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(Acts whose publication is obligatory)

DIRECTIVE 2006/48/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 14 June 2006

relating to the taking up and pursuit of the business of credit institutions (recast)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Economic and Social Committee [1],

Having regard to the Opinion of the European Central Bank [2],

Acting in accordance with the procedure laid down in Article 251 of the Treaty [3],

Whereas:

(1) 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 [4] has been significantly amended on several occasions. Now that new amendments are being made to the said Directive, it is desirable, in order to clarify matters, that it should be recast.

(2) In order to make it easier to take up and pursue the business of credit institutions, it is necessary to eliminate the most obstructive differences between the laws of the Member States as regards the rules to which these institutions are subject.

(3) This Directive constitutes the essential instrument for the achievement of the internal market from the point of view of both the freedom of establishment and the freedom to provide financial services, in the field of credit institutions.

(4) 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 is a key element of the action plan.

(5) Measures to coordinate credit institutions should, both in order to protect savings and to create equal conditions of competition between these institutions, apply to all of them. Due regard should however be had to the objective differences in their statutes and their proper aims as laid down by national laws.

(6) The scope of those measures should therefore be as broad as possible, covering all institutions whose business is to receive repayable funds from the public, whether in the form of deposits or in other forms such as the continuing issue of bonds and other comparable securities and to grant credits for their own account. Exceptions should be provided for in the case of certain credit institutions to which this Directive cannot apply. The provisions of this Directive should not prejudice the application of national laws which provide for special supplementary authorisations permitting credit institutions to carry on specific activities or undertake specific kinds of operations.

(7) It is appropriate to effect only the essential harmonisation necessary and sufficient to secure the mutual recognition of authorisation and of prudential supervision systems, making possible the granting of a single licence recognised throughout the Community and the application of the principle of home Member State prudential supervision. Therefore, the requirement that a programme of operations be produced should be seen merely as a factor enabling the competent authorities to decide on the basis of more precise information using objective criteria. A measure of flexibility should nonetheless be possible as regards the requirements on the legal form of credit institutions concerning the protection of banking names.

[1] OJ C 234, 22.9.2005, p. 8.

[2] OJ C 52, 2.3.2005, p. 37.

[3] Opinion of the European Parliament of 28 September 2005 (not yet published in the OJ) and Decision of the Council of 7 June 2006.

[4] OJ L 126, 26.5.2000, p. 1. Directive as last amended by Directive 2006/29/EC (OJ L 70, 9.3.2006, p. 50).

(8) Since the objectives of this Directive, namely the introduction of rules concerning the taking up and pursuit of the business of credit institutions, and their prudential supervision, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and the effects of the proposed action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(9) Equivalent financial requirements for credit institutions are necessary to ensure similar safeguards for savers and fair conditions of competition between comparable groups of credit institutions. Pending further coordination, appropriate structural ratios should be formulated making it possible within the framework of cooperation between national authorities to observe, in accordance with standard methods, the position of comparable types of credit institutions. This procedure should help to bring about the gradual approximation of the systems of coefficients established and applied by the Member States. It is necessary, however to make a distinction between coefficients intended to ensure the sound management of credit institutions and those established for the purposes of economic and monetary policy.

(10) 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.

(11) The competent authorities should not authorise or continue the authorisation of a credit institution where they are liable to be prevented from effectively exercising their supervisory functions by the close links between that institution and other natural or legal persons. Credit institutions already authorised should also satisfy the competent authorities in that respect.

(12) The reference to the supervisory authorities' effective exercise of their supervisory functions covers supervision on a consolidated basis which should be exercised over a credit institution where the provisions of Community law so provide. In such cases, the authorities applied to for authorisation should be able to identify the authorities competent to exercise supervision on a consolidated basis over that credit institution.

(13) This Directive enables Member States and/or competent authorities to apply capital requirements on a solo and consolidated basis, and to disapply solo where they deem this appropriate. Solo, consolidated and cross-border consolidated supervision are useful tools in overseeing credit institutions. This Directive enables competent authorities to support cross border institutions by facilitating cooperation between them. In particular, the competent authorities should continue to make use of Articles 42, 131 and 141 to coordinate their activities and information requests.

