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Volume I

Proposal for

DIRECTIVES OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

Re-casting 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 and Council Directive 93/6/EEC of 15 March 1993 on the capital adequacy of investment firms and credit institutions.

(presented by the Commission)

{SEC(2004) 921}

EXPLANATORY MEMORANDUM

1. GENERAL COMMENTS

A single financial market in the EU will be a key factor in promoting the competitiveness of the European economy and the lowering the capital cost to companies. The Financial Services Action Plan announces a directive on new capital adequacy rules for credit institutions and investment firms in 2004, in step with progress at G-10 level in the Basel Committee on Banking Supervision[1].

The agreement by the G-10 Basel Committee on Banking Supervision of the so-called Basel Accord in 1988 (Basel I) led to the adoption of minimum capital requirements across over 100 countries[2]. It was broadly contemporaneous to the adoption of key EU directives (*Directive 89/299/EEC of 17.4.1989 on own funds*, *Directive 89/647/EEC of 18.12.1989 on a solvency ratio*, consolidated in *Directive 2000/12/EC of the European Parliament and of the Council of 20.3.2000 relating to the taking up and pursuit of the business of credit institutions*).

These directives addressed credit institutions' risks arising from credit-granting activities. *Directive 93/6/EEC of 15.3.1993 on the capital adequacy of investment firms and credit institutions* extended both the credit risk and market risk rules to investment firms.

1) The need for improved European requirements.

The existing rules have made a significant contribution to the single market and high prudential standards. However, various important shortcomings have been identified.

1. Crude estimates of credit risks result in an extremely crude measure of risk and is in danger of falling into disrepute.

2. Scope for capital arbitrage: innovations in markets have enabled financial institutions to effectively arbitrage the mismatch between institutions' own allocation of capital to risks and minimum capital requirements.

3. Lack of recognition of effective risk mitigation: the present Directives do not provide appropriate levels of recognition for risk mitigation techniques.

4. Incompleteness of the risks covered under the existing directives, including operational risk, which are not subject to any capital charges.

5. Absence of requirement for supervisors to evaluate the actual risk profile of credit institutions to satisfy themselves that adequate capital is held having regard to that risk profile.

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1 The Basel Committee on Banking Supervision was established by the central bank Governors of the Group of Ten (G-10) countries. It consists of representatives of the authority responsible for prudential supervision of banks from the following countries: Belgium, Canada, France, Germany, Italy, Japan, Luxembourg, the Netherlands, Spain, Sweden, Switzerland, the United Kingdom and the United States. The European Commission, along with the European Central Bank, participates as an observer.

2 While formally agreed by the authorities of the G-10 group of industrialised countries for application to internationally active banks, the 1988 Accord has been applied throughout the world to banks of all sizes and levels of complexity.

6. Absence of requirement for supervisory cooperation: in an increasingly cross-border market authorities must cooperate effectively with each other in the supervision of cross-border groups to reduce regulatory burdens.

7. Absence of proper market disclosures: the present Directives do not facilitate effective market discipline for reliable information for market participants to make well-founded assessments.

8. Lack of flexibility in the regulatory framework: the current EU system the lacks the flexibility to keep pace with rapid developments in financial markets and risk management practices, and with improvements in regulatory and supervisory tools.

What would happen under a "no policy change" scenario?

There is strong consensus that the present situation is unsustainable. Capital requirements and risks would continue to be misaligned resulting in limited effectiveness of the prudential rules and increased risks to consumers and financial stability. The full extent of the risks that some financial institutions are undertaking would still not be captured. In addition, the newest and most effective risk management techniques would not be actively encouraged or recognised and financial services groups operating in more than one Member State would continue to be subject to disproportionate burdens resulting from multiple layers of regulation and supervision. Finally, the EU would be unable to benefit appropriately from future developments, given the difficulty in speedily updating the current EU regulatory framework. In view of the proposed global implementation of the new Basel Accord the EU financial services sector would be significantly disadvantaged compared with its overseas competitors.

2) The approach of the Directive

The Commission's 1998 Financial Services Action Plan stated that the EU needed accurate, internationally consistent, up to date prudential standards. They should also be proportionate recognising the reduction in risks arising from the context in which exposures are incurred, and in particular lending to consumers and to small- or medium-sized entities. Rules should apply to both credit institutions and investment firms (level playing field) but also need to be proportionate and take fully into account the 'biodiversity' of EU financial institutions.

2. CONSULTATION AND IMPACT ASSESSMENT

a) Consultation of stakeholders and interested parties

The Commission has been engaged in consultation with stakeholders and interested parties since November 1999. Three full consultation papers have been issued on 22.11.1999, 5.2.2001 and 1.7.2003. A full and structured dialogue with stakeholders was organised on 18.11.2002. Consultation papers on specific technical issues have been published (real estate and covered bonds on 7.4. 2003; 'expected losses and unexpected losses´ on 26.11.2003; collective investment undertakings on 3.2.2004).

Commentators have generally been very supportive of the major objectives of the project. Enhanced risk-sensitivity leading to greater financial stability is supported and there is now a pressing need for the rules to be updated, to respond to the significant advances in techniques for risk measurement and management in financial services, and to reflect increased regulatory and supervisory sophistication. There is strong support for the Commission's

approach that the EU capital framework should be revised consistent with the new international framework but differentiated where necessary for EU specificities.

Less complex institutions

There is broad and significant support for the application of the new rules in Europe – to all credit institutions and investment services providers whatever the legal nature and complexity of the institution, also to avoid 'second class' institutions that would be likely to result if some were excluded. This reflects the perception that the proposed new framework has been well designed for the purposes of broad application.

Flexibility of the new directive

There is continued wide and strong support for the approach proposed to ensure that the new framework is responsive to market and supervisory innovation to maintain an optimally efficient and competitive EU financial services sector. Stakeholders support the approach where enduring principles and objectives are set out in the articles and provide the mandate for the more detailed and technical provisions contained in the annexes. The procedure for amending the annexes must ensure full and effective consultation with interested parties.

Investment firms

Significant modifications have been introduced to address concerns expressed by some from the investment firm sector about being subject to capital requirements which they perceive to be more appropriate for credit institutions.

Complexity

Some respondents asked for simplification and less prescription. The Commission has increased the clarity and user-friendliness of the text. The design will be attractive to those institutions seeking simple rules to apply or wishing to progress gradually to more complex capital rules. The proposed new framework contains a range of options and approaches of different degrees of sophistication.

Since 1999 there have also been several consultations on detailed issues. The proposal has been taken account of very detailed and useful comments from interested parties, in particular the banking and investment firm industry.

b) Impact assessment

An extended impact assessment has been carried out to identify whether there is a need for action at EU level and, if so, the action required.

The Basel Committee published a quantitative impact study (QIS3) involving credit institutions across 40 countries to assess the impact of the new Basel proposals on banks' minimum capital requirements. The Commission assisted in extending this study to EU countries not represented in Basel. The key conclusions were that the new rules will in general reduce capital requirements for EU credit institutions by around 5% compared to present levels. Furthermore, the outcomes for the different approaches are in line with objectives – particularly combining capital neutrality with appropriate incentives for institutions to move towards more sophisticated approaches. Finally, smaller domestic credit institutions adopting the simple approach will face slightly reduced capital charges; larger internationally active credit institutions adopting the more advanced approach will face substantially unchanged capital charges; smaller but specialised and sophisticated EU credit institutions adopting the advanced approach might face substantially lower capital

requirements than at present. Importantly, the main source of reduction in capital requirements is the 'retail' portfolio, which is mostly composed of loans to Small and Medium Enterprises (SMEs) below EUR 1 million and residential mortgage loans. The new operational risk capital charge is the main source of offset of this decrease in capital requirements for credit institutions.

