

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 III

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

Article 18

Credit institutions

The Member States shall provide that the activities listed in Annex I may be carried on within their territories, in accordance with Articles 20(1) to (6), 21(1) and (2), and 22, 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.

Article 19

Financial institutions

The Member States shall also provide that the activities listed in Annex I may be carried on within their territories, in accordance with Articles 20(1) to (6), 21(1) and (2), and 22, 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:

- the parent undertaking or undertakings must be authorised as credit institutions in the Member State by the law of which the subsidiary is governed,
- the activities in question must actually be carried on within the territory of the same Member State,
- the parent undertaking or undertakings must hold 90 % or more of the voting rights attaching to shares in the capital of the subsidiary.
- the parent undertaking or undertakings must satisfy the competent authorities regarding the prudent management of the subsidiary and must 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 subsidiary,
- the subsidiary 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 Articles 52 to 56, 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 51.

Compliance with these conditions must be verified by the competent authorities of the home Member State and the latter must supply the subsidiary with a certificate of compliance which must form part of the notification referred to in Articles 20(1) to (6), and 21(1) and (2).

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The competent authorities of the home Member State shall ensure the supervision of the subsidiary in accordance with Articles 5(3), 16, 17, 26, 28, 29, 30, and 32.

The provisions mentioned in this Article shall apply *mutatis mutandis* to subsidiaries, subject to the necessary modifications. In particular, the words ‘credit institution’ should be read as ‘financial institution fulfilling the conditions laid down in Article 19’ and the word ‘authorisation’ as ‘memorandum and articles of association’.

The second subparagraph of Article 20(3) shall read:

The home Member State competent authorities shall also communicate the amount of own funds of the subsidiary financial institution and the consolidated solvency ratio of the credit institution which is its parent undertaking.

If a financial institution eligible under this Article should cease to fulfil any of the conditions imposed, the home Member State shall notify the competent authorities of the host Member State and the activities carried on by that institution in the host Member State become subject to the legislation of the host Member State.

Article 20

Exercise of the right of establishment

1 A credit institution wishing to establish a branch within the territory of another Member State shall notify the competent authorities of its Member State.

2 The Member State shall require every credit institution wishing to establish a branch in another Member State to provide the following information when effecting the notification referred to in paragraph 1:

- a the Member State within the territory of which it plans to establish a branch;
- b a programme of operations setting out, *inter alia*, the types of business envisaged and the structural organisation of the branch;
- c the address in the host Member State from which documents may be obtained;
- d the names of those responsible for the management of the branch.

3 Unless the competent authorities of the home Member State have reason to doubt the adequacy of the administrative structure or the financial situation of the credit institution, taking into account the activities envisaged, they shall within three months of receipt of the information referred to in paragraph 2 communicate that information to the competent authorities of the host Member State and shall inform the institution accordingly.

The home Member State competent authorities shall also communicate the amount of own funds and the solvency ratio of the credit institution.

Where the competent authorities of the home Member State refuse to communicate the information referred to in paragraph 2 to the competent authorities of the host Member State, they shall give reasons for their refusal to the institution concerned within three months of receipt of all the information. That refusal or failure to reply shall be subject to a right to apply to the courts in the home Member State.

4 Before the branch of a credit institution commences its activities the competent authorities of the host Member State shall, within two months of receiving the information mentioned in paragraph 3, prepare for the supervision of the credit institution in accordance with Article 22 and if necessary indicate the conditions under which, in the interest of the general good, those activities must be carried on in the host Member State.

5 On receipt of a communication from the competent authorities of the host Member State, or in the event of the expiry of the period provided for in paragraph 4 without receipt of any communication from the latter, the branch may be established and commence its activities.

6 In the event of a change in any of the particulars communicated pursuant to paragraph 2(b), (c) or (d), a credit institution shall give written notice of the change in question to the competent authorities of the home and host Member States at least one month before making the change so as to enable the competent authorities of the home Member State to take a decision pursuant to paragraph 3 and the competent authorities of the host Member State to take a decision on the change pursuant to paragraph 4.