(14) Credit institutions authorised in their home Member States should be allowed to carry on, throughout the Community, any or all of the activities listed in Annex I by establishing branches or by providing services.

(15) The Member States may also establish stricter rules than those laid down in Article 9(1), first subparagraph, Article 9 (2) and Articles 12, 19 to 21, 44 to 52, 75 and 120 to 122 for credit institutions 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.

(16) It is appropriate to extend mutual recognition to the activities listed in Annex I when they are carried on by financial institutions which are subsidiaries of credit institutions, provided that such subsidiaries are covered by the consolidated supervision of their parent undertakings and meet certain strict conditions.

(17) The host Member State should be able, in connection with the exercise of the right of establishment and the freedom to provide services, to require compliance with specific provisions of its own national laws or regulations on the Part of institutions not authorised as credit institutions in their home Member States and with regard to activities not listed in Annex I provided that, on the one hand, such provisions are compatible with Community law and are intended to protect the general good and that, on the other hand, such institutions or such activities are not subject to equivalent rules under this legislation or regulations of their home Member States.

(18) The Member States should ensure that there are no obstacles to carrying on activities receiving mutual recognition in the same manner as in the home Member State, as long as the latter do not conflict with legal provisions protecting the general good in the host Member State.

(19) The rules governing branches of credit institutions having their head office outside the Community should be analogous in all Member States. It is important to provide that such rules may not be more favourable than those for branches of institutions from another Member State. The Community should be able to conclude agreements with third countries providing for the application of rules which accord such branches the same treatment throughout its territory. The branches of credit institutions authorised in third countries should not enjoy the freedom to provide services under the second paragraph of Article 49 of the Treaty or the freedom of establishment in Member States other than those in which they are established.

(20) Agreement should be reached, on the basis of reciprocity, between the Community and third countries with a view to allowing the practical exercise of consolidated supervision over the largest possible geographical area.

(21) Responsibility for supervising the financial soundness of a credit institution, and in particular its solvency, should lay with its home Member State. The host Member State's competent authorities should be responsible for the supervision of the liquidity of the branches and monetary policies. The supervision of market risk should be the subject of close cooperation between the competent authorities of the home and host Member States.

(22) The smooth operation of the internal banking market requires not only legal rules but also close and regular cooperation and significantly enhanced convergence of regulatory and supervisory practices between the competent authorities of the Member States. To this end, in particular, consideration of problems concerning individual credit institutions and the mutual exchange of information should take place in the Committee of European Banking Supervisors set up by Commission Decision 2004/5/EC [1]. That mutual information procedure should not in any case replace bilateral cooperation. Without prejudice to their own powers of control, the competent authorities of the host Member States should be able, in an emergency, on their own initiative or following the initiative of the competent authorities of home Member State, to verify that the activities of a credit institution established within their territories comply with the relevant laws and with the principles of sound administrative and accounting procedures and adequate internal control.

(23) It is appropriate to allow the exchange of information between the competent authorities and authorities or bodies which, by virtue of their function, help to strengthen the stability of the financial system. In order to preserve the confidential nature of the information forwarded, the list of addressees should remain within strict limits.

(24) Certain behaviour, such as fraud and insider offences, is liable to affect the stability, including the integrity, of the financial system, even when involving institutions other than credit institutions. It is necessary to specify the conditions under which exchange of information in such cases is authorised.

(25) Where it is stipulated that information may be disclosed only with the express agreement of the competent authorities, these should be able, where appropriate, to make their agreement subject to compliance with strict conditions.

(26) Exchanges of information between, on the one hand, the competent authorities and, on the other, central banks and other bodies with a similar function in their capacity as monetary authorities and, where appropriate, other public authorities responsible for supervising payment systems should also be authorised.

