

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2006 relating to the taking up and pursuit of the business of credit institutions (recast) (Text with EEA relevance) (repealed)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

**PRINCIPLES AND TECHNICAL INSTRUMENTS FOR
PRUDENTIAL SUPERVISION AND DISCLOSURE**

CHAPTER 1

Principles of prudential supervision

Section 2

Exchange of information and professional secrecy

Article 44

1 Member States shall provide that all persons working for or who have worked for the competent authorities, as well as auditors or experts acting on behalf of the competent authorities, shall be bound by the obligation of professional secrecy.

No confidential information which they may receive in the course of their duties may be divulged to any person or authority whatsoever, except in summary or collective form, such that individual credit institutions cannot be identified, without prejudice to cases covered by criminal law.

Nevertheless, where a credit institution has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern third parties involved in attempts to rescue that credit institution may be divulged in civil or commercial proceedings.

2 Paragraph 1 shall not prevent the competent authorities of the various Member States from exchanging information in accordance with this Directive and with other Directives applicable to credit institutions. That information shall be subject to the conditions of professional secrecy indicated in paragraph 1.

Article 45

Competent authorities receiving confidential information under Article 44 may use it only in the course of their duties and only for the following purposes:

- (a) to check that the conditions governing the taking-up of the business of credit institutions are met and to facilitate monitoring, on a non-consolidated or consolidated basis, of the conduct of such business, especially with regard to the monitoring of liquidity, solvency, large exposures, and administrative and accounting procedures and internal control mechanisms;
- (b) to impose penalties;
- (c) in an administrative appeal against a decision of the competent authority; or

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- (d) in court proceedings initiated pursuant to Article 55 or to special provisions provided for in this in other Directives adopted in the field of credit institutions.

Article 46

Member States may conclude cooperation agreements, providing for exchanges of information, with the competent authorities of third countries or with authorities or bodies of third countries as defined in Articles 47 and 48(1) only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those referred to in Article 44(1). Such exchange of information shall be for the purpose of performing the supervisory task of the authorities or bodies mentioned.

Where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Article 47

Articles 44(1) and 45 shall not preclude the exchange of information within a Member State, where there are two or more competent authorities in the same Member State, or between Member States, between competent authorities and the following:

- (a) authorities entrusted with the public duty of supervising other financial organisations and insurance companies and the authorities responsible for the supervision of financial markets;
- (b) bodies involved in the liquidation and bankruptcy of credit institutions and in other similar procedures; and
- (c) persons responsible for carrying out statutory audits of the accounts of credit institutions and other financial institutions;

in the discharge of their supervisory functions.

Articles 44(1) and 45 shall not preclude the disclosure to bodies which administer deposit-guarantee schemes of information necessary to the exercise of their functions.

In both cases, the information received shall be subject to the conditions of professional secrecy specified in Article 44(1).

Article 48

1 Notwithstanding Articles 44 to 46, Member States may authorise exchange of information between the competent authorities and the following:

- a the authorities responsible for overseeing the bodies involved in the liquidation and bankruptcy of credit institutions and in other similar procedures; and
- b the authorities responsible for overseeing persons charged with carrying out statutory audits of the accounts of insurance undertakings, credit institutions, investment firms and other financial institutions.

In such cases, Member States shall require fulfilment of at least the following conditions:

- a the information shall be for the purpose of performing the supervisory task referred to in the first subparagraph;
- b information received in this context shall be subject to the conditions of professional secrecy specified in Article 44(1); and

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- c where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Member States shall communicate to the Commission and to the other Member States the names of the authorities which may receive information pursuant to this paragraph.

2 Notwithstanding Articles 44 to 46, Member States may, with the aim of strengthening the stability, including integrity, of the financial system, authorise the exchange of information between the competent authorities and the authorities or bodies responsible under law for the detection and investigation of breaches of company law.

In such cases Member States shall require fulfilment of at least the following conditions:

- a the information is for the purpose of performing the task referred to in the first subparagraph;
- b information received in this context is subject to the conditions of professional secrecy specified in Article 44(1); and
- c where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Where, in a Member State, the authorities or bodies referred to in the first subparagraph perform their task of detection or investigation with the aid, in view of their specific competence, of persons appointed for that purpose and not employed in the public sector, the possibility of exchanging information provided for in the first subparagraph may be extended to such persons under the conditions specified in the second subparagraph.

In order to implement the third subparagraph, the authorities or bodies referred to in the first subparagraph shall communicate to the competent authorities which have disclosed the information, the names and precise responsibilities of the persons to whom it is to be sent.

Member States shall communicate to the Commission and to the other Member States the names of the authorities or bodies which may receive information pursuant to this Article.

The Commission shall draw up a report on the application of the provisions of this Article.

Article 49

This Section shall not prevent a competent authority from transmitting information to the following for the purposes of their tasks:

- (a) central banks and other bodies with a similar function in their capacity as monetary authorities; and
- (b) where appropriate, to other public authorities responsible for overseeing payment systems.

This Section shall not prevent such authorities or bodies from communicating to the competent authorities such information as they may need for the purposes of Article 45.

Information received in this context shall be subject to the conditions of professional secrecy specified in Article 44(1).

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Article 50

Notwithstanding Articles 44(1) and 45, the Member States may, by virtue of provisions laid down by law, authorise the disclosure of certain information to other departments of their central government administrations responsible for legislation on the supervision of credit institutions, financial institutions, investment services and insurance companies and to inspectors acting on behalf of those departments.

However, such disclosures may be made only where necessary for reasons of prudential control.

Article 51

The Member States shall provide that information received under Articles 44(2) and 47 and information obtained by means of the on-the-spot verification referred to in Article 43(1) and (2) may never be disclosed in the cases referred to in Article 50 except with the express consent of the competent authorities which disclosed the information or of the competent authorities of the Member State in which on-the-spot verification was carried out.

Article 52

This Section shall not prevent the competent authorities of a Member State from communicating the information referred to in Articles 44 to 46 to a clearing house or other similar body recognised under national law for the provision of clearing or settlement services for one of their national markets if they consider that it is necessary to communicate the information in order to ensure the proper functioning of those bodies in relation to defaults or potential defaults by market participants. The information received in this context shall be subject to the conditions of professional secrecy specified in Article 44(1).

The Member States shall, however, ensure that information received under Article 44(2) may not be disclosed in the circumstances referred to in this Article without the express consent of the competent authorities which disclosed it.