels, Benoît Hamon, Gunnar Hökmark, Karsten Friedrich Hoppenstedt, Sophia in 't Veld, Othmar Karas, Piia-Noora Kauppi, Wolf Klinz, Christoph Konrad, Guntars Krasts, Kurt Joachim Lauk, Astrid Lulling, Gay Mitchell, Cristobal Montoro Romero, Joseph Muscat, John Purvis, Alexander Radwan, Bernhard Rapkay, Dariusz Rosati, Eoin Ryan, Peter Skinner, Margarita Starkevičiūtė, Ivo Strejček, Sahra Wagenknecht, John Whittaker
Substitutes present for the final vote	Harald Ettl, Catherine Guy-Quint, Ona Juknevičienė, Jules Maaten, Thomas Mann, Giovanni Pittella, Kamal Syed Salah, Corien Wortmann-Kool
Substitutes under Rule 178(2) present for the final vote	
Date tabled – A6	29.8.2005 A6-0257/2005
Comments	...

PROCEDURE (2)

Title	Proposal for a irective of the European Parliament and of the Council recasting Council Directive 93/6/EEC of 15 March 1993 on the capital adequacy of investment firms and credit institutions
References	COM(2004)0486 – C6-0144/2004 – 2004/0159(COD)
Legal basis	Articles 251(2) and 47(2) EC
Basis in Rules of Procedure	Rule 51
Date submitted to Parliament	15.7.2004
Committee responsible Date announced in plenary	ECON 14.4.2005
Committee(s) asked for opinion(s) Date announced in plenary	JURI 14.4.2005
Not delivering opinion(s) Date of decision	
Enhanced cooperation Date announced in plenary	
Rapporteur(s) Date appointed	Alexander Radwan 21.9.2004
Previous rapporteur(s)	
Simplified procedure Date of decision	
Legal basis disputed Date of JURI opinion	
Financial endowment amended Date of BUDG opinion	
European Economic and Social Committee consulted Date of decision in plenary	
Committee of the Regions consulted Date of decision in plenary	
Discussed in committee	22.10.2004 18.1.2005 29.3.2005 23.5.2005 14.6.2005
Date adopted	13.7.2005
Result of final vote	for: 36 against: 0 abstentions: 6
Members present for the final vote	Zsolt László Becsey, Pier Luigi Bersani, Bowles Sharon Margaret, Udo Bullmann, Ieke van den Burg, David Casa, Paolo Cirino Pomicino, Elisa Ferreira, Jean-Paul Gauzès, Robert Goebbels, Benoît Hamon, Gunnar Hökmark, Karsten Friedrich Hoppenstedt, Sophia in 't Veld, Othmar Karas, Piia-Noora Kauppi, Wolf Klinz, Christoph Konrad, Guntars Krasts, Kurt Joachim Lauk, Astrid Lulling, Gay Mitchell, Cristobal Montoro Romero, Joseph Muscat, John Purvis, Alexander Radwan, Bernhard Rapkay, Dariusz Rosati, Eoin Ryan, Peter Skinner, Margarita Starkevičiūtė, Ivo Strejček, Sahra Wagenknecht, John Whittaker
Substitutes present for the final vote	Harald Ettl, Catherine Guy-Quint, Ona Juknevičienė, Jules Maaten, Thomas Mann, Giovanni Pittella, Kamal Syed Salah, Corien Wortmann-Kool
Substitutes under Rule 178(2) present for the final vote	
Date tabled – A6	29.8.2005 A6-0257/2005
Comments	...