(27) For the purpose of strengthening the prudential supervision of credit institutions and the protection of clients of credit institutions, auditors should have a duty to report promptly to the competent authorities, wherever, during the performance of their tasks, they become aware of certain facts which are liable to have a serious effect on the financial situation or the administrative and accounting organisation of a credit institution. For the same reason Member States should also provide that such a duty applies in all circumstances where such facts are discovered by an auditor during the performance of his tasks in an undertaking which has close links with a credit institution. The duty of auditors to communicate, where appropriate, to the competent authorities certain facts and decisions concerning a credit institution which they discover during the performance of their tasks in a non-financial undertaking should not in itself change the nature of their tasks in that undertaking nor the manner in which they should perform those tasks in that undertaking.

(28) This Directive specifies that for certain own funds items qualifying criteria should be specified, without prejudice to the possibility of Member States to apply more stringent provisions.

(29) According to the nature of the items constituting own funds, this Directive distinguishes between on the one hand, items constituting original own funds and, on the other, those constituting additional own funds.

(30) To reflect the fact that items constituting additional own funds are not of the same nature as those constituting original own funds, the amount of the former included in

[1] OJ L 3, 7.1.2004, p. 28.

own funds should not exceed the original own funds. Moreover, the amount of certain items of additional own funds included should not exceed one half of the original own funds.

(31) In order to avoid distortions of competition, public credit institutions should not include in their own funds guarantees granted them by the Member States or local authorities.

(32) Whenever in the course of supervision it is necessary to determine the amount of the consolidated own funds of a group of credit institutions, the calculation should be effected in accordance with this Directive.

(33) The precise accounting technique to be used for the calculation of own funds, their adequacy for the risk to which a credit institution is exposed, and for the assessment of the concentration of exposures should take account of the provisions of Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions [1], which incorporates certain adaptations of the provisions of Seventh Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts [2] or of Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards [3], whichever governs the accounting of the credit institutions under national law.

(34) Minimum capital requirements play a central role in the supervision of credit institutions and in the mutual recognition of supervisory techniques. In that respect, the provisions on minimum capital requirements should be considered in conjunction with other specific instruments also harmonising the fundamental techniques for the supervision of credit institutions.

(35) In order to prevent distortions of competition and to strengthen the banking system in the internal market, it is appropriate to lay down common minimum capital requirements.

(36) For the purposes of ensuring adequate solvency it is important to lay down minimum capital requirements which weight assets and off-balance-sheet items according to the degree of risk.

(37) 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 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions [4], form an equivalent to the provisions of the Basel framework agreement.

(38) 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 free movement of such data [5]. 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 this Directive, to use better methods for risk measurement and management and also use them for regulatory own funds purposes.

(39) With regard to the use of both external and an institution's own estimates or internal ratings, account should 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 Community authorisation process. In the case of external ratings use is made of the products of what are known as recognised rating agencies, which in the Community are not currently subject to an authorisation process. In view of the importance of external ratings in connection with the calculation of capital requirements under this Directive, appropriate future authorisation and supervisory process for rating agencies need to be kept under review.

[1] OJ L 372, 31.12.1986, p. 1. Directive as last amended by Directive 2003/51/EC of the European Parliament and of the Council (OJ L 178, 17.7.2003, p. 16).

[2] OJ L 193, 18.7.1983, p. 1. Directive as last amended by Directive 2003/51/EC.

[3] OJ L 243, 11.9.2002, p. 1.

[4] See page 201 of this Official Journal

[5] OJ L 281, 23.11.1995, p. 31. Directive as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

(40) The minimum capital requirements should be proportionate to the risks addressed. In particular the reduction in risk levels deriving from having a large number of relatively small exposures should be reflected in the requirements.

(41) 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 Internal Ratings Based Approach ('IRB Approach'), are recognised for retail exposures.

(42) The 'evolutionary' nature of this Directive enables credit institutions to choose amongst three approaches of varying complexity. In order to allow especially small credit institutions to opt for the more risk-sensitive IRB Approach, the competent authorities should implement the provisions of Article 89(1)(a) and (b) whenever appropriate. Those provisions should be read as such that exposure classes referred to in Article 86(1)(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 should not discriminate between the three approaches with regard to the Supervisory Review Process, i.e. credit institutions operating according to the provisions of the Standardised Approach should not for that reason alone be supervised on a stricter basis.

(43) 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.