In addition, at the request of the Barcelona European Council the Commission commissioned a study on the consequences of the draft proposed new capital requirements for credit institutions and investment firms in the EU[3]. The final report, prepared by PricewaterhouseCoopers, is positive about the impact (with only two areas of criticism – investment firms and venture capital - both of which have been addressed in the Commission's proposals).[4] The key conclusions are that the new capital requirements framework should be positive for the EU, and for prudential regulation in the EU. EU credit institutions' capital requirements should decrease by ± 5% (€ 90 billion) and translate into an annual increase in profits of ± € 10-12 billion. There is no disadvantage for smaller credit institutions and no indication that the new regime will force mergers or consolidation. The decision to cover all credit institutions in the directive will not put EU firms at a competitive disadvantage, nor is the US decision to apply only advanced approaches to some 20 big credit institutions a significant competitive factor. Implementation costs for EU credit institutions are not solely driven by Basel II and many of these investments (perhaps as high as 80%) would have happened anyway, although over a longer period. Importantly, there will be no negative impact on the availability and cost of finance for SMEs in most EU Member States ('procyclicality' effects are less - and less damaging - than the present rules). SME fears stem from insufficient information understanding of Basel II. The macro-economic effects of Basel II on the EU-economy are small - there could be a benign supply-side shock to the economy reducing the cost of capital to firms and generating an increase of 0.07% in EU GDP. In general the new capital framework will reduce the banking system's vulnerability through greater awareness of risk, improved risk management, and a more efficient allocation of capital should have beneficial long-run consequences for the EU economy.

3. LEGAL BASIS

The proposals are based on Article 47(2) of the Treaty, which is the legal basis to adopt Community measures aimed at achieving the Internal Market in financial services. The chosen instrument is a Directive as the most appropriate to achieve the objectives and it amends existing directives covering the same technical issues. Its provisions do not go beyond what it is necessary to achieve the objectives pursued.

4. COMMENTS ON THE ARTICLES

The proposals apply the 're-casting technique' (Interinstitutional Agreement 2002/C 77/01) enabling substantive amendments to existing legislation without a self-standing amending directive. This reduces complexity and makes EU legislation more accessible and comprehensible.

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[3] OJ S167 of 29/08/2002,

[4] Available on Commission website - http://europa.eu.int/comm/internal_market/regcapital/index_en.htm

Amendments of a non-substantive nature are made to many provisions to improve the structure, drafting and readability of the directives.

A. DIRECTIVE 2000/12/EC

Article 4: Definitions

Article 4 contains certain new definitions concerning essential concepts to clarify their meaning and contribute to a better understanding.

Article 22:

The existing wording has been amended to clarify and develop the obligation for credit institutions to have in place effective internal risk management systems. Given the diversity of credit institutions covered, these requirements will have to be met on a proportionate basis. Relevant technical provisions are in Annex V.

Articles 56-67:

A small number of amendments have been made. Although it is not intended to review the definition of 'own funds', as a consequence of the modified approach to expected loss in the Basel Committee ('Madrid decision'), some limited amendments are necessary.

Articles 68-75:

Credit institutions must hold adequate own funds on an ongoing basis and state the minimum level of those own funds. The provisions specify how the requirements should be met if the credit institution is part of a group (the existing option for Member States' authorities to waive certain requirements has been retained but with more precision). The calculation of the requirements has been clarified in the light of the introduction of Regulation (EC) no.1606/2002 on international accounting standards.

Articles 76-101:

These provisions replace the existing solvency ratio requirements for credit risk and introduce two methods to calculate risk weighted exposure amounts.

The Standardised Approach (Art. 78-83) is based on the existing framework, with risk weights determined by the allocation of assets and off-balance sheet items to a limited number of risk buckets. Risk sensitivity has been increased by the number of exposure classes and risk buckets (Art. 79). There are lower risk weights for non-mortgage retail items (75%) and residential mortgages (35%). A 150% risk weight for assets which are 90 days past due (100% for residential mortgages) is introduced. The use of credit rating agencies' ratings to assign risk weights where these are available ('external ratings') is permitted (Art 81-83). Relevant technical provisions are in Annex VI.

The Internal Ratings Based (IRB) approach (Art 84-89), permits credit institutions to use their own estimates of the risk parameters inherent in their different credit risk exposures. These parameters form the inputs into a prescribed calculation designed to provide soundness to a 99.9% confidence level. The 'Foundation' Approach allows credit institutions to use their own estimates of probability of default, while using regulatory prescribed values for other risk

components. Under the 'Advanced' Approach, credit institutions may use their own estimates for losses given default and their exposure at default. Credit institutions are allowed to use pooled data in the estimation of risk parameter values. This allows smaller credit institutions to apply a more risk sensitive approach to calculating capital requirements.

The proposed 'roll-out' rules (Art. 85) for the IRB approach provide flexibility for credit institutions to move different business lines and exposure classes to the Foundation or the Advanced IRB Approach during a reasonable timeframe. 'Partial' use is allowed for non-material exposure classes and business lines (capital requirements can be calculated under the Standardised Approach even if a credit institution uses the IRB Approach for other exposure classes). The proposed EU framework recognises that, for small credit institutions the requirement to develop a rating system for certain counterparties is potentially very burdensome. Permanent partial use for these exposure classes is proposed even in cases where credit institutions' exposures to such counterparts are material (Art. 89).

Relevant technical provisions for the IRB approach are in Annex VI.

Articles 90-93:

The rules identify common issues for mitigation techniques and treat common underlying risks or economic effects consistently. These include the recognition of a wider range of collateral and guarantee/credit derivative providers than at present. The IRB Foundation Approach gives a prudentially appropriate level of recognition to financial receivables and physical collateral. Alternative methodologies are available for credit institutions to choose between methods of different levels of complexity (a Simple Method – based on an easy-to-use 'risk weight substitution' approach; or a Comprehensive Method – involving the application of volatility adjustments to the value of the collateral received). To calculate volatility adjustments more and less complex approaches are made available (a simple 'Supervisory' approach where the amounts of the benchmark volatility adjustments are set out in a table; or a more risk-sensitive 'Own Estimates' approach). Relevant technical provisions are in Annex VIII.

Articles 94-101:

These articles introduce for the first time a harmonised set of rules for capital requirements for securitisation activities and investments. This provides a significantly improved capital requirements framework – allowing credit institutions to take advantage of the funding, balance-sheet management and other advantages that such transactions can deliver. It will also reduce the extent to which securitisation has been seen as an instrument of capital arbitrage. Relevant technical provisions are in Annex IX.

Articles 102-105:

These provisions introduce requirements to meet the operational risk faced by credit institutions. Three different methodologies are available. A simple approach (Art. 103) based on a single income indicator (Basic Indicator Approach - BIA). This approach provides a capital buffer against operational risk, without requiring credit institutions to develop sophisticated and costly information systems about their risk exposure. A more precise approach based on business lines (Standardised Approach - STA) (Art. 104) is more risk-sensitive as the capital requirement for operational risk is differentiated to reflect the relative risks of different business lines. This approach is likely to be attractive to a large number of smaller / less complex credit institutions. More sophisticated methodologies (Advanced

Measurement Approaches - AMAs) (Art. 105) generate their own measures of operational risk, subject to more demanding risk management standards. AMAs are expected to be gradually adopted mainly by large internationally active credit institutions and smaller specialised credit institutions which have developed advanced risk monitoring systems for their main activities. Relevant technical provisions are in Annex X.

