



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

Amending

Directive 2006/49/EC on the capital adequacy of investment firms and credit institutions, as regards the implementing powers conferred on the Commission

(presented by the Commission)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

Amending

Directive 2006/49/EC on the capital adequacy of investment firms and credit institutions, as regards the implementing powers conferred on the Commission

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 47(2) thereof,

Having regard to the proposal of the Commission¹,

Having regard to the opinion of the European Economic and Social Committee²,

Having regard to the opinion of the European Central Bank,

Acting in accordance with the procedure laid down in Article 251 of the Treaty³,

Whereas:

- (1) Directive 2006/49/EC of the European Parliament and of the Council⁴ provides that certain measures are to 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 Commission⁵.
- (2) Decision 1999/468/EC has been amended by Decision 2006/512/EC, which introduced a regulatory procedure with scrutiny for measures of general scope designed to amend non-essential elements of a basic instrument adopted in accordance with the procedure referred to in Article 251 of the Treaty, including by deleting some of those elements or by supplementing the instrument by the addition of new non-essential elements.
- (3) In accordance with the joint statement of the European Parliament, the Council and the Commission⁶ on Decision 2006/512/EC, instruments which are already in force must be adjusted in accordance with the applicable procedures. That statement indicates a

¹ OJ C , , p. .

² OJ C , , p. .

³ OJ C , , p. .

⁴ OJ L 177, 30.6.2006, p. 201.

⁵ OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200 , 22.7.2006, p.11).

⁶ OJ C255, 21.10.2006, p. 1.

list of instruments which should be adjusted as a matter of urgency, including Directive 2006/49/EC.

- (4) In particular power should be conferred on the Commission to adopt the measures necessary for the implementation of Directive 2006/49/EC in order to take account, *inter alia*, of technical developments of financial markets and to ensure uniform application of that Directive. More particularly, those measures are designed to clarify definitions, to adjust the provisions of the Directive through technical adaptations related to the determination of own funds, the organisation, calculation and evaluation of risks and exposures, and to the categories of investment firms which are subject to the Directive. Since those measures are of general scope and are designed to amend non-essential elements of Directive 2006/49/EC, they should be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (5) Directive 2006/49/EC provided for a time restriction concerning the implementing powers conferred to the Commission. In their joint statement on Decision 2006/512/EC, the European Parliament, the Council and the Commission have stated that Decision 2006/512/EC provides a horizontal and satisfactory solution to the European Parliament's wish to scrutinise the implementation of instruments adopted under the co-decision procedure and that, accordingly, implementing powers should be conferred on the Commission without time-limit. The European Parliament and Council also declared that they would make sure that the proposals aimed at repealing the provisions in the instruments that provide for a time-limit on the delegation of implementing powers to the Commission are adopted as rapidly as possible. Following the introduction of the regulatory procedure with scrutiny, the provision establishing that time restriction in Directive 2006/49/EC should be deleted.
- (6) Directive 2006/49/EC should therefore be amended accordingly.
- (7) Since the amendments to be made to Directive 2006/49/EC are adjustments of a technical nature which only concern the committee procedures, they do not need to be transposed by the Member States. It is therefore not necessary to lay down provisions to that effect,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 2006/49/EC is amended as follows:

- (1) Article 41 is amended as follows:
 - (a) In paragraph 1 the terms "in accordance with the procedure referred to in article 42(2)" are deleted
 - (b) Paragraph 2 is replaced by the following:

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

(2) Article 42 is amended as follows:

(a) Paragraph (2) is replaced by the following:

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

(b) Paragraphs 3 and 4 are deleted.

Article 2

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

Article 3

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President