

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2006 relating to the taking up and pursuit of the business of credit institutions (recast) (Text with EEA relevance) (repealed)

TITLE I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

1 This Directive lays down rules concerning the taking up and pursuit of the business of credit institutions, and their prudential supervision.

2 Article 39 and Title V, Chapter 4, Section 1 shall apply to financial holding companies and mixed-activity holding companies which have their head offices in the Community.

3 The institutions permanently excluded pursuant to Article 2, with the exception, however, of the central banks of the Member States, shall be treated as financial institutions for the purposes of Article 39 and Title V, Chapter 4, Section 1.

Article 2

This Directive shall not apply to the following:

- the central banks of Member States,
- post office giro institutions,
- in Belgium, the ‘Institut de Réescompte et de Garantie/Herdiscontering- en Waarborginstituut’,
- [^{F1}in Denmark, the ‘Dansk Eksportfinansieringsfond’, the ‘Danmarks Skibskredit A/S’ and the ‘KommuneKredit’,]
- in Germany, the ‘Kreditanstalt für Wiederaufbau’, undertakings which are recognised under the ‘Wohnungsgemeinnützigkeitgesetz’ as bodies of State housing policy and are not mainly engaged in banking transactions, and undertakings recognised under that law as non-profit housing undertakings,
- in Greece, the ‘Ταμείο Παρακαταθηκών και Δανείων’ (Tamio Parakatathikon kai Danion),
- in Spain, the ‘Instituto de Crédito Oficial’,
- in France, the ‘Caisse des dépôts et consignations’,
- in Ireland, credit unions and the friendly societies,
- in Italy, the ‘Cassa depositi e prestiti’,
- in Latvia, the ‘krājaizdevu sabiedrības’, undertakings that are recognised under the ‘krājaizdevu sabiedrību likums’ as cooperative undertakings rendering financial services solely to their members,
- in Lithuania, the ‘kredito unijos’ other than the ‘Centrinė kredito unija’,
- in Hungary, the ‘Magyar Fejlesztési Bank Rt.’ and the ‘Magyar Export-Import Bank Rt.’,
- in the Netherlands, the ‘Nederlandse Investeringsbank voor Ontwikkelingslanden NV’, the ‘NV Noordelijke Ontwikkelingsmaatschappij’, the ‘NV Industriebank Limburgs Instituut voor Ontwikkeling en Financiering’ and the ‘Overijsselse Ontwikkelingsmaatschappij NV’,

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- in Austria, undertakings recognised as housing associations in the public interest and the ‘Österreichische Kontrollbank AG’,
- in Poland, the ‘Spółdzielcze Kasy Oszczędnościowo — Kredytowe’ and the ‘Bank Gospodarstwa Krajowego’,
- in Portugal, ‘Caixas Económicas’ existing on 1 January 1986 with the exception of those incorporated as limited companies and of the ‘Caixa Económica Montepio Geral’,
- in Finland, the ‘Teollisen yhteistyön rahasto Oy/Fonden för industriellt samarbete AB’, and the ‘Finnvera Oyj/Finnvera Abp’,
- in Sweden, the ‘Svenska Skeppshypotekskassan’,
- in the United Kingdom, the National Savings Bank, the Commonwealth Development Finance Company Ltd, the Agricultural Mortgage Corporation Ltd, the Scottish Agricultural Securities Corporation Ltd, the Crown Agents for overseas governments and administrations, credit unions and municipal banks.

Textual Amendments

- F1** Substituted by [Commission Directive 2007/18/EC of 27 March 2007 amending Directive 2006/48/EC of the European Parliament and of the Council as regards the exclusion or inclusion of certain institutions from its scope of application and the treatment of exposures to multilateral development banks \(Text with EEA relevance\).](#)

Article 3

[^{F21} One or more credit institutions situated in the same Member State and which are permanently affiliated to a central body which supervises them and which is established in the same Member State, may be exempted from the requirements of Article 7 and Article 11(1) if national law provides that:]

- a the commitments of the central body and affiliated institutions are joint and several liabilities or the commitments of its affiliated institutions are entirely guaranteed by the central body;
- b the solvency and liquidity of the central body and of all the affiliated institutions are monitored as a whole on the basis of consolidated accounts; and
- c the management of the central body is empowered to issue instructions to the management of the affiliated institutions.

