

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of credit institutions (recast) (Text with EEA relevance) (repealed)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 III

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

Section 1

Credit institutions

Article 23

The Member States shall provide that the activities listed in Annex I may be carried on within their territories, in accordance with Articles 25, 26(1) to (3), 28(1) and (2) and 29 to 37 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.

Section 2

Financial institutions

Article 24

1 The Member States shall provide that the activities listed in Annex I may be carried on within their territories, in accordance with Articles 25, 26(1) to (3), 28(1) and (2) and 29 to 37, 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:

- a the parent undertaking or undertakings shall be authorised as credit institutions in the Member State by the law of which the financial institution is governed;
- b the activities in question shall actually be carried on within the territory of the same Member State;
- c the parent undertaking or undertakings shall hold 90 % or more of the voting rights attaching to shares in the capital of the financial institution;
- d the parent undertaking or undertakings shall satisfy the competent authorities regarding the prudent management of the financial institution and shall 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 financial institution; and
- e the financial institution shall 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 Title V, Chapter 4, Section 1, in particular for the purposes of the minimum own funds requirements set out in Article 75 for the

control of large exposures and for purposes of the limitation of holdings provided for in Articles 120 to 122.

Compliance with these conditions shall be verified by the competent authorities of the home Member State and the latter shall supply the financial institution with a certificate of compliance which shall form Part of the notification referred to in Articles 25 and 28.

The competent authorities of the home Member State shall ensure the supervision of the financial institution in accordance with Articles 10(1), 19 to 22, 40, 42 to 52 and 54.

2 If a financial institution as referred to in the first subparagraph of paragraph 1 ceases 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 financial institution in the host Member State shall become subject to the legislation of the host Member State.

3 Paragraphs 1 and 2 shall apply *mutatis mutandis* to subsidiaries of a financial institution as referred to in the first subparagraph of paragraph 1.

Section 3

Exercise of the right of establishment

Article 25

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

2 Member States 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; and
- d the names of those to be 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 credit institution accordingly.

The home Member State's competent authorities shall also communicate the amount of own funds and the sum of the capital requirements under Article 75 of the credit institution.

By way of derogation from the second subparagraph, in the case referred to in Article 24, the home Member State's competent authorities shall communicate the amount of own funds of the financial institution and the sum of the consolidated own funds and consolidated capital requirements under Article 75 of the credit institution which is its parent undertaking.

4 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 credit institution concerned within three months of receipt of all the information.

That refusal or a failure to reply, shall be subject to a right to apply to the courts in the home Member State.

Article 26

1 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 referred to in Article 25, prepare for the supervision of the credit institution in accordance with Section 5 and if necessary indicate the conditions under which, in the interest of the general good, those activities shall be carried on in the host Member State.

2 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 1 without receipt of any communication from the latter, the branch may be established and may commence its activities.

3 In the event of a change in any of the particulars communicated pursuant to points (b), (c) or (d) of Article 25(2), 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 Article 25 and the competent authorities of the host Member State to take a decision on the change pursuant to paragraph 1 of this Article.

4 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 Article 25 and in paragraphs 1 and 2 of this Article. They shall be governed, from 1 January 1993, by paragraph 3 of this Article and by Articles 23 and 43 as well as Sections 2 and 5.

Article 27

Any number of places of business set up in the same Member State by a credit institution with headquarters in another Member State shall be regarded as a single branch.

Section 4

Exercise of the freedom to provide services

Article 28

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 provided for 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.

Section 5

Powers of the competent authorities of the host Member State

Article 29

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 41, 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.

Article 30

1 Where the competent authorities of a host Member State ascertain that a credit 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 credit institution concerned to put an end to that irregular situation.

2 If the credit 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 credit institution concerned puts an end to that irregular situation. The nature of those measures shall be communicated to the competent authorities of the host Member State.

3 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 credit institution persists in violating the legal rules referred to in paragraph 1 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 credit 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.

Article 31

Articles 29 and 30 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 interests of the general good. This shall include the possibility of preventing offending credit institutions from initiating further transactions within their territories.

Article 32

Any measure taken pursuant to Article 30(2) and (3), or Article 31 involving penalties or restrictions on the exercise of the freedom to provide services shall be properly justified and communicated to the credit institution concerned. Every such measure shall be subject to a right of appeal to the courts in the Member State in which it was taken.

Article 33

Before following the procedure provided for in Article 30, 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 shall 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 shall amend or abolish those measures.

Article 34

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 offending credit institutions from initiating further transactions within their territories.

Article 35

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 credit institution concerned from initiating further transactions within its territory and to safeguard the interests of depositors.

Article 36

The Member States shall inform the Commission of the number and type of cases in which there has been a refusal pursuant to Articles 25 and 26(1) to (3) or in which measures have been taken in accordance with Article 30(3).

Article 37

This Section shall not 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 interests of the general good.