(44) In order to ensure that the risks and risk reductions arising from credit institutions' securitisation activities and investments are appropriately reflected in the minimum capital requirements of credit institutions it is necessary to include rules providing for a risk-sensitive and prudentially sound treatment of such activities and investments.

(45) 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.

(46) In order to ensure adequate solvency of credit institutions within a group it is essential that the minimum capital requirements apply on the basis of the consolidated financial situation of the group. In order to ensure that own funds are appropriately distributed within the group and available to protect savings where needed, the minimum capital requirements should apply to individual credit institutions within a group, unless this objective can be effectively otherwise achieved.

(47) The essential rules for monitoring large exposures of credit institutions should be harmonised. Member States should still be able to adopt provisions more stringent than those provided for by this Directive.

(48) The monitoring and control of a credit institution's exposures should be an integral Part of its supervision. Therefore, excessive concentration of exposures to a single client or group of connected clients may result in an unacceptable risk of loss. Such a situation can be considered prejudicial to the solvency of a credit institution.

(49) Since credit institutions in the internal market are engaged in direct competition, monitoring requirements should be equivalent throughout the Community.

(50) While it is appropriate to base the definition of exposures for the purposes of limits to large exposures on that provided for the purposes of minimum own funds requirements for credit risk, it is not appropriate to refer on principle to the weightings or degrees of risk. Those weightings and degrees of risk were devised for the purpose of establishing a general solvency requirement to cover the credit risk of credit institutions. In order to limit the maximum loss that a credit institution may incur through any single client or group of connected clients it is appropriate to adopt rules for the determination of large exposures which take account of the nominal value of the exposure without applying weightings or degrees of risk.

(51) While it is desirable, pending further review of the large exposures provisions, to permit the recognition of the effects of credit risk mitigation in a manner similar to that permitted for minimum capital requirement purposes in order to limit the calculation requirements, the rules on credit risk mitigation were designed in the context of the general diversified credit risk arising from exposures to a large number of counterparties. Accordingly, recognition of the effects of such techniques for the purposes of limits to large exposures designed to limit the maximum loss that may be incurred through any single client or group of connected clients should be subject to prudential safeguards.

(52) When a credit institution incurs an exposure to its own parent undertaking or to other subsidiaries of its parent undertaking, particular prudence is necessary. The management of exposures incurred by credit institutions should be carried out in a fully autonomous manner, in accordance with the principles of sound banking management, without regard to any other considerations. Where the influence exercised by persons directly or indirectly holding a qualifying participation in a credit institution is likely to operate to the detriment of the sound and prudent management of that institution, the competent authorities should take appropriate measures to put an end to that situation. In the field of large exposures, specific standards, including more stringent restrictions, should be laid down for exposures incurred by a credit institution to its own group. Such standards need not, however be applied where the parent undertaking is a financial holding company or a credit institution or where the other subsidiaries are either credit or financial institutions or undertakings offering ancillary services, provided that all such undertakings are covered by the supervision of the credit institution on a consolidated basis.

(53) Credit institutions should ensure that they have internal capital that, having regard to the risks to which they are or may be exposed, is adequate in quantity, quality and distribution. Accordingly, credit institutions should have strategies and processes in place for assessing and maintaining the adequacy of their internal capital.

(54) Competent authorities have responsibility to be satisfied that credit institutions have good organisation and adequate own funds, having regard to the risks to which the credit institutions are or might be exposed.

(55) In order for the internal banking market 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, and should report on a yearly basis to the Community institutions on progress made.

(56) For the same reason, and to ensure that Community credit institutions which are active in several Member States are not disproportionately burdened as a result of the continued responsibilities of individual Member State competent authorities for authorisation and supervision, it is essential to significantly enhance the cooperation between competent authorities. In this context, the role of the consolidating supervisor should be strengthened. The Committee of European Banking Supervisors should support and enhance such cooperation.

(57) Supervision of credit institutions on a consolidated basis aims at, in particular, protecting the interests of the depositors of credit institutions and at ensuring the stability of the financial system.

