

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2006 relating to the taking up and pursuit of the business of credit institutions (recast) (Text with EEA relevance) (repealed)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 1

Competence of home and host Member State

Article 40

1 The prudential supervision of a credit institution, including that of the activities it carries on in accordance with Articles 23 and 24, shall be the responsibility of the competent authorities of the home Member State, without prejudice to those provisions of this Directive which give responsibility to the competent authorities of the host Member State.

2 Paragraph 1 shall not prevent supervision on a consolidated basis pursuant to this Directive.

[^{F13} The competent authorities in one Member State shall, in the exercise of their general duties, duly consider the potential impact of their decisions on the stability of the financial system in all other Member States concerned and, in particular, in emergency situations, based on the information available at the relevant time.]

Textual Amendments

- F1** 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 41

Host Member States shall, pending further coordination, retain responsibility in cooperation with the competent authorities of the home Member State for the supervision of the liquidity of the branches of credit institutions.

Without prejudice to the measures necessary for the reinforcement of the European Monetary System, host Member States shall retain complete responsibility for the measures resulting from the implementation of their monetary policies.

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Such measures may not provide for discriminatory or restrictive treatment based on the fact that a credit institution is authorised in another Member State.

Article 42

The competent authorities of the Member States concerned shall collaborate closely in order to supervise the activities of credit institutions operating, in particular through a branch, in one or more Member States other than that in which their head offices are situated. They shall supply one another with all information concerning the management and ownership of such credit institutions that is likely to facilitate their supervision and the examination of the conditions for their authorisation, and all information likely to facilitate the monitoring of such institutions, in particular with regard to liquidity, solvency, deposit guarantees, the limiting of large exposures, administrative and accounting procedures and internal control mechanisms.

[^{F2}The competent authorities may refer to EBA situations where a request for collaboration, in particular to exchange information, has been rejected or has not been acted upon within a reasonable time. Without prejudice to Article 258 of the Treaty on the Functioning of the European Union (TFEU), EBA may, in situations referred to in the first sentence, act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1093/2010.

In order to ensure consistent harmonisation of this Article, EBA shall develop draft regulatory technical standards to specify the information contained in this Article.

In order to ensure uniform conditions of application of this Article, EBA shall develop draft implementing technical standards to establish standard forms, templates and procedures for the information sharing requirements which are likely to facilitate the monitoring of credit institutions.

EBA shall submit those draft technical standards to the Commission by 1 January 2014.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the third paragraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010.

Power is also conferred on the Commission to adopt the implementing technical standards referred to in the fourth paragraph in accordance with Article 15 of Regulation (EU) No 1093/2010.]

Textual Amendments

- F2** Inserted by [Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority \(European Banking Authority\), the European Supervisory Authority \(European Insurance and Occupational Pensions Authority\) and the European Supervisory Authority \(European Securities and Markets Authority\)](#) (Text with EEA relevance).

[^{F1}Article 42a

1 The competent authorities of a host Member State may make a request to the consolidating supervisor where Article 129(1) applies or to the competent authorities of the home Member State, for a branch of a credit institution to be considered as significant.

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That request shall provide reasons for considering the branch to be significant with particular regard to the following:

- a whether the market share of the branch of a credit institution in terms of deposit exceeds 2 % in the host Member State;
- b the likely impact of a suspension or closure of the operations of the credit institution on market liquidity and the payment and clearing and settlement systems in the host Member State; and
- c the size and the importance of the branch in terms of number of clients within the context of the banking or financial system of the host Member State.

The competent authorities of the home and host Member States, and the consolidating supervisor where Article 129(1) applies, shall do everything within their power to reach a joint decision on the designation of a branch as being significant.

If no joint decision is reached within two months of receipt of a request under the first subparagraph, the competent authorities of the host Member State shall take their own decision within a further period of two months on whether the branch is significant. In taking their decision, the competent authorities of the host Member State shall take into account any views and reservations of the consolidating supervisor or the competent authorities of the home Member State.

