

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2006 relating to the taking up and pursuit of the business of credit institutions (recast) (Text with EEA relevance) (repealed)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

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

Article 6

Member States shall require credit institutions to obtain authorisation before commencing their activities. Without prejudice to Articles 7 to 12, they shall lay down the requirements for such authorisation and notify them to the Commission.

Article 7

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 credit institution.

Article 8

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

Article 9

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.

‘Initial capital’ shall comprise capital and reserves as referred to in Article 57(a) and (b).

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 11(1).

2 Member States may, subject to the following conditions, grant authorisation to particular categories of credit institutions the initial capital of which is less than that specified in paragraph 1:

- a the initial capital shall be no less than EUR 1 million;
- b the Member States concerned shall notify the Commission of their reasons for exercising this option; and
- c the name of each credit institution that does not have the minimum capital specified in paragraph 1 shall be annotated to that effect in the list referred to in Article 14.

Article 10

1 A credit institution's own funds may not fall below the amount of initial capital required under Article 9 at the time of its authorisation.

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2 Member States may decide that credit institutions already in existence on 1 January 1993, the own funds of which do not attain the levels specified for initial capital in Article 9, 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.

3 If control of a credit institution falling within the category referred to in paragraph 2 is taken by a natural or legal person other than the person who controlled the institution previously, the own funds of that credit institution shall attain at least the level specified for initial capital in Article 9.

4 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 2, the own funds of the credit institution resulting from the merger may not fall below the total own funds of the merged credit institutions at the time of the merger, as long as the appropriate levels specified in Article 9 have not been attained.

5 If, in the cases referred to in paragraphs 1, 2 and 4, the own funds should be reduced, the competent authorities may, where the circumstances justify it, allow a credit institution a limited period in which to rectify its situation or cease its activities.

Article 11

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.

They 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:

- a any credit institution which is a legal person and which, under its national law, has a registered office shall have its head office in the same Member State as its registered office; and
- b any other credit institution shall have its head office in the Member State which granted its authorisation and in which it actually carries on its business.

Article 12

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

In determining a qualifying holding in the context of this Article, the voting rights referred to in Article 92 of Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities⁽¹⁾ shall be taken into consideration.

2 The competent authorities shall not grant 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 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.

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The competent authorities shall also not grant authorisation if the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the credit institution has close links, or difficulties involved in the enforcement of those laws, regulations or administrative provisions, 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 13

Reasons shall be given whenever a decision not to grant an authorisation is taken 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 14

Every authorisation shall be notified to the Commission.

The name of each credit institution to which authorisation has been granted shall be entered in a list. The Commission shall publish that list in the Official Journal of the European Union and shall keep it up to date.

Article 15

1 The competent authority shall, before granting authorisation to a credit institution, consult the competent authorities of the other Member State involved in the following cases:

- a the credit institution concerned is a subsidiary of a credit institution authorised in another Member State;
- b the credit institution concerned is a subsidiary of the parent undertaking of a credit institution authorised in another Member State; or
- c the credit institution concerned is controlled by the same persons, whether natural or legal, as control a credit institution authorised in another Member State.

2 The competent authority shall, before granting authorisation to a credit institution, consult the competent authority of a Member State involved, responsible for the supervision of insurance undertakings or investment firms in the following cases:

- a the credit institution concerned is a subsidiary of an insurance undertaking or investment firm authorised in the Community;
- b the credit institution concerned is a subsidiary of the parent undertaking of an insurance undertaking or investment firm authorised in the Community; or
- c the credit institution concerned is controlled by the same person, whether natural or legal, as controls an insurance undertaking or investment firm authorised in the Community.

3 The relevant competent authorities referred to in paragraphs 1 and 2 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 exchange any information regarding the suitability of shareholders and the reputation and experience of directors which is of relevance for the granting of an authorisation as well as for the ongoing assessment of compliance with operating conditions.

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Article 16

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 in accordance with Articles 22, 25, 26(1) to (3), 29 to 37 and 40.

Article 17

1 The competent authorities may withdraw the authorisation granted 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; or
- e falls within one of the other cases where national law provides for withdrawal of authorisation.

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

Article 18

For the purposes of exercising their activities, credit institutions may, notwithstanding any provisions in the host Member State concerning the use of the words 'bank', 'savings bank' or other banking names, 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 19

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 shall 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 paragraph 2, the competent authorities shall have a maximum of three months from the date of the notification provided for in the first and second subparagraphs 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 concerned. If they do not oppose the plan, they may fix a maximum period for its implementation.

2 If the person proposing to acquire 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

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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 credit 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 shall be subject to the prior consultation provided for in Article 15.

Article 20

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 shall 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.

Article 21

1 Credit institutions shall, on becoming aware 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 Article 19(1) and Article 20, inform the competent authorities of those acquisitions or disposals.

They shall also, at least once a year, inform the competent authorities 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.

2 The Member States shall require that, where the influence exercised by the persons referred to in Article 19(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 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 who fail to comply with the obligation to provide prior information, as laid down in Article 19(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.

3 In determining a qualifying holding and other levels of holding referred to in this Article, the voting rights referred to in Article 92 of Directive 2001/34/EC shall be taken into consideration.

Article 22

1 Home Member State competent authorities shall require that every credit institution have robust governance arrangements, which include a clear organisational structure with well defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks it is or might be exposed to, and adequate internal control mechanisms, including sound administrative and accounting procedures.

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2 The arrangements, processes and mechanisms referred to in paragraph 1 shall be comprehensive and proportionate to the nature, scale and complexity of the credit institution's activities. The technical criteria laid down in Annex V shall be taken into account.

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- (1) [OJ L 184, 6.7.2001, p. 1](#). Directive as last amended by Directive 2005/1/EC.