[^{F3} Credit institutions operating locally which are permanently affiliated, subsequent to 15 December 1977, to a central body within the meaning of the first subparagraph, may benefit from the conditions laid down therein if they constitute normal additions to the network belonging to that central body.

In the case of credit institutions other than those which are set up in areas newly reclaimed from the sea or have resulted from scission or mergers of existing institutions dependent or answerable to the central body, the Commission, pursuant to the procedure referred to in Article 151(2) may lay down additional rules for the application of the second subparagraph including the repeal of exemptions provided for in the first subparagraph, where it is of the opinion that the affiliation of new institutions benefiting from the arrangements laid down in the second subparagraph might have an adverse effect on competition.]

2 A credit institution referred to in the first subparagraph of paragraph 1, may also be exempted from the provisions of Articles 9 and 10, and also Title V, Chapter 2, Sections 2, 3, 4, 5 and 6 and Chapter 3 provided that, without prejudice to the application of those provisions to the

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central body, the whole as constituted by the central body together with its affiliated institutions is subject to those provisions on a consolidated basis.

In case of exemption, Articles 16, 23, 24, 25, 26(1) to (3) and 28 to 37 shall apply to the whole as constituted by the central body together with its affiliated institutions.

Textual Amendments

- F2** Substituted by Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management (Text with EEA relevance).
- F3** Deleted by Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management (Text with EEA relevance).

Article 4

For the purposes of this Directive, the following definitions shall apply:

- (1) [^{F4}‘credit institution’ means an undertaking the business of which is to receive deposits or other repayable funds from the public and to grant credits for its own account;]
- (2) ‘authorisation’ means an instrument issued in any form by the authorities by which the right to carry on the business of a credit institution is granted;
- (3) ‘branch’ means a place of business which forms a legally dependent Part of a credit institution and which carries out directly all or some of the transactions inherent in the business of credit institutions;
- (4) ‘competent authorities’ means the national authorities which are empowered by law or regulation to supervise credit institutions;
- (5) [^{F4}‘financial institution’ means an undertaking other than a credit institution, the principal activity of which is to acquire holdings or to pursue one or more of the activities listed in points 2 to 12 and 15 of Annex I;]
- (6) [^{F2}‘institutions’ for the purposes of Sections 2, 3 and 5 of Title V, Chapter 2, means institutions as defined in Article 3(1)(c) of Directive 2006/49/EC;]
- (7) ‘home Member State’ means the Member State in which a credit institution has been authorised in accordance with Articles 6 to 9 and 11 to 14;
- (8) ‘host Member State’ means the Member State in which a credit institution has a branch or in which it provides services;
- (9) ‘control’ means the relationship between a parent undertaking and a subsidiary, as defined in Article 1 of Directive 83/349/EEC, or a similar relationship between any natural or legal person and an undertaking;
- (10) ‘participation’ for the purposes of points (o) and (p) of Article 57, Articles 71 to 73 and Title V, Chapter 4 means participation within the meaning of the first sentence of Article 17 of Fourth Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain types of companies⁽¹⁾, or the ownership, direct or indirect, of 20 % or more of the voting rights or capital of an undertaking;