Articles 106-119:

A small number of amendments bring consistency between capital requirements and the large exposures rules, in particular to reflect the expanded recognition of credit risk mitigation techniques.

Article 123-124:

These Articles reflect the second 'pillar' of the Basel Committee's capital accord. Art. 51A requires credit institutions to have in place internal processes to measure and manage their risk and the amount of 'internal' capital they themselves deem adequate to support those risks. Competent authorities are required (Art. 124) to review compliance by credit institutions with the various legal obligations for organisation and risk control, and to evaluate the risks taken by credit institutions. This assessment will be used by supervisors to determine whether weaknesses exist in controls and capital held. Relevant technical provisions are in Annex XIII.

Articles 125-143:

There is an increasing degree of EU cross-border business and a trend towards centralisation of risk management within cross-border groups. This requires improved coordination and cooperation amongst national supervisory authorities in the EU. The existing and well established role of the consolidating supervisor has thus been developed further. Under Art. 136 supervisors will be provided with a minimum harmonised range of powers to require credit institutions to address any inadequacies in the requirements of the Directive.

Article 144:

A minimum set of disclosure requirements exists for Member States' authorities to enhance convergence of implementation and introduce transparency.

Articles 145-149:

These provisions reflect the 'third' pillar of the Basel Committee's new capital accord. The disclosure of information by credit institutions to market participants contributes to greater financial soundness and stability, maintains a level playing field and respects the sensitivity of certain information. Art. 147 requires disclosure on a minimum annual basis for most credit institutions - more frequent disclosure may be necessary in the light of specific criteria. Relevant technical provisions are in Annex XII.

Article 150:

The Directive needs to keep pace with market developments. The necessary degree of flexibility is provided by making a distinction between core and technical rules (particularly in the annexes to the directive) that may need adaptations in the short to medium term. Art. 150 adds new technical areas to those in Directive 2000/12/EC (introduced in 1989) and

proposes that the new technical Annexes should be able to be modified following the same rapid procedure.

B. DIRECTIVE 93/6/EEC ON THE CAPITAL ADEQUACY OF INVESTMENTS FIRMS AND CREDIT INSTITUTIONS

Article 2: Scope

Article 2 specifies how the requirements apply to individual investment firms, groups of investment firms, and mixed groups.

Article 3: Definitions

There are certain new and amended definitions on essential concepts to clarify their meaning and contribute to a better understanding.

Article 11: Trading book capital treatment

There is an enhanced definition of the 'trading book' to increase certainty as to the capital requirements that apply and to restrict possible arbitrage between the 'banking book' / 'trading book' boundary. Relevant technical provisions are set out in Annex VII.

Articles 18 and 20:

Article 18 prescribes, for credit institutions and investment firms, the minimum capital requirements for market risk. The treatment of positions in collective investment undertakings and credit derivatives and a number of other modifications for increased risk-sensitivity are new. Relevant technical provisions are in Annexes I to VII. Article 20 extends the rules on capital requirements for credit risk and operational risk in Directive 2000/12 to investment firms, as at present. New credit risk elements include the provision of a treatment for credit derivatives and an amended measure of exposure for repurchase transactions and securities/commodities financing transactions. For operational risk there are significant modifications to take account of the specific features of the investment firm sector, with an option to continue the 'Expenditure Based Requirement' for investment firms falling into the low-, medium- and medium/high-risk categories.

Article 28: Large exposures

The current situation is continued where credit institutions and investment firms are subject to the same rules, subject to modifications to large exposures for trading book transactions. A new element is an amended measure of exposure for repurchase transactions and securities/commodities financing transactions. Relevant technical provisions are in Annex VI.

Article 33: Valuation of positions for reporting

Enhanced requirements for the valuation of trading book positions are prescribed for prudential soundness in the context of rules designed for trading book positions to be priced on a daily basis. Relevant technical provisions are in Annex VII.

Article 22: Consolidated requirements

The existing option for competent authorities to waive the application of consolidated requirements for groups consisting of investment firms is continued subject to more prudentially sound conditions.

Article 34: Risk management and capital assessment

Article 34 incorporates the obligation for credit institutions (Article 17 of Directive 2000/12), for investment firms to have in place effective internal risk management systems. Given the diversity of the institutions covered, these requirements will have to be met on a proportionate basis. It also applies the requirement in Article 51A of Directive 2000/12 to investment firms to have internal processes to measure and manage the risk they are exposed to and the amount of capital ('internal' capital) they deem adequate to support those risks. It adds to the existing risk management requirements for investment firms in Directive 2004/39/EC.

Article 37: Supervision

This Article applies the rules in Directive 2000/12 *mutatis mutandis* to investment firms.

Article 42

As for Directive 2000/12, Directive 93/6 need to keep pace with market developments. The necessary flexibility is brought by distinguishing between core and technical rules (particularly in the annexes) that will need adaptations in the short to medium run. The technical Annexes should be able to be modified following a rapid procedure. To reflect expected further important developments in regulatory practice in the coming years, a review clause is included for the treatment of counterparty risk.

↓ 2000/12/EC

2004/0155 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

relating to the taking up and pursuit of the business of credit institutions (recast)

⇩ new

(Text with EEA relevance)

↓ 2000/12/EC (adapted)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular the first and third sentences of Article 47(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social Committee[5],

Acting in accordance with the procedure laid down in Article 251 of the Treaty[6],

Whereas:

↓ 2000/12/EC Recital 1 (adapted)

(1) ~~Council Directive 73/183/EEC of 28 June 1973 on the abolition of restrictions on freedom of establishment and freedom to provide services in respect of self-employed activities of banks and other financial institutions[7], first Council Directive (77/780/EEC) of 12 December 1977 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions[8], Council Directive 89/299/EEC of 17 April 1989 on the own funds of credit institutions[9], second Council Directive 89/646/EEC of 15 December 1989 on the coordination of laws, regulations and administrative provisions relating to the taking~~

5 OJ C ~~157, 25.5.1998, p. 13~~ ⌦ […] ⌫ .

6 Opinion of the European Parliament of ~~18 January 2000 (not yet published in the Official Journal)~~ ⌦ […] ⌫ and Council Decision of ~~13 March 2000 (not yet published in the Official Journal)~~ ⌦ […] ⌫ .

7 ~~OJ L 126, 26.5.2000, p.1, as last amended by the Act of Accession 2003~~

8 ~~OJ L 126, 26.5.2000, p.1, as last amended by the Act of Accession 2003~~

9 ~~OJ L 126, 26.5.2000, p.1, as last amended by the Act of Accession 2003~~

~~up and pursuit of the business of credit institutions[10], Council Directive 89/647/EEC of 18 December 1989 on a solvency ratio for credit institutions[11], Council Directive 92/30/EEC of 6 April 1992 on the supervision of credit institutions on a consolidated basis[12], and Council Directive 92/121/EEC of 21 December 1992 on the monitoring and control of large exposures of credit institutions[13] have been frequently and substantially amended. For reasons of clarity and rationality, the said Directives therefore, should be codified and combined in a single text.~~ ⌦ 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[14] has been substantially amended several times. Since further amendments are to be made, it should be recast in the interest of clarity. ⌫

↓ 2000/12/EC Recital 2 (adapted)

~~Pursuant to the Treaty, any discriminatory treatment with regard to establishment and to the provision of services, based either on nationality or on the fact that an undertaking is not established in the Member State where the services are provided, is prohibited.~~

↓ 2000/12/EC Recital 3

(2) In order to make it easier to take up and pursue the business of credit institutions, it is necessary to eliminate the most obstructive differences between the laws of the Member States as regards the rules to which these institutions are subject.

