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

TITLE II

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

Article 4

Authorisation

Member States shall require credit institutions to obtain authorisation before commencing their activities. They shall lay down the requirements for such authorisation subject to Articles 5 to 9, and notify them to both the Commission and the Banking Advisory Committee.

Article 5

Initial capital

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.

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 6(1).

2 The Member States shall, however, have the option of granting authorisation to particular categories of credit institutions the initial capital of which is less than that prescribed in paragraph 1. In such cases:

- a the initial capital shall not be less than EUR 1 million,
- b the Member States concerned must notify the Commission of their reasons for making use of the option provided for in this paragraph,
- c when the list referred to in Article 11 is published, the name of each credit institution that does not have the minimum capital prescribed in paragraph 1 shall be annotated to that effect.

3 A credit institution's own funds may not fall below the amount of initial capital required by paragraphs 1 and 2 at the time of its authorisation.

4 The Member States may decide that credit institutions already in existence on 1 January 1993, the own funds of which do not attain the levels prescribed for initial capital in paragraphs 1 and 2, 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.

5 If control of a credit institution falling within the category referred to in paragraph 4 is taken by a natural or legal person other than the person who controlled the institution previously,

the own funds of that institution must attain at least the level prescribed for initial capital in paragraphs 1 and 2.

6 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 4, the own funds of the institution resulting from the merger may not fall below the total own funds of the merged institutions at the time of the merger, as long as the appropriate levels pursuant to paragraphs 1 and 2 have not been attained.

7 If, in the cases referred to in paragraphs 3, 4 and 6, the own funds should be reduced, the competent authorities may, where the circumstances justify it, allow an institution a limited period in which to rectify its situation or cease its activities.

Article 6

Management body and place of the head office of credit institutions

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.

Moreover, the authorities concerned 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:

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

— any other credit institution have its head office in the Member State which issued its authorisation and in which it actually carries on its business.

Article 7

Shareholders and members

1 The competent authorities shall not grant authorisation for the taking-up of the business of credit institutions before 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.

For the purpose of the definition of qualifying holding in the context of this Article, the voting rights referred to in Article 7 of Council Directive 88/627/EEC[(1)] shall be taken into consideration.

2 The competent authorities shall refuse 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 abovementioned 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 refuse authorisation if the laws, regulations or administrative provisions of a non-member country governing one or more natural or legal persons with which the credit institution has close links, or difficulties involved in their enforcement, 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 8

Programme of operations and structural organisation

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 institution.

Article 9

Economic needs

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

Article 10

Authorisation refusal

Reasons shall be given whenever an authorisation is refused 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 11

Notification of the authorisation to the Commission

Every authorisation shall be notified to the Commission. Each credit institution shall be entered in a list which the Commission shall publish in the *Official Journal of the European Communities* and shall keep up to date.

Article 12

Prior consultation with the competent authorities of other Member States

There must be prior consultation with the competent authorities of the other Member State involved on the authorisation of a credit institution which is:

— a subsidiary of a credit institution authorised in another Member State, or

— a subsidiary of the parent undertaking of a credit institution authorised in another Member State, or

— controlled by the same persons, whether natural or legal, as control a credit institution authorised in another Member State.

[F1The competent authority of a Member State involved, responsible for the supervision of insurance undertakings or investment firms, shall be consulted prior to the granting of an authorisation to a credit institution which is:

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

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

(c) controlled by the same person, whether natural or legal, who controls an insurance undertaking or investment firm authorised in the Community.

The relevant competent authorities referred to in the first and second paragraphs 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 inform each other of any information regarding the suitability of shareholders and the reputation and experience of directors which is of relevance to the other competent authorities involved for the granting of an authorisation as well as for the ongoing assessment of compliance with operating conditions.**]**

Textual Amendments

F1 Inserted by Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council.

Article 13

Branches of credit institutions authorised in another Member State

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 as prescribed in Articles 17, 20(l) to (6) and Articles 22 and 26.

Article 14

Withdrawal of authorisation

1 The competent authorities may withdraw the authorisation issued 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;

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

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

Article 15

Name

For the purpose of exercising their activities, credit institutions may, notwithstanding any provisions concerning the use of the words 'bank', 'savings bank' or other banking names which may exist in the host Member State, 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 16

Qualifiying holding in a credit institution

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 must 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 the provisions of paragraph 2, the competent authorities shall have a maximum of three months from the date of the notification provided for in the first subparagraph 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 referred to in the first subparagraph. If they do not oppose the plan referred to in the first subparagraph, they may fix a maximum period for its implementation.

[[F2]2 If the acquirer of 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 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 must be subject to the prior consultation referred to in Article 12.**]**

3 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 must 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.

4 On becoming aware of them, credit institutions shall inform the competent authorities 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 paragraphs 1 and 3.

They shall also, at least once a year, inform them 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.

5 The Member States shall require that, where the influence exercised by the persons referred to in paragraph 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 for example 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 failing to comply with the obligation to provide prior information, as laid down in paragraph 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.

6 For the purposes of the definition of qualifying holding and other levels of holding set out in this Article, the voting rights referred to in Article 7 of Directive 88/627/EEC shall be taken into consideration.

Textual Amendments

F2 Substituted by Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council.

Article 17

Procedures and internal control mechanisms

Home Member State competent authorities shall require that every credit institution have sound administrative and accounting procedures and adequate internal control mechanisms.

(**1**) Council Directive 88/627/EEC of 12 December 1988 on the information to be published when a major holding in a listed company is acquired or disposed of (OJ L 348, 17.12.1988, p. 62).