(58) In order to be effective, supervision on a consolidated basis should therefore be applied to all banking groups, including those the parent undertakings of which are not credit institutions. The competent authorities should hold the necessary legal instruments to be able to exercise such supervision.

(59) In the case of groups with diversified activities where parent undertakings control at least one credit institution subsidiary, the competent authorities should be able to assess the financial situation of a credit institution in such a group. The competent authorities should at least have the means of obtaining from all undertakings within a group the information necessary for the performance of their function. Cooperation between the authorities responsible for the supervision of different financial sectors should be established in the case of groups of undertakings carrying on a range of financial activities. Pending subsequent coordination, the Member States should be able to lay down appropriate methods of consolidation for the achievement of the objective of this Directive.

(60) The Member States should be able to refuse or withdraw banking authorisation in the case of certain group structures considered inappropriate for carrying on banking activities, in particular because such structures could not be supervised effectively. In this respect the competent authorities should have the necessary powers to ensure the sound and prudent management of credit institutions.

(61) In order for the internal banking market to operate with increasing effectiveness and for citizens of the Community to be afforded adequate levels of transparency, it is necessary that competent authorities disclose publicly and in a way which allows for meaningful comparison the manner in which this Directive is implemented.

(62) In order to strengthen market discipline and stimulate credit institutions to improve their market strategy, risk control and internal management organization, appropriate public disclosure by credit institutions should be provided for.

(63) The examination of problems connected with matters covered by this Directive, as well as by other Directives on the business of credit institutions, requires cooperation between the competent authorities and the Commission, particularly when conducted with a view to closer coordination.

(64) 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].

[1] OJ L 184, 17.7.1999, p. 23.

(65) In its resolution of 5 February 2002 on the implementation of financial services legislation [1] the Parliament requested that it and the Council should have an equal role in supervising the way in which the Commission exercises its executive role in order to reflect the legislative powers of Parliament under Article 251 of the Treaty. In the solemn declaration made before the Parliament the same day by its President, the Commission supported this request. On 11 December 2002 the Commission proposed amendments to Decision 1999/468/EC, and then submitted an amended proposal on 22 April 2004. The Parliament does not consider that this proposal preserves its legislative prerogatives. In the view of the Parliament, it and the Council should have the opportunity of evaluating the conferral of implementing powers on the Commission within a determined period. It is therefore appropriate to limit the period during which the Commission may adopt implementing measures.

(66) The 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 Parliament, the Commission should re-examine the draft amendments or measures.

(67) In order to avoid disruption to markets and to ensure continuity in overall levels of own funds it is appropriate to provide for specific transitional arrangements.

(68) In view of the risk-sensitivity of the rules relating to minimum capital requirements, it is desirable to keep under review whether these have significant effects on the economic cycle. The Commission, taking into account the contribution of the European Central Bank should report on these aspects to the European Parliament and to the Council.

(69) The arrangements necessary for the supervision of liquidity risks should also be harmonised.

(70) This Directive respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union as general principles of Community law.

(71) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with earlier directives. The obligation to transpose the provisions which are unchanged exists under the earlier directives.

(72) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of the Directives set out in Annex XIII, Part B,

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

(47) 'recognised exchanges' means exchanges which are recognised as such by the competent authorities and which meet the following conditions:

(a) they function regularly;

(b) they have rules, issued or approved by the appropriate authorities of the home country of the exchange, defining the conditions for the operation of the exchange, the conditions of access to the exchange as well as the conditions that shall be satisfied by a contract before it can effectively be dealt on the exchange; and

(c) they have a clearing mechanism whereby contracts listed in Annex IV are subject to daily margin requirements which, in the opinion of the competent authorities, provide appropriate protection.

Article 5

Member States shall prohibit persons or undertakings that are not credit institutions from carrying on the business of taking deposits or other repayable funds from the public.

The first paragraph shall not apply to the taking of deposits or other funds repayable by a Member State or by a Member State's regional or local authorities or by public international bodies of which one or more Member States are members or to cases expressly covered by national or Community legislation, provided that those activities are subject to regulations and controls intended to protect depositors and investors and applicable to those cases.