[^{F2}If, at the end of the initial two-month period any of the competent authorities concerned has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the competent authorities of the host Member State shall defer their decision and await the decision that EBA may take in accordance with Article 19(3) of that Regulation. The competent authorities of the host Member State shall take their decision in conformity with that of EBA. The two-month period shall be deemed to be the ‘conciliation phase’ within the meaning of Article 19 of that Regulation. EBA shall take its decision within 1 month. The matter shall not be referred to EBA after the end of the initial two month period or after a joint decision has been reached.]

The decisions referred to in the third and fourth subparagraph shall be set out in a document containing the fully reasoned decision and transmitted to the competent authorities concerned, and shall be recognised as determinative and applied by the competent authorities in the Member States concerned.

The designation of a branch as being significant shall not affect the rights and responsibilities of the competent authorities under this Directive.

2 The competent authorities of the home Member State shall communicate to the competent authorities of a host Member State where a significant branch is established the information referred to in Article 132(1)(c) and (d) and carry out the tasks referred to in Article 129(1)(c) in cooperation with the competent authorities of the host Member State.

If a competent authority of a home Member State becomes aware of an emergency situation within a credit institution as referred to in Article 130(1), it shall alert as soon as practicable the authorities referred to in the fourth paragraph of Article 49 and in Article 50.

3 Where Article 131a does not apply, the competent authorities supervising a credit institution with significant branches in other Member States shall establish and chair a college of supervisors to facilitate the cooperation under paragraph 2 of this Article and Article 42. The establishment and functioning of the college shall be based on written arrangements determined, after consultation with competent authorities concerned, by the competent authority of the home Member State. The competent authority of the home Member State shall decide which competent authorities participate in a meeting or in an activity of the college.

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The decision of the competent authority of the home Member State shall take account of the relevance of the supervisory activity to be planned or coordinated for those authorities, in particular the potential impact on the stability of the financial system in the Member States concerned referred to in Article 40(3) and the obligations referred to in paragraph 2 of this Article.

The competent authority of the home Member State shall keep all members of the college fully informed, in advance, of the organisation of such meetings, the main issues to be discussed and the activities to be considered. The competent authority of the home Member State shall also keep all the members of the college fully informed, in a timely manner, of the actions taken in those meetings or the measures carried out.

[^{F2}In order to ensure consistent harmonisation of this Article, EBA may develop draft regulatory technical standards in order to specify general conditions for the functioning of colleges of supervisors.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the fourth subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010.

In order to ensure uniform conditions of application of this Article, EBA may develop draft implementing technical standards in order to determine the operational functioning of colleges of supervisors.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the sixth subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.]

Textual Amendments

- F1** 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).
- F2** Inserted by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Text with EEA relevance).

Article 42b

[^{F31} In the exercise of their duties, the competent authorities shall take into account the convergence in respect of supervisory tools and supervisory practices in the application of the laws, regulations and administrative requirements adopted pursuant to this Directive. For that purpose, Member States shall ensure that:

- a the competent authorities participate in the activities of EBA;
- b the competent authorities follow the guidelines and recommendations of EBA and state the reasons if they do not do so;
- c national mandates conferred on the competent authorities do not inhibit the performance of their duties as members of EBA or under this Directive.]]

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Textual Amendments

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- F3** Substituted by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Text with EEA relevance).
- F4** Deleted by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Text with EEA relevance).

Article 43

1 Host Member States shall provide that, where a credit institution authorised in another Member State carries on its activities through a branch, the competent authorities of the home Member State may, after having first informed the competent authorities of the host Member State, carry out themselves or through the intermediary of persons they appoint for that purpose on-the-spot verification of the information referred to in Article 42.

2 The competent authorities of the home Member State may also, for purposes of the verification of branches, have recourse to one of the other procedures laid down in Article 141.

3 Paragraphs 1 and 2 shall not affect the right of the competent authorities of the host Member State to carry out, in the discharge of their responsibilities under this Directive, on-the-spot verifications of branches established within their territory.