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- (11) ‘qualifying holding’ means a direct or indirect holding in an undertaking which represents 10 % or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of that undertaking;
- (12) ‘parent undertaking’ means:
- (a) a parent undertaking as defined in Articles 1 and 2 of Directive 83/349/EEC; or
 - (b) for the purposes of Articles 71 to 73, Title V, Chapter 2, Section 5 and Chapter 4, a parent undertaking within the meaning of Article 1(1) of Directive 83/349/EEC and any undertaking which, in the opinion of the competent authorities, effectively exercises a dominant influence over another undertaking;
- (13) ‘subsidiary’ means:
- (a) a subsidiary undertaking as defined in Articles 1 and 2 of Directive 83/349/EEC; or
 - (b) for the purposes of Articles 71 to 73, Title V, Chapter 2, Section 5, and Chapter 4 a subsidiary undertaking within the meaning of Article 1(1) of Directive 83/349/EEC and any undertaking over which, in the opinion of the competent authorities, a parent undertaking effectively exercises a dominant influence.
- All subsidiaries of subsidiary undertakings shall also be considered subsidiaries of the undertaking that is their original parent;
- (14) ‘parent credit institution in a Member State’ means a credit institution which has a credit institution or a financial institution as a subsidiary or which holds a participation in such an institution, and which is not itself a subsidiary of another credit institution authorised in the same Member State, or of a financial holding company set up in the same Member State;
- (15) ‘parent financial holding company in a Member State’ means a financial holding company which is not itself a subsidiary of a credit institution authorised in the same Member State, or of a financial holding company set up in the same Member State;
- (16) ‘EU parent credit institution’ means a parent credit institution in a Member State which is not a subsidiary of another credit institution authorised in any Member State, or of a financial holding company set up in any Member State;
- (17) ‘EU parent financial holding company’ means a parent financial holding company in a Member State which is not a subsidiary of a credit institution authorised in any Member State or of another financial holding company set up in any Member State;
- (18) ‘public sector entities’ means non-commercial administrative bodies responsible to central governments, regional governments or local authorities, or authorities that in the view of the competent authorities exercise the same responsibilities as regional and local authorities, or non-commercial undertakings owned by central governments that have explicit guarantee arrangements, and may include self administered bodies governed by law that are under public supervision;
- (19) ‘financial holding company’ means a financial institution, the subsidiary undertakings of which are either exclusively or mainly credit institutions or financial institutions, at least one of such subsidiaries being a credit institution, and which is not a mixed

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- financial holding company within the meaning of Article 2(15) of Directive 2002/87/EC⁽²⁾;
- (20) ‘mixed-activity holding company’ means a parent undertaking, other than a financial holding company or a credit institution or a mixed financial holding company within the meaning of Article 2(15) of Directive 2002/87/EC, the subsidiaries of which include at least one credit institution;
- (21) ‘ancillary services undertaking’ means an undertaking the principal activity of which consists in owning or managing property, managing data-processing services, or any other similar activity which is ancillary to the principal activity of one or more credit institutions;
- (22) ‘operational risk’ means the risk of loss resulting from inadequate or failed internal processes, people and systems or from external events, and includes legal risk;
- (23) ‘central banks’ include the European Central Bank unless otherwise indicated;
- (24) ‘dilution risk’ means the risk that an amount receivable is reduced through cash or non-cash credits to the obligor;
- (25) ‘probability of default’ means the probability of default of a counterparty over a one year period;
- (26) ‘loss’, for the purposes of Title V, Chapter 2, Section 3, means economic loss, including material discount effects, and material direct and indirect costs associated with collecting on the instrument;
- (27) ‘loss given default (LGD)’ means the ratio of the loss on an exposure due to the default of a counterparty to the amount outstanding at default;
- (28) ‘conversion factor’ means the ratio of the currently undrawn amount of a commitment that will be drawn and outstanding at default to the currently undrawn amount of the commitment, the extent of the commitment shall be determined by the advised limit, unless the unadvised limit is higher;
- (29) ‘expected loss (EL)’, for the purposes of Title V, Chapter 2, Section 3, shall mean the ratio of the amount expected to be lost on an exposure from a potential default of a counterparty or dilution over a one year period to the amount outstanding at default;
- (30) ‘credit risk mitigation’ means a technique used by a credit institution to reduce the credit risk associated with an exposure or exposures which the credit institution continues to hold;
- (31) ‘funded credit protection’ means a technique of credit risk mitigation where the reduction of the credit risk on the exposure of a credit institution derives from the right of the credit institution — in the event of the default of the counterparty or on the occurrence of other specified credit events relating to the counterparty — to liquidate, or to obtain transfer or appropriation of, or to retain certain assets or amounts, or to reduce the amount of the exposure to, or to replace it with, the amount of the difference between the amount of the exposure and the amount of a claim on the credit institution;
- (32) ‘unfunded credit protection’ means a technique of credit risk mitigation where the reduction of the credit risk on the exposure of a credit institution derives from the undertaking of a third party to pay an amount in the event of the default of the borrower or on the occurrence of other specified credit events;