TITLE II

REQUIREMENTS FOR ACCESS TO THE TAKING UP AND PURSUIT OF THE BUSINESS OF CREDIT INSTITUTIONS

Article 6

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.

Article 7

Member States shall require applications for authorisation to be accompanied by a programme of operations setting out, inter alia, the types of business envisaged and the structural organisation of the credit institution.

Article 8

Member States may not require the application for authorisation to be examined in terms of the economic needs of the market.

Article 9

1. Without prejudice to other general conditions laid down by national law, the competent authorities shall not grant authorisation when the credit institution does not possess separate own funds or in cases where initial capital is less than EUR 5 million.

'Initial capital' shall comprise capital and reserves as referred to in Article 57(a) and (b).

Member States may decide that credit institutions which do not fulfil the requirement of separate own funds and which were in existence on 15 December 1979 may continue to carry on their business. They may exempt such credit institutions from complying with the requirement contained in the first subparagraph of Article 11(1).

2. Member States may, subject to the following conditions, grant authorisation to particular categories of credit institutions the initial capital of which is less than that specified in paragraph 1:

(a) the initial capital shall be no less than EUR 1 million;

(b) the Member States concerned shall notify the Commission of their reasons for exercising this option; and

(c) the name of each credit institution that does not have the minimum capital specified in paragraph 1 shall be annotated to that effect in the list referred to in Article 14.

Article 10

1. A credit institution's own funds may not fall below the amount of initial capital required under Article 9 at the time of its authorisation.

2. Member States may decide that credit institutions already in existence on 1 January 1993, the own funds of which do not attain the levels specified for initial capital in Article 9, may continue to carry on their activities. In that event, their own funds may not fall below the highest level reached with effect from 22 December 1989.

3. If control of a credit institution falling within the category referred to in paragraph 2 is taken by a natural or legal person other than the person who controlled the institution previously, the own funds of that credit institution shall attain at least the level specified for initial capital in Article 9.

4. In certain specific circumstances and with the consent of the competent authorities, where there is a merger of two or more credit institutions falling within the category referred to in paragraph 2, the own funds of the credit institution resulting from the merger may not fall below the total own funds of the merged credit institutions at the time of the merger, as long as the appropriate levels specified in Article 9 have not been attained.

5. If, in the cases referred to in paragraphs 1, 2 and 4, the own funds should be reduced, the competent authorities may, where

the circumstances justify it, allow a credit institution a limited period in which to rectify its situation or cease its activities.

Article 11

1. The competent authorities shall grant an authorisation to the credit institution only when there are at least two persons who effectively direct the business of the credit institution.

They shall not grant authorisation if these persons are not of sufficiently good repute or lack sufficient experience to perform such duties.

2. Each Member State shall require that:

(a) any credit institution which is a legal person and which, under its national law, has a registered office shall have its head office in the same Member State as its registered office; and

(b) any other credit institution shall have its head office in the Member State which granted its authorisation and in which it actually carries on its business.

Article 12

1. The competent authorities shall not grant authorisation for the taking-up of the business of credit institutions unless they have been informed of the identities of the shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings, and of the amounts of those holdings.

In determining a qualifying holding in the context of this Article, the voting rights referred to in Article 92 of Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities [1] shall be taken into consideration.

2. The competent authorities shall not grant authorisation if, taking into account the need to ensure the sound and prudent management of a credit institution, they are not satisfied as to the suitability of the shareholders or members.

3. Where close links exist between the credit institution and other natural or legal persons, the competent authorities shall grant authorisation only if those links do not prevent the effective exercise of their supervisory functions.

The competent authorities shall also not grant authorisation if the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the credit institution has close links, or difficulties involved in the enforcement of those laws, regulations or administrative provisions, prevent the effective exercise of their supervisory functions.

The competent authorities shall require credit institutions to provide them with the information they require to monitor compliance with the conditions referred to in this paragraph on a continuous basis.

Article 13

Reasons shall be given whenever a decision not to grant an authorisation is taken and the applicant shall be notified thereof within six months of receipt of the application or, should the latter be incomplete, within six months of the applicant's sending the information required for the decision. A decision shall, in any case, be taken within 12 months of the receipt of the application.

