

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 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).

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:

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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.