↓ 2000/12/EC Recital 4 (adapted)

(3) This Directive constitutes the essential instrument for the achievement of the internal market~~, a course determined by the Single European Act and set out in timetable form in the Commission's White Paper,~~ from the point of view of both the freedom of establishment and the freedom to provide financial services, in the field of credit institutions.

↓ 2000/12/EC Recital 5 (adapted)

(4) Measures to coordinate credit institutions must, both in order to protect savings and to create equal conditions of competition between these institutions, apply to all of them. Due regard ~~must~~ ⌦ should however ⌫ be had~~, where applicable,~~ to the objective differences in their statutes and their proper aims as laid down by national laws.

↓ 2000/12/EC Recital 6 (adapted)

(5) The scope of those measures should therefore be as broad as possible, covering all institutions whose business is to receive repayable funds from the public, whether in

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10 ~~OJ L 126, 26.5.2000, p.1, as last amended by the Act of Accession 2003~~

11 ~~OJ L 126, 26.5.2000, p.1, as last amended by the Act of Accession 2003~~

12 ~~OJ L 126, 26.5.2000, p.1, as last amended by the Act of Accession 2003~~

13 ~~OJ L 126, 26.5.2000, p.1, as last amended by the Act of Accession 2003~~

14 OJ L 126, 26.5.2000, p.1 as last amended by Directive 2004/xx/EC (OJ L, […])

the form of deposits or in other forms such as the continuing issue of bonds and other comparable securities and to grant credits for their own account. Exceptions ~~must~~ ⌦ should ⌫ be provided for in the case of certain credit institutions to which this Directive cannot apply. The provisions of this Directive ~~shall~~ ⌦ should ⌫ not prejudice the application of national laws which provide for special supplementary authorisations permitting credit institutions to carry on specific activities or undertake specific kinds of operations.

↓ 2000/12/EC Recital 7 (adapted)

(6) ~~The approach which has been adopted is~~ ⌦ It is appropriate ⌫ to ~~achieve~~ ⌦ effect ⌫ only the essential harmonisation necessary and sufficient to secure the mutual recognition of authorisation and of prudential supervision systems, making possible the granting of a single licence recognised throughout the Community and the application of the principle of home Member State prudential supervision. Therefore, the requirement that a programme of operations must be produced should be seen merely as a factor enabling the competent authorities to decide on the basis of more precise information using objective criteria. A measure of flexibility ~~may~~ ⌦ should ⌫ none-the-less be possible as regards the requirements on the legal form of credit institutions ~~of~~ ⌦ concerning ⌫ the protection of banking names.

⇩ new

(7) Since the objective of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and the effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose.

↓ 2000/12/EC Recital 8 (adapted)

(8) Equivalent financial requirements for credit institutions are necessary to ensure similar safeguards for savers and fair conditions of competition between comparable groups of credit institutions. Pending further coordination, appropriate structural ratios should be formulated ~~that will make~~ ⌦ making ⌫ it possible within the framework of cooperation between national authorities to observe, in accordance with standard methods, the position of comparable types of credit institutions. This procedure should help to bring about the gradual approximation of the systems of coefficients established and applied by the Member States. It is necessary, however to make a distinction between coefficients intended to ensure the sound management of credit institutions and those established for the purposes of economic and monetary policy.

↓ 2000/12/EC Recital 9 (adapted)
⇨ new

(9) The principles of mutual recognition and home Member State supervision require that Member States' competent authorities should not grant or should withdraw ⌦ an ⌫

authorisation where factors such as ⌦ the ⌫ content of the activities programmes, the geographical distribution ⌦ of activities ⌫ or the activities actually carried on indicate clearly that a credit institution has opted for the legal system of one Member State for the purpose of evading the stricter standards in force in another Member State within whose territory it carries on or intends to carry on the greater part of its activities. A credit institution which is a legal person ~~must~~ ⌦ should ⌫ be authorised in the Member State in which it has its registered office. A credit institution which is not a legal person ~~must~~ ⌦ should ⌫ have its head office in the Member State in which it has been authorised. In addition, Member States ~~must~~ ⌦ should ⌫ require that a credit institution's head office always be situated in its home Member State and that it actually operates there.

↓ 2000/12/EC Recital 10 (adapted)

(10) The competent authorities should not authorise or continue the authorisation of a credit institution where they are liable to be prevented from effectively exercising their supervisory functions by the close links between that institution and other natural or legal persons. Credit institutions already authorised ~~must~~ ⌦ should ⌫ also satisfy the competent authorities in that respect. ~~The definition of «close links» in this Directive lays down minimum criteria. That does not prevent Member States from applying it to situations other than those envisaged by the definition. The sole fact of having acquired a significant proportion of a company's capital does not constitute participation, within the meaning of «close links», if that holding has been acquired solely as a temporary investment which does not make it possible to exercise influence over the structure or financial policy of the institution.~~

↓ 2000/12/EC Recital 11 (adapted)

(11) The reference to the supervisory authorities' effective exercise of their supervisory functions covers supervision on a consolidated basis which must be exercised over a credit institution where the provisions of Community law so provide. In such cases, the authorities applied to for authorisation ~~must~~ ⌦ should ⌫ be able to identify the authorities competent to exercise supervision on a consolidated basis over that credit institution.

↓ 2000/12/EC Recital 12 (adapted)

~~The home Member State may also establish rules stricter than those laid down in Article 5(1), first subparagraph and (2), and Articles 7, 16, 30, 51 for institutions authorised by its competent authorities.~~

↓ 2000/12/EC Recital 13 (adapted)

~~The abolition of the authorisation requirement with respect to the branches of Community credit institutions necessitates the abolition of endowment capital.~~

↓ 2000/12/EC Recital 14
(adapted)

(12) ~~By virtue of mutual recognition, the approach chosen permits~~ ~~e~~Credit institutions authorised in their home Member States ⌦ should be allowed ⌫ to carry on, throughout the Community, any or all of the activities listed in Annex I by establishing branches or by providing services. ~~The carrying on of activities not listed in the said Annex enjoys the right of establishment and the freedom to provide services under the general provisions of the Treaty.~~

↓ 2000/12/EC Recital 15
(adapted)

(13) It is appropriate~~, however~~ to extend mutual recognition to the activities listed in Annex I when they are carried on by financial institutions which are subsidiaries of credit institutions, provided that such subsidiaries are covered by the consolidated supervision of their parent undertakings and meet certain strict conditions.

↓ 2000/12/EC Recital 16
(adapted)

(14) The host Member State ~~may~~ ⌦ should be able ⌫, in connection with the exercise of the right of establishment and the freedom to provide services, ⌦ to ⌫ require compliance with specific provisions of its own national laws or regulations on the part of institutions not authorised as credit institutions in their home Member States and with regard to activities not listed in Annex I provided that, on the one hand, such provisions are compatible with Community law and are intended to protect the general good and that, on the other hand, such institutions or such activities are not subject to equivalent rules under this legislation or regulations of their home Member States.