Article 14

Every authorisation shall be notified to the Commission.

The name of each credit institution to which authorisation has been granted shall be entered in a list. The Commission shall publish that list in the Official Journal of the European Union and shall keep it up to date.

Article 15

1. The competent authority shall, before granting authorisation to a credit institution, consult the competent authorities of the other Member State involved in the following cases:

(a) the credit institution concerned is a subsidiary of a credit institution authorised in another Member State;

(b) the credit institution concerned is a subsidiary of the parent undertaking of a credit institution authorised in another Member State; or

(c) the credit institution concerned is controlled by the same persons, whether natural or legal, as control a credit institution authorised in another Member State.

2. The competent authority shall, before granting authorisation to a credit institution, consult the competent authority of a Member State involved, responsible for the supervision of insurance undertakings or investment firms in the following cases:

(a) the credit institution concerned is a subsidiary of an insurance undertaking or investment firm authorised in the Community;

(b) the credit institution concerned is a subsidiary of the parent undertaking of an insurance undertaking or investment firm authorised in the Community; or

[1] OJ L 184, 6.7.2001, p. 1. Directive as last amended by Directive 2005/1/EC.

(c) the credit institution concerned is controlled by the same person, whether natural or legal, as controls an insurance undertaking or investment firm authorised in the Community.

3. The relevant competent authorities referred to in paragraphs 1 and 2 shall in particular consult each other when assessing the suitability of the shareholders and the reputation and experience of directors involved in the management of another entity of the same group. They shall exchange any information regarding the suitability of shareholders and the reputation and experience of directors which is of relevance for the granting of an authorisation as well as for the ongoing assessment of compliance with operating conditions.

Article 16

Host Member States may not require authorisation or endowment capital for branches of credit institutions authorised in other Member States. The establishment and supervision of such branches shall be effected in accordance with Articles 22, 25, 26 (1) to (3), 29 to 37 and 40.

Article 17

1. The competent authorities may withdraw the authorisation granted to a credit institution only where such an institution:

(a) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has ceased to engage in business for more than six months, if the Member State concerned has made no provision for the authorisation to lapse in such cases;

(b) has obtained the authorisation through false statements or any other irregular means;

(c) no longer fulfils the conditions under which authorisation was granted;

(d) no longer possesses sufficient own funds or can no longer be relied on to fulfil its obligations towards its creditors, and in particular no longer provides security for the assets entrusted to it; or

(e) falls within one of the other cases where national law provides for withdrawal of authorisation.

2. Reasons shall be given for any withdrawal of authorisation and those concerned informed thereof. Such withdrawal shall be notified to the Commission.

Article 18

For the purposes of exercising their activities, credit institutions may, notwithstanding any provisions in the host Member State concerning the use of the words 'bank', 'savings bank' or other banking names, use throughout the territory of the Community the same name as they use in the Member State in which their head office is situated. In the event of there being any danger of confusion, the host Member State may, for the purposes of clarification, require that the name be accompanied by certain explanatory particulars.

Article 19

1. The Member States shall require any natural or legal person who proposes to hold, directly or indirectly, a qualifying holding in a credit institution first to inform the competent authorities, telling them of the size of the intended holding. Such a person shall likewise inform the competent authorities if he proposes to increase his qualifying holding so that the proportion of the voting rights or of the capital held by him would reach or exceed 20 %, 33 % or 50 % or so that the credit institution would become his subsidiary.

Without prejudice to paragraph 2, the competent authorities shall have a maximum of three months from the date of the notification provided for in the first and second subparagraphs to oppose such a plan if, in view of the need to ensure sound and prudent management of the credit institution, they are not satisfied as to the suitability of the person concerned. If they do not oppose the plan, they may fix a maximum period for its implementation.

2. If the person proposing to acquire the holdings referred to in paragraph 1 is a credit institution, insurance undertaking or investment firm authorised in another Member State or the parent undertaking of a credit institution, insurance undertaking or investment firm authorised in another Member State or a natural or legal person controlling a credit institution, insurance undertaking or investment firm authorised in another Member State, and if, as a result of that acquisition, the credit institution in which the acquirer proposes to hold a holding would become a subsidiary or subject to the control of the acquirer, the assessment of the acquisition shall be subject to the prior consultation provided for in Article 15.

