Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions

TITLE VIII

TRANSITIONAL AND FINAL PROVISIONS

CHAPTER 1

TRANSITIONAL PROVISIONS

Article 61

Transitional provisions regarding Article 36

Denmark may allow its mortgage credit institutions organised as cooperative societies or funds before 1 January 1990 and converted into public limited liability companies to continue to include joint and several commitments of members, or of borrowers as referred to in Article 36(1) claims on whom are treated in the same way as such joint and several commitments, in their own funds, subject to the following limits:

(a) the basis for calculation of the part of joint and several commitments of borrowers shall be the total of the items referred to in Article 34(2)(1) and (2), minus those referred to in Article 34(2)(9), (10) and (11);

(b) the basis for calculation on 1 January 1991 or, if converted at a later date, on the date on conversion, shall be the maximum basis for calculation. The basis for calculation may never exceed the maximum basis for calculation;

(c) the maximum basis for calculation shall, from 1 January 1997, be reduced by half of the proceeds from any issue of new capital, as defined in Article 34(2)(1), made after that date; and

(d) the maximum amount of joint and several commitments of borrowers to be included as own funds must never exceed:

50 % in 1991 and 1992,
45 % in 1993 and 1994,
40 % in 1995 and 1996,
35 % in 1997,
30 % in 1998,
20 % in 1999,
10 % in 2000, and
0 % after 1 January 2001, of the basis for calculation.

Article 62

Transitional provisions regarding Article 43

1 Until 31 December 2006, the competent authorities of the Member States may authorise their credit institutions to apply a 50 % risk weighting to loans fully and completely secured to their satisfaction by mortgages on offices or on multi-purpose commercial premises situated within the territory of those Member States that allow the 50 % risk weighting, subject to the following conditions:

(i) the 50 % risk weighting applies to the part of the loan that does not exceed a limit calculated according to either (a) or (b):

(a) 50 % of the market value of the property in question.

The market value of the property must be calculated by two independent valuers making independent assessments at the time the loan is made. The loan must be based on the lower of the two valuations.

The property shall be revalued at least once a year by one valuer. For loans not exceeding EUR 1 million and 5 % of the own funds of the credit institution, the property shall be revalued at least every three years by one valuer;

(b) 50 % of the market value of the property or 60 % of the mortgage lending value, whichever is lower, in those Member States that have laid down rigorous criteria for the assessment of the mortgage lending value in statutory or regulatory provisions.

The mortgage lending value shall means the value of the property as determined by a valuer making a prudent assessment of the future marketability of the property by taking into account long-term sustainable aspects of the property, the normal and local market conditions, the current use and alternative appropriate uses of the property. Speculative elements shall not be taken into account in the assessment of the mortgage lending value. The mortgage lending value shall be documented n a transparent and clear manner.

At least every three years or if the market falls by more than 10 % the mortgage lending value and in particular the underlying assumptions concerning the development of the relevant market, shall be reassessed.

In both (a) and (b) 'market value' shall mean the price at which the property could be sold under private contract between a willing seller and an arm's-length buyer on the date of valuation, it being assumed that the property is publicly exposed to the market, that market conditions permit orderly disposal and that a normal period, having regard to the nature of the property, is available for the negotiation of the sale;

(ii) the 100 % risk weighting applies to the part of the loan that exceeds the limits set out in (i);

(iii) the property must be either used or let by the owner.

The first subparagraph shall not prevent the competent authorities of a Member State, which applies a higher risk weighting in its territory, from allowing, under the conditions defined above, the 50 % risk weighting to apply for this type of lending in the territories of those Member States that allow the 50 % risk weighting.

The competent authorities of the Member States may allow their credit institutions to apply a 50 % risk weighting to the loans outstanding on 21 July 2000 provided that the conditions listed in this paragraph are fulfilled. In this case the property shall be valued according to the assessment criteria laid down above not later than 21 July 2003.

For loans granted before 31 December 2006, the 50 % risk weighting remains applicable until their maturity, if the credit institution is bound to observe the contractual terms.

Until 31 December 2006, the competent authorities of the Member State may also authorise their credit institutions to apply a 50 % risk weighting to the part of the loans fully and completely secured to their satisfaction by shares in Finnish housing companies operating in accordance with the Finnish Housing Company Act of 1991 or subsequent equivalent legislation, provided that the conditions laid down in this paragraph are fulfilled.

Member States shall inform the Commission of the use they make of this paragraph.

2 Member States may apply a 50 % risk weighting to property leasing transactions concluded before 31 December 2006 and concerning assets for business use situated in the country of the head office and governed by statutory provisions whereby the lessor retains full ownership of the rented asset until the tenant exercises his option to purchase. Member States shall inform the Commission of the use they make of this paragraph.