7 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 paragraphs 1 to 5. They shall be governed, from the abovementioned date, by paragraph 6, and by Articles 18, 19, 22 and 29.

Article 21

Exercise of the freedom to provide services

1 Any credit institution wishing to exercise the freedom to provide services by carrying on its activities within the territory of another Member State for the first time shall notify the competent authorities of the home Member State, of the activities on the list in Annex I which it intends to carry on.

2 The competent authorities of the home Member State shall, within one month of receipt of the notification mentioned in paragraph 1, send that notification to the competent authorities of the host Member State.

3 This Article shall not affect rights acquired by credit institutions providing services before 1 January 1993.

Article 22

Power of the competent authorities of the host Member State

1 Host Member States may, for statistical purposes, require that all credit institutions having branches within their territories shall report periodically on their activities in those host Member States to the competent authorities of those host Member States.

In discharging the responsibilities imposed on them in Article 27, host Member States may require that branches of credit institutions from other Member States provide the same information as they require from national credit institutions for that purpose.

2 Where the competent authorities of a host Member State ascertain that an institution having a branch or providing services within its territory is not complying with the legal provisions adopted in that State pursuant to the provisions of this Directive involving powers of the host Member State's competent authorities, those authorities shall require the institution concerned to put an end to that irregular situation.

3 If the institution concerned fails to take the necessary steps, the competent authorities of the host Member State shall inform the competent authorities of the home Member State accordingly. The competent authorities of the home Member State shall, at the earliest opportunity, take all appropriate measures to ensure that the institution concerned puts an end to

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that irregular situation. The nature of those measures shall be communicated to the competent authorities of the host Member State.

4 If, despite the measures taken by the home Member State or because such measures prove inadequate or are not available in the Member State in question, the institution persists in violating the legal rules referred to in paragraph 2 in force in the host Member State, the latter State may, after informing the competent authorities of the home Member State, take appropriate measures to prevent or to punish further irregularities and, in so far as is necessary, to prevent that institution from initiating further transactions within its territory. The Member States shall ensure that within their territories it is possible to serve the legal documents necessary for these measures on credit institutions.

5 The provisions of paragraph 1 to 4 shall not affect the power of host Member States to take appropriate measures to prevent or to punish irregularities committed within their territories which are contrary to the legal rules they have adopted in the interest of the general good. This shall include the possibility of preventing offending institutions from initiating any further transactions within their territories.

6 Any measure adopted pursuant to paragraph 3, 4 and 5 involving penalties or restrictions on the exercise of the freedom to provide services must be properly justified and communicated to the institution concerned. Every such measure shall be subject to a right of appeal to the courts in the Member State the authorities of which adopted it.

7 Before following the procedure provided for in paragraph 2, 3 and 4, the competent authorities of the host Member State may, in emergencies, take any precautionary measures necessary to protect the interests of depositors, investors and others to whom services are provided. The Commission and the competent authorities of the other Member States concerned must be informed of such measures at the earliest opportunity.

The Commission may, after consulting the competent authorities of the Member States concerned, decide that the Member State in question must amend or abolish those measures.

8 Host Member States may exercise the powers conferred on them under this Directive by taking appropriate measures to prevent or to punish irregularities committed within their territories. This shall include the possibility of preventing institutions from initiating further transactions within their territories.

9 In the event of the withdrawal of authorisation the competent authorities of the host Member State shall be informed and shall take appropriate measures to prevent the institution concerned from initiating further transactions within its territory and to safeguard the interests of depositors. Every two years the Commission shall submit a report on such cases to the Banking Advisory Committee.

10 The Member States shall inform the Commission of the number and type of cases in which there has been a refusal pursuant to Article 20(1) to (6) or in which measures have been taken in accordance with paragraph 4 of this Article. Every two years the Commission shall submit a report on such cases to the Banking Advisory Committee.

11 Nothing in this Article shall prevent credit institutions with head offices in other Member States from advertising their services through all available means of communication in the host Member State, subject to any rules governing the form and the content of such advertising adopted in the interest of the general good.