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- (33) ‘repurchase transaction’ means any transaction governed by an agreement falling within the definition of ‘repurchase agreement’ or ‘reverse repurchase agreement’ as defined in Article 3(1)(m) of Directive 2006/49/EC;
- (34) ‘securities or commodities lending or borrowing transaction’ means any transaction falling within the definition of ‘securities or commodities lending’ or ‘securities or commodities borrowing’ as defined in Article 3(1)(n) of Directive 2006/49/EC;
- (35) ‘cash assimilated instrument’ means a certificate of deposit or other similar instrument issued by the lending credit institution;
- (36) ‘securitisation’ means a transaction or scheme, whereby the credit risk associated with an exposure or pool of exposures is tranching, having the following characteristics:
- (a) payments in the transaction or scheme are dependent upon the performance of the exposure or pool of exposures; and
 - (b) the subordination of tranches determines the distribution of losses during the ongoing life of the transaction or scheme;
- (37) ‘traditional securitisation’ means a securitisation involving the economic transfer of the exposures being securitised to a securitisation special purpose entity which issues securities. This shall be accomplished by the transfer of ownership of the securitised exposures from the originator credit institution or through sub-participation. The securities issued do not represent payment obligations of the originator credit institution;
- (38) ‘synthetic securitisation’ means a securitisation where the tranching is achieved by the use of credit derivatives or guarantees, and the pool of exposures is not removed from the balance sheet of the originator credit institution;
- (39) ‘tranche’ means a contractually established segment of the credit risk associated with an exposure or number of exposures, where a position in the segment entails a risk of credit loss greater than or less than a position of the same amount in each other such segment, without taking account of credit protection provided by third parties directly to the holders of positions in the segment or in other segments;
- (40) ‘securitisation position’ shall mean an exposure to a securitisation;
- (41) ‘originator’ means either of the following:
- (a) an entity which, either itself or through related entities, directly or indirectly, was involved in the original agreement which created the obligations or potential obligations of the debtor or potential debtor giving rise to the exposure being securitised; or
 - (b) an entity which purchases a third party's exposures onto its balance sheet and then securitises them;
- (42) ‘sponsor’ means a credit institution other than an originator credit institution that establishes and manages an asset-backed commercial paper programme or other securitisation scheme that purchases exposures from third party entities;
- (43) ‘credit enhancement’ means a contractual arrangement whereby the credit quality of a position in a securitisation is improved in relation to what it would have been if the enhancement had not been provided, including the enhancement provided by more junior tranches in the securitisation and other types of credit protection;

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- (44) ‘securitisation special purpose entity (SSPE)’ means a corporation trust or other entity, other than a credit institution, organised for carrying on a securitisation or securitisations, the activities of which are limited to those appropriate to accomplishing that objective, the structure of which is intended to isolate the obligations of the SSPE from those of the originator credit institution, and the holders of the beneficial interests in which have the right to pledge or exchange those interests without restriction;
- (45) ‘group of connected clients’ means:
- (a) two or more natural or legal persons who, unless it is shown otherwise, constitute a single risk because one of them, directly or indirectly, has control over the other or others; or
 - (b) [^{F2}two or more natural or legal persons between whom there is no relationship of control as described in point (a) but who are to be regarded as constituting a single risk because they are so interconnected that, if one of them were to experience financial problems, in particular funding or repayment difficulties, the other or all of the others would also be likely to encounter funding or repayment difficulties;]
- (46) ‘close links’ means a situation in which two or more natural or legal persons are linked in any of the following ways:
- (a) participation in the form of ownership, direct or by way of control, of 20 % or more of the voting rights or capital of an undertaking;
 - (b) control; or
 - (c) the fact that both or all are permanently linked to one and the same third person by a control relationship;
- (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[^{F2};
- (48) [^{F5}‘consolidating supervisor’ means the competent authority responsible for the exercise of supervision on a consolidated basis of EU parent credit institutions and credit institutions controlled by EU parent financial holding companies.]

Textual Amendments

- F2** Substituted by [Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management \(Text with EEA relevance\).](#)

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- F4** Substituted by Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (Text with EEA relevance).
- F5** Inserted by Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management (Text with EEA relevance).

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.

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- (1) [OJ L 222, 14.8.1978, p. 11](#). Directive as last amended by Directive 2003/51/EC.
- (2) 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 ([OJ L 35, 11.2.2003, p. 1](#)). Directive as amended by Directive 2005/1/EC.