↓ 2000/12/EC Recital 17
(adapted)

(15) The Member States ~~must~~ ⌦ should ⌫ ensure that there are no obstacles to carrying on activities receiving mutual recognition in the same manner as in the home Member State, as long as the latter do not conflict with legal provisions protecting the general good in the host Member State.

↓ 2000/12/EC Recital 18
(adapted)

~~There is a necessary link between the objective of this Directive and the liberalisation of capital movements being brought about by other Community legislation. In any case the measures regarding the liberalisation of banking services must be in harmony with the measures liberalising capital movements.~~

↓ 2000/12/EC Recital 19
(adapted)

(16) The rules governing branches of credit institutions having their head office outside the Community should be analogous in all Member States. It is important ~~at the present time~~ to provide that such rules may not be more favourable than those for branches of institutions from another Member State. ~~It should be specified that t~~The Community ~~may~~ ⌦ should be able to ⌫ conclude agreements with third countries providing for the application of rules which accord such branches the same treatment throughout its territory~~, account being taken of the principle of reciprocity~~. The branches of credit institutions authorised in third countries ~~do~~ ⌦ should ⌫ not enjoy the freedom to provide services under the second paragraph of Article 49 of the Treaty or the freedom of establishment in Member States other than those in which they are established. ~~However, requests for the authorisation of subsidiaries or of the acquisition of holdings made by undertakings governed by the laws of third countries are should subject to a procedure intended to ensure that Community credit institutions receive reciprocal treatment in the third countries in question.~~

↓ 2000/12/EC Recital 20
(adapted)

~~The authorisations granted to credit institutions by the competent national authorities pursuant to this Directive have Community-wide, and no longer merely nationwide, application. Existing reciprocity clauses have therefore no effect. A flexible procedure is therefore needed to make it possible to assess reciprocity on a Community basis. The aim of this procedure is not to close the Community's financial markets but rather, as the Community intends to keep its financial markets open to the rest of the world, to improve the liberalisation of the global financial markets in other third countries. To that end, this Directive provides for procedures for negotiating with third countries and, as a last resort, for the possibility of taking measures involving the suspension of new applications for authorisation or the restriction of new authorisations.~~

↓ 2000/12/EC Recital 21
(adapted)

(17) ~~It is desirable that a~~Agreement should be reached, on the basis of reciprocity, between the Community and third countries with a view to allowing the practical exercise of consolidated supervision over the largest possible geographical area.

↓ 2000/12/EC Recital 22
(adapted)

(18) Responsibility for supervising the financial soundness of a credit institution, and in particular its solvency, ~~rests~~ ⌦ should lay ⌫ with ~~the competent authorities of~~ its home Member State. The host Member State's competent authorities ~~retain~~ ⌦ should be ⌫ ~~responsibility~~ ⌦ responsible ⌫ for the supervision of ⌦ the ⌫ liquidity ⌦ of the branches ⌫ and monetary ~~policy~~ ⌦ policies ⌫. The supervision of market risk ~~must~~ ⌦ should ⌫ be the subject of close cooperation between the competent authorities of the home and host Member States.

↓ 2000/12/EC Recital 23 and 24 (adapted)
⇨ new

(19) The smooth operation of the internal banking market requires not only legal rules but also close and regular cooperation ⇨ and significantly enhanced convergence of regulatory and supervisory practices ⇦ between the competent authorities of the Member States. ~~For the~~ ⌦ To this end, in particular, ⌫ consideration of problems concerning individual credit institutions ⇨ and the mutual exchange of information should take place in ⇦ the ~~«groupe de contact» (contact group)~~ ⇨ Committee of European Banking Supervisors ⇦ set up ⇨ by Commission Decision 2004/5/EC [15] ⇦ ~~between the banking supervisory authorities remains the most appropriate forum. That group is a suitable body for the mutual exchange of information provided for in Article 28.~~ That mutual information procedure ~~does~~ ⌦ should ⌫ not in any case replace the bilateral ~~collaboration~~ ⌦ co-operation⌫ ~~established by Article 28. The competent host Member State authorities can,~~. ~~w~~Without prejudice to their powers of proper control, ⌦ the competent authorities of the host Member States should be able ⌫ ~~continue either~~, in an emergency, on their own initiative or following the initiative of the competent ⌦ authorities of ⌫ home Member State ~~authorities~~, to verify that the activities of a credit institution established within their territories comply with the relevant laws and with the principles of sound administrative and accounting procedures and adequate internal control.

↓ 2000/12/EC Recital 25 (adapted)

(20) It is appropriate to allow the exchange of information between the competent authorities and authorities or bodies which, by virtue of their function, help to strengthen the stability of the financial system. In order to preserve the confidential nature of the information forwarded, the list of addressees ~~must~~ ⌦ should ⌫ remain within strict limits.

↓ 2000/12/EC Recital 26 and 27 (adapted)

(21) Certain behaviour, such as fraud and insider offences, is liable to affect the stability, including the integrity, of the financial system, even when involving institutions other than credit institutions. It is necessary to specify the conditions under which ~~such~~ exchange~~s~~ of information ⌦ in such cases ⌫ ~~are~~ ⌦ is ⌫ authorised.

↓ 2000/12/EC Recital 28 (adapted)

(22) Where it is stipulated that information may be disclosed only with the express agreement of the competent authorities, these ~~may~~ ⌦ should be able ⌫, where

[15] OJ L 3, 7.1.2004, p. 28

appropriate, ⌦ to ⌫ make their agreement subject to compliance with strict conditions.

↓ 2000/12/EC Recital 29

(23) Exchanges of information between, on the one hand, the competent authorities and, on the other, central banks and other bodies with a similar function in their capacity as monetary authorities and, where appropriate, other public authorities responsible for supervising payment systems should also be authorised.

↓ 2000/12/EC Recital 30
(adapted)

(24) For the purpose of strengthening the prudential supervision of credit institutions and ⌦ the ⌫ protection of clients of credit institutions, ~~it should be stipulated that an~~ auditors ~~must~~ ⌦ should ⌫ have a duty to report promptly to the competent authorities, wherever, ~~as provided for by this Directive, he~~ ⌦ during the performance of their tasks, ⌫ becomes aware~~, while carrying out his tasks,~~ of certain facts which are liable to have a serious effect on the financial situation or the administrative and accounting organisation of a credit institution. ~~Having regard to the aim in view, it is desirable for the~~ ⌦ For the same reason ⌫ Member States ~~to~~ ⌦ should also ⌫ provide that such a duty ~~should apply~~ ⌦ applies ⌫ in all circumstances where such facts are discovered by an auditor during the performance of his tasks in an undertaking which has close links with a credit institution. The duty of auditors to communicate, where appropriate, to the competent authorities certain facts and decisions concerning a credit institution which they discover during the performance of their tasks in a non-financial undertaking ~~does~~ ⌦ should ⌫ not in itself change the nature of their tasks in that undertaking nor the manner in which they must perform those tasks in that undertaking.