3 Article 43(3) shall not affect the competent authorities' recognition of bilateral contracts for novation concluded concerning:

— Belgium, before 23 April 1996,
— Denmark, before 1 June 1996,
— Germany, before 30 October 1996,
— Greece, before 27 March 1997,
— Spain, before 7 January 1997,
— France, before 30 May 1996,
— Ireland, before 27 June 1996,
— Italy, before 30 July 1996,
— Luxembourg, before 29 May 1996,
— the Netherlands, before 1 July 1996,
— Austria, before 30 December 1996,
— Portugal, before 15 January 1997,
— Finland, before 21 August 1996,
— Sweden, before 1 June 1996, and
— United Kingdom, before 30 April 1996.

Article 63

Transitional provisions regarding Article 47

1 A credit institution, the minimum ratio of which has not reached the 8 % prescribed in Article 47(1), by 1 January 1991, must gradually approach that level by successive stages. It may not allow the ratio to fall below the level reached before that objective has been attained.

Any fluctuation should be temporary and the competent authorities should be apprised of the reasons for it.

2 For not more than five years after 1 January 1993, the Member States may fix a weighting of 10 % for the bonds defined in Article 22(4) of Directive 85/611/EEC and maintain if for credit institutions when and if they consider it necessary, to avoid grave disturbances in the operation of their markets. Such exceptions shall be reported to the Commission.

3 For not more than seven years after 1 January 1993, Article 47(1) shall not apply to the Agricultural Bank of Greece. However, the latter must approach the level prescribed in Article 47(1) by successive stages according to the method described in paragraph 1 of this Article.

Article 64

Transitional provisions regarding Article 49

1 If, on 5 February 1993, a credit institution had already incurred an exposure or exposures exceeding either the large exposure limit or the aggregate large exposure limit laid down in Article 49, the competent authorities shall require the credit institution concerned to take steps to have that exposure or those exposures brought within the limits laid down in Article 49.

2 The process of having such an exposure or exposures brought within authorised limits shall be devised, adopted, implemented and completed within the period which the competent authorities consider consistent with the principle of sound administration and fair competition. The competent authorities shall inform the Commission[F1 and the Banking Advisory Committee] of the schedule for the general process adopted.

3 A credit institution may not take any measure which would cause the exposures referred to in paragraph 1 to exceed their level on 5 February 1993

4 The period applicable under paragraph 2 shall expire no later than 31 December 2001. Exposures with a longer maturity, for which the lending institution is bound to observe the contractual terms, may be continued until their maturity.

5 Until 31 December 1998, Member States may increase the limit laid down in Article 49(1) to 40 % and the limit laid down in Article 49(2) to 30 %. In such cases and subject to paragraphs 1 to 4, the time limit for bringing the exposures existing at the end of this period within the limit laid down in Article 49 shall expire on 31 December 2001.

6 In the case of credit institutions the own funds of which do not exceed EUR 7 million and only in the case of such institutions, Member States may extend the time limits laid down in paragraph 5 by five years. Member States that avail themselves of the option provided for in this paragraph shall take steps to prevent distortions of competition and shall inform the Commission[F1 and the Banking Advisory Committee] thereof.

7 In the cases referred to in paragraphs 5 and 6, an exposure may be considered a large exposure if its value is equal to or exceeds 15 % of own funds.

8 Until 31 December 2001 Member States may substitute a frequency of at least twice a year for the frequency of notification of large exposures referred to in the second indent of Article 48(2).

9 Member States may fully or partially exempt from the application of Article 49(1), (2) and (3) exposures incurred by a credit institution consisting of mortgage loans as defined in Article 62(1) concluded before 1 January 2002 as well as property leasing transactions as

defined in Article 62(2) concluded before 1 January 2002, in both cases up to 50 % of the value of the property concerned.

The same treatment applies to loans secured, to the satisfaction of the competent authorities, by shares in Finnish residential housing companies, operating in accordance with the Finnish Housing Company Act of 1991 or subsequent equivalent legislation which are similar to the mortgage loans referred to in the first subparagraph.

Textual Amendments

F1 Deleted by Directive 2005/1/EC of the European Parliament and of the Council of 9 March 2005 amending Council Directives 73/239/EEC, 85/611/EEC, 91/675/EEC, 92/49/EEC and 93/6/EEC and Directives 94/19/EC, 98/78/EC, 2000/12/EC, 2001/34/EC, 2002/83/EC and 2002/87/EC in order to establish a new organisational structure for financial services committees (Text with EEA relevance).

Article 65

Transitional provisions regarding Article 51

Credit institutions which, on 1 January 1993, exceeded the limits laid down in Articles 51(1) and (2) shall have until 1 January 2003 to comply with them.