Article 20

The Member States shall require any natural or legal person who proposes to dispose, directly or indirectly, of a qualifying holding in a credit institution first to inform the competent authorities, telling them of the size of his intended holding. Such a person shall likewise inform the competent authorities if he proposes to reduce his qualifying holding so that the proportion of the voting rights or of the capital held by him would fall below 20 %, 33 % or 50 % or so that the credit institution would cease to be his subsidiary.

Article 21

1. Credit institutions shall, on becoming aware of any acquisitions or disposals of holdings in their capital that cause

holdings to exceed or fall below one of the thresholds referred to in Article 19(1) and Article 20, inform the competent authorities of those acquisitions or disposals.

They shall also, at least once a year, inform the competent authorities of the names of shareholders and members possessing qualifying holdings and the sizes of such holdings as shown, for example, by the information received at the annual general meetings of shareholders and members or as a result of compliance with the regulations relating to companies listed on stock exchanges.

2. The Member States shall require that, where the influence exercised by the persons referred to in Article 19(1) is likely to operate to the detriment of the prudent and sound management of the institution, the competent authorities shall take appropriate measures to put an end to that situation. Such measures may consist in injunctions, sanctions against directors and managers, or the suspension of the exercise of the voting rights attaching to the shares held by the shareholders or members in question.

Similar measures shall apply to natural or legal persons who fail to comply with the obligation to provide prior information, as laid down in Article 19(1).

If a holding is acquired despite the opposition of the competent authorities, the Member States shall, regardless of any other sanctions to be adopted, provide either for exercise of the corresponding voting rights to be suspended, or for the nullity of votes cast or for the possibility of their annulment.

3. In determining a qualifying holding and other levels of holding referred to in this Article, the voting rights referred to in Article 92 of Directive 2001/34/EC shall be taken into consideration.

Article 22

1. Home Member State competent authorities shall require that every credit institution have robust governance arrangements, which include a clear organisational structure with well defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks it is or might be exposed to, and adequate internal control mechanisms, including sound administrative and accounting procedures.

2. The arrangements, processes and mechanisms referred to in paragraph 1 shall be comprehensive and proportionate to the nature, scale and complexity of the credit institution's activities. The technical criteria laid down in Annex V shall be taken into account.

TITLE III

PROVISIONS CONCERNING THE FREEDOM OF ESTABLISHMENT AND THE FREEDOM TO PROVIDE SERVICES

Section 1

Credit institutions

Article 23

The Member States shall provide that the activities listed in Annex I may be carried on within their territories, in accordance with Articles 25, 26(1) to (3), 28(1) and (2) and 29 to 37 either by the establishment of a branch or by way of the provision of services, by any credit institution authorised and supervised by the competent authorities of another Member State, provided that such activities are covered by the authorisation.

Section 2

Financial institutions

Article 24

1. The Member States shall provide that the activities listed in Annex I may be carried on within their territories, in accordance with Articles 25, 26(1) to (3), 28(1) and (2) and 29 to 37, either by the establishment of a branch or by way of the provision of services, by any financial institution from another Member State, whether a subsidiary of a credit institution or the jointly-owned subsidiary of two or more credit institutions, the memorandum and Articles of association of which permit the carrying on of those activities and which fulfils each of the following conditions:

(a) the parent undertaking or undertakings shall be authorised as credit institutions in the Member State by the law of which the financial institution is governed;

(b) the activities in question shall actually be carried on within the territory of the same Member State;

(c) the parent undertaking or undertakings shall hold 90 % or more of the voting rights attaching to shares in the capital of the financial institution;

(d) the parent undertaking or undertakings shall satisfy the competent authorities regarding the prudent management of the financial institution and shall have declared, with the consent of the relevant home Member State competent authorities, that they jointly and severally guarantee the commitments entered into by the financial institution; and

(e) the financial institution shall be effectively included, for the activities in question in particular, in the consolidated supervision of the parent undertaking, or of each of the