↓ 2000/12/EC Recitals 31 to 35
(adapted)

~~Common basic standards for the own funds of credit institutions are a key factor in the creation of an internal banking market since own funds serve to ensure the continuity of credit institutions and to protect savings. Such harmonisation strengthens the supervision of credit institutions and contributes to further coordination in the banking sector.~~

~~Such standards must apply to all credit institutions authorised in the Community.~~

~~The own funds of a credit institutions can serve to absorb losses which are not matched by a sufficient volume of profits. The own funds also serve as an important yardstick for the competent authorities, in particular for the assessment of the solvency of credit institutions and for other prudential purposes.~~

~~Credit institutions, in an internal banking market, engage in direct competition with each other, and the definitions and standards pertaining to own funds must therefore be equivalent. To that end, the criteria for determining the composition of own funds must not be left solely to Member States. The adoption of common basic standards will be in the best interests of the~~

~~Community in that it will prevent distortions of competition and will strengthen the Community banking system.~~

~~The definition of own funds laid down in this Directive provides for a maximum of items and qualifying amounts, leaving it to the discretion of each Member State to use all or some of such items or to adopt lower ceilings for the qualifying amounts.~~

↓ 2000/12/EC Recital 36 (adapted)

(25) This Directive specifies ~~the~~ ⌦ that for certain own funds items ⌫ qualifying criteria ~~for certain own funds items~~ ⌦ should be specified, without prejudice to the possibility of ⌫ ~~and the~~ Member States ~~remain free~~ to apply more stringent provisions.

↓ 2000/12/EC Recital 37 (adapted)

~~At the initial stage common basic standards are defined in broad terms in order to encompass all the items making up own funds in the different Member States.~~

↓ 2000/12/EC Recital 38

(26) According to the nature of the items making up own funds, this Directive distinguishes between on the one hand, items constituting original own funds and, on the other, those constituting additional own funds.

↓ 2000/12/EC Recital 39 (adapted)

(27) To reflect the fact that items constituting additional own funds are not of the same nature as those constituting original own funds, the amount of the former included in own funds ~~must~~ ⌦ should ⌫ not exceed the original own funds. Moreover, the amount of certain items of additional own funds included ~~must~~ ⌦ should ⌫ not exceed one half of the original own funds.

↓ 2000/12/EC Recital 39 (adapted)

(28) In order to avoid distortions of competition, public credit institutions ~~must~~ ⌦ should ⌫ not include in their own funds guarantees granted them by the Member States or local authorities.

↓ 2000/12/EC Recital 40 (adapted)

(29) Whenever in the course of supervision it is necessary to determine the amount of the consolidated own funds of a group of credit institutions, the calculation ~~shall~~ ⌦ should ⌫ be effected in accordance with this Directive.

↓ 2000/12/EC Recital 41
(adapted)
⇨ new

(30) The precise accounting technique to be used for the calculation of own funds, ~~the solvency ratio~~ ⇨ their adequacy for the risk to which a credit institution is exposed ⇦, and for the assessment of the concentration of exposures ~~must~~ ⌦ should ⌫ take account of the provisions of Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions[16], which incorporates certain adaptations of the provisions of Council Directive 83/349/EEC of 13 June 1983 based on Article 44(2)(g) of the Treaty on consolidated accounts ⌦ [17] ⌫ ⇨ or of Regulation (EC) No 1606/2002 of the European Parliament and Council of 19 July 2002 on the application of international accounting standards[18] whichever governs the accounting of the credit institutions under national law ⇦.

↓ 2000/12/EC Recital 42 to 47
(adapted)

~~The provisions on own funds, form part of the wider international effort to bring about approximation of the rules in force in major countries regarding the adequacy of own funds.~~

~~In an internal banking market, institutions are required to enter into direct competition with one another and the common solvency ration in the form of a minimum ratio prevent distortions of competition and strengthen the Community banking system.~~

~~The Commission will draw up a report and periodically examine, with the aim of tightening them, the provisions on own funds and thus achieving greater convergence on a common definition of own funds. Such convergence will allow the alignment of Community credit institutions' own funds~~.

~~The provisions on solvency ratios are the outcome of work carried out by the Banking Advisory Committee which is responsible for making suggestions to the Commission with a view to coordinating the coefficients applicable in the Member States.~~

~~The establishment of an appropriate solvency ratio plays a central role in the supervision of credit institutions.~~

~~A ratio which weights assets and off-balance-sheet items according to the degree of credit risk is a particularly useful measure of solvency.~~

16 OJ L 372, 31.12.1986, p. 1.
17 OJ L 193, 18.7.1983, p. 1. Directive as last amended by Directive ⌦ 2003/51/EC (OJ L 178, 17.7.2003, p. 16). ⌫
18 OJ L 243, 11.9.2002, p. 1.

⇩ new

(31) Minimum capital requirements play a central role in the supervision of credit institutions and in the mutual recognition of supervisory techniques. In that respect, the provisions on minimum capital requirements should be considered in conjunction with other specific instruments also harmonising the fundamental techniques for the supervision of credit institutions.

(32) In order to prevent distortions of competition and to strengthen the banking system in the internal market, it is appropriate to lay down common minimum capital requirements.

(33) For the purposes of ensuring adequate solvency it is important to lay down minimum capital requirements which weight assets and off-balance-sheet items according to the degree of risk.

🡻 2000/12/EC Recitals 48 to 51 (adapted)

~~The development of common standards for own funds in relation to assets and off-balance-sheet items exposed to credit risk is, accordingly, an essential aspect of the harmonisation necessary for the achievement of the mutual recognition of supervision techniques and thus the completion of the internal banking market.~~

~~In that respect, the provisions on a solvency ratio must be considered in conjunction with other specific instruments also harmonising the fundamental techniques of the supervision of credit institutions.~~

~~In an internal banking market, institutions are required to enter into direct competition with one another and the common solvency standards in the form of a minimum ratio prevent distortions of competition and strengthen the Community banking system.~~

~~This Directive provides for different weightings to be given to guarantees issued by different financial institutions. The Commission accordingly undertakes to examine whether this Directive taken as a whole significantly distorts competition between credit institutions and insurance undertakings and, in the light of that examination, to consider whether any remedial measures are justified.~~

⇩ new

(34) It is essential to take account of the diversity of credit institutions in the Community by providing alternative approaches to the calculation of minimum capital requirements for credit risk incorporating different levels of risk-sensitivity and requiring different degrees of sophistication. Use of external ratings and credit institutions' own estimates of individual credit risk parameters represents a significant enhancement in the risk-sensitivity and prudential soundness of the credit risk rules. There should be appropriate incentives for credit institutions to move towards the more risk-sensitive approaches.

(35) The minimum capital requirements should be proportionate to the risks addressed. In particular the reduction in risk levels deriving from having a large number of relatively small exposures should be reflected in the requirements.

(36) Increased recognition should be given to techniques of credit risk mitigation within a framework of rules designed to ensure that solvency is not undermined by undue recognition.

(37) In order to ensure that the risks and risk reductions arising from credit institutions' securitisation activities and investments are appropriately reflected in the minimum capital requirements of credit institutions it is necessary to include rules providing for a risk-sensitive and prudentially sound treatment of such activities and investments.

↓ 2000/12/EC Recital 52 (adapted)

~~Annex III lays down the treatment of off-balance-sheet items in the context of the calculation of credit institutions' capital requirements. With a view to the smooth functioning of the internal market and in particular with a view to ensuring a level playing field Member States are obliged to strive for uniform assessment of contractual netting agreements by their competent authorities. Annex III takes account of the work of an international forum of banking supervisors on the supervisory recognition of bilateral netting, in particular the possibility of calculating the own funds requirements for certain transactions on the basis of a net rather than a gross amount provided that there are legally binding agreements which ensure that the credit risk is confined to the net amount. For internationally active credit institutions and groups of credit institutions in a wide range of third countries, which compete with Community credit institutions, the rules adopted on the wider international level will result in a refined supervisory treatment of over-the-counter (OTC) derivative instruments. This refinement results in a more appropriate compulsory capital cover taking into account the risk-reducing effects of supervisorily recognised contractual netting agreements on potential future credit risks. The clearing of OTC derivative instruments provided by clearing houses acting as a central counterparty plays an important role in certain Member States. It is appropriate to recognise the benefits from such a clearing in terms of a reduction of credit risk and related systemic risk in the prudential treatment of credit risk. It is necessary for the current and potential future exposures arising from cleared OTC derivatives contracts to be fully collateralised and for the risk of a build-up of the clearing house's exposures beyond the market value of posted collateral to be eliminated in order for cleared OTC derivatives to be granted for a transitional period the same prudential treatment as exchange-traded derivatives. The competent authorities must be satisfied as to the level of the initial margins and variation margins required and the quality of and the level of protection provided by the posted collateral. For credit institutions incorporated in the Member States, Annex III creates a similar possibility for the recognition of bilateral netting by the competent authorities and thereby offers them equal conditions of competition. The rules are both well balanced and appropriate for the further reinforcement of the application of prudential supervisory measures to credit institutions. The competent authorities in the Member States should ensure that the calculation of add-ons is based on effective rather than apparent national amounts.~~

⇩ new

(38) Operational risk is a significant risk faced by credit institutions requiring coverage by own funds. It is essential to take account of the diversity of credit institutions in the Community by providing alternative approaches to the calculation of operational risk requirements incorporating different levels of risk-sensitivity and requiring different degrees of sophistication. There should be appropriate incentives for credit institutions to move towards the more risk-sensitive approaches. In view of the emerging state of the art for the measurement and management of operational risk the rules should be kept under review and updated as appropriate including in relation to the charges for different business lines and the recognition of risk mitigation techniques.

(39) In order to ensure adequate solvency of credit institutions within a group it is essential that the minimum capital requirements apply on the basis of the consolidated financial situation of the group. In order to ensure that own funds are appropriately distributed within the group and available to protect savings where needed, the minimum capital requirements should apply to individual credit institutions within a group, unless this objective can be effectively otherwise achieved.

🡻 2000/12/EC Recital 53 (adapted)

~~The minimum ratio provided for in this Directive reinforces the capital of credit institutions in the Community. A level of 8% has been adopted following a statistical survey of capital requirements in force at the beginning of 1988.~~

🡻 2000/12/EC Recital 54

(40) The essential rules for monitoring large exposures of credit institutions should be harmonised. Member States should still be able to adopt provisions more stringent than those provided for by this Directive.

🡻 2000/12/EC Recital 55 (adapted)

(41) The monitoring and control of a credit institution's exposures ~~is~~ ⌦ should be ⌫ an integral part of its supervision. ⌦ Therefore ⌫ ~~E~~excessive concentration of exposures to a single client or group of connected clients may result in an unacceptable risk of loss. Such a situation ~~may~~ ⌦ can ⌫ be considered prejudicial to the solvency of a credit institution.

🡻 2000/12/EC Recital 56 (adapted)

(42) ~~In an internal banking market,~~ ⌦ Since ⌫ credit institutions ⌦ in the internal market ⌫ are engaged in direct competition, ~~with one another and~~ monitoring requirements ~~throughout the Community~~ should ~~therefore~~ be equivalent ⌦ throughout the Community ⌫. ~~To that end, the criteria applied to determining the concentration of exposures must be the subject of legally binding rules at Community~~

~~level and cannot be left entirely to the discretion of the Member States. The adoption of common rules will therefore best serve the Community's interests, since it will prevent differences in the conditions of competition, while strengthening the Community's banking system.~~

↓ 2000/12/EC Recital 57
(adapted)
⇨ new

(43) ~~The provisions on a solvency ratio for credit institutions include a list of credit risks which may be incurred by credit institutions. That list should therefore be used also for the definition of exposures for the purposes of limits to large exposures. It is not, however,~~ ⇨ While it is appropriate to base the definition of exposures for the purposes of limits to large exposures on that provided for the purposes of minimum own funds requirements for credit risk, it is not ⇦ appropriate to refer on principle to the weightings or degrees of risk laid down in the said provisions. Those weightings and degrees of risk were devised for the purpose of establishing a general solvency requirement to cover the credit risk of credit institutions. ~~In the context of the regulation of large exposures, the aim is.~~ ⌦ In order ⌫ to limit the maximum loss that a credit institution may incur through any single client or group of connected clients~~. It~~ ⌦ it ⌫ is ~~therefore~~ appropriate to adopt ~~a prudent approach in which, as a general rule, account is taken of the nominal value of exposures, but no~~ ⌦ rules for the determination of large exposures which take account of the nominal value of the exposure without applying ⌫ weightings or degrees of risk ~~are applied~~.

⇩ new

(44) While it is desirable, pending further review of the large exposures provisions, to permit the recognition of the effects of credit risk mitigation in a manner similar to that permitted for minimum capital requirement purposes in order to limit the calculation requirements, the rules on credit risk mitigation were designed in the context of the general diversified credit risk arising from exposures to a large number of counterparties. Accordingly, recognition of the effects of such techniques for the purposes of limits to large exposures designed to limit the maximum loss that may be incurred through any single client or group of connected clients should be subject to prudential safeguards.

↓ 2000/12/EC Recital 58
(adapted)

(45) When a credit institution incurs an exposure to its own parent undertaking or to other subsidiaries of its parent undertaking, particular prudence is necessary. The management of exposures incurred by credit institutions ~~must~~ ⌦ should ⌫ be carried out in a fully autonomous manner, in accordance with the principles of sound banking management, without regard to any ⌦ other ⌫ considerations ~~other than those principles~~. ~~The provision of this Directive require that w~~Where the influence exercised by persons directly or indirectly holding a qualifying participation in a credit institution is likely to operate to the detriment of the sound and prudent management of that institution, the competent authorities ~~shall~~ ⌦ should ⌫ take appropriate measures to put an end to that situation. In the field of large exposures, specific

standards ⊠ , including more stringent restrictions, ⌫ should ~~also~~ be laid down for exposures incurred by a credit institution to its own group~~, and in such cases more stringent restrictions are justified than for other exposures. More stringent restrictions~~ ⊠. Such standards ⌫ need not, however be applied where the parent undertaking is a financial holding company or a credit institution or where the other subsidiaries are either credit or financial institutions or undertakings offering ancillary ~~banking~~ services, provided that all such undertakings are covered by the supervision of the credit institution on a consolidated basis. ~~In such cases the consolidated monitoring of the group of undertakings allows for an adequate level of supervision, and does not require the imposition of more stringent limits on exposure. Under this approach banking groups will also be encouraged to organise their structures in such a way as to allow consolidated monitoring, which is desirable because a more comprehensive level of monitoring is possible.~~

⇩ new

(46) Credit institutions should ensure that they have internal capital which, having regard to the risks to which they are or might be exposed, is adequate in quantity, quality and distribution. Accordingly, credit institutions should have strategies and processes in place for assessing and maintaining the adequacy of their internal capital.

(47) Competent authorities have responsibility to be satisfied that credit institutions have good organisation and adequate own funds, having regard to the risks to which the credit institutions are or might be exposed to.

(48) In order for the internal market in banking to operate effectively the Committee of European Banking Supervisors should contribute to the consistent application of this directive and to the convergence of supervisory practices throughout the Community.

(49) For the same reason and to ensure that Community credit institutions which are active in several Member States are not disproportionately burdened as a result of the continued responsibilities of individual Member State competent authorities for authorisation and supervision, it is essential to significantly enhance the co-operation between competent authorities. In this context the role of the consolidated supervisor should be strengthened. The Committee of European Banking Supervisors should support and enhance such co-operation.

🡻 2000/12/EC Recital 65
(adapted)

(50) Supervision of credit institutions on a consolidated basis ~~must be aimed~~ ⊠ aims ⌫ at, in particular, protecting the interests of the depositors of ~~the said~~ ⊠ credit ⌫ institutions and ⊠ at ⌫ ensuring the stability of the financial system.

🡻 2000/12/EC Recital 59
(adapted)

(51) In order to be effective, supervision on a consolidated basis ~~must~~ ⊠ should therefore ⌫ be applied to all banking groups, including those the parent undertakings

of which are not credit institutions. The competent authorities ~~must~~ ⌦ should ⌫ hold the necessary legal instruments to be able to exercise such supervision.

↓ 2000/12/EC Recital 60 (adapted)

(52) In the case of groups with diversified activities ⌦ where ⌫ ~~the~~ parent undertakings of which control at least one credit institution subsidiary, the competent authorities ~~must~~ ⌦ should ⌫ be able to assess the financial situation of a credit institution in such a group. ~~Pending subsequent coordination, the Member States may lay down appropriate methods of consolidation for the achievement of the objective of this Directive.~~ The competent authorities ~~must~~ ⌦ should ⌫ at least have the means of obtaining from all undertakings within a group the information necessary for the performance of their function. Cooperation between the authorities responsible for the supervision of different financial sectors ~~must~~ ⌦ should ⌫ be established in the case of groups of undertakings carrying on a range of financial activities ⌦ . Pending subsequent coordination, the Member States should be able to lay down appropriate methods of consolidation for the achievement of the objective of this Directive. ⌫

↓ 2000/12/EC Recital 61 (adapted)

(53) The Member States ~~can, furthermore,~~ ⌦ should be able to ⌫ refuse or withdraw banking authorisation in the case of certain group structures considered inappropriate for carrying on banking activities, in particular because such structures could not be supervised effectively. In this respect the competent authorities ⌦ should ⌫ have the ⌦ necessary ⌫ powers ~~mentioned in the first subparagraph of Article 7(1), Article 7(2), point (c) of Article 14(1), and Article 16 of this Directive, in order~~ to ensure the sound and prudent management of credit institutions.

↓ 2000/12/EC Recitals 62 to 64 (adapted)

~~The Member States can equally apply appropriate supervision techniques to groups with structures not covered by this Directive. If such structures become common, this Directive should be extended to cover them.~~

~~Supervision on a consolidated basis must take in all activities defined in Annex I. All undertakings principally engaged in such activities must therefore be included in supervision on a consolidated basis. As a result, the definition of financial institutions must be widened in order to cover such activities.~~

~~Directive 86/635/EEC, together with Directive 83/349/EEC, established the rules of consolidation applicable to consolidated accounts published by credit institutions. It is therefore possible to define more precisely the methods to be used in prudential supervision exercised on a consolidated basis.~~

⇩ new

(54) In order for the internal market in banking to operate with increasing effectiveness and for citizens of the Community to be afforded adequate levels of transparency, it is necessary that competent authorities disclose publicly and in a way which allows for meaningful comparison the manner in which this Directive is implemented.

(55) In order to strengthen market discipline and stimulate credit institutions to improve their market strategy, risk control and internal management organization, appropriate public disclosure by credit institutions should be provided for.

🡻 2000/12/EC Recital 66
(adapted)

(56) The examination of problems connected with matters covered by this Directive as well as by other Directive on the business of credit institutions requires cooperation between the competent authorities and the Commission ~~within a banking advisory committee~~, particularly when conducted with a view to closer coordination. ~~The Banking Advisory Committee of the competent authorities of the Member States does not rule out other forms of cooperation between authorities which supervise the taking up and pursuit of the business of credit institutions and, in particular, cooperation within the «groupe de contact» (contact group) set up between the banking supervisory authorities~~.

🡻 2000/12/EC Recital 67
(adapted)

(57) ~~Technical modifications to the detailed rules laid down in this Directive may from time to time be necessary to take account of new developments in the banking sector. The Commission shall accordingly make such modifications as are necessary, after consulting the Banking Advisory Committee, within the limits of the implementing powers conferred on the Commission by the Treaty.~~ The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⌦ [19] ⌫ .

⇩ new

(58) In order to avoid disruption to markets and to ensure continuity in overall levels of own funds it is appropriate to provide for specific transitional arrangements.

(59) In view of the risk-sensitivity of the rules relating to minimum capital requirements, it is desirable to keep under review whether these have significant effects on the economic cycle. The Commission, taking into account the contribution of the European Central Bank should report on these aspects to the European Parliament and to the Council.

[19] ⌦ OJ L 184, 17.7.1999, p. 23. ⌫

↓ 2000/12/EC Recital 68 (adapted)

~~Article 36 (1) of this Directive permits joint and several commitments of borrowers in the case of credit institutions organised as cooperative societies or funds to be treated as own funds items under Article 34 (2)(7). The Danish Government has expressed a strong interest in having its few mortgage credit institutions organised as cooperative societies or funds converted into public limited liability companies. In order to facilitate the conversion or to make it possible, a temporary derogation allowing them to include part of their joint and several commitments as own funds is required. This temporary derogation should not adversely affect competition between credit institutions.~~

↓ 2000/12/EC Recitals 69 to 71

~~(69) The application of a 20% weighting to credit institutions' holdings of mortgage bonds may unsettle a national financial market on which such instruments play a preponderant role. In this case, provisional measures are taken to apply a 10% risk weighting. The market for securitisation is undergoing rapid development. It is therefore desirable that the Commission should examine with the Member States the prudential treatment of asset-backed securities and put forward, before 22 June 1999, proposals aimed at adapting existing legislation in order to define an appropriate prudential treatment for asset-backed securities. The competent authorities may authorise a 50% weighting to assets secured by mortgages on offices or on multipurpose commercial premises until 31 December 2006. The property to which the mortgage relates must be subject to rigorous assessment criteria and regular revaluation to take account of the developments in the commercial property market. The property must be either occupied or let by the owner. Loans for property development are excluded from this 50% weighting.~~

~~(70) In order to ensure harmonious application of the provisions on large exposures, Member States should be allowed to provide for the two-stage application of the new limits. For smaller credit institutions, a longer transitional period may be warranted inasmuch as too rapid an application of the 25% rule could reduce their lending activity too abruptly.~~

~~(71) Moreover, the harmonisation of the conditions relating to the reorganisation and winding-up of credit institutions is also proceeding.~~

↓ 2000/12/EC Recital 72 (adapted)

(60) The arrangements necessary for the supervision of liquidity risks will also ~~have to~~ be harmonised.

↓ 2000/12/EC Recital 73 (adapted)

~~This Directive must not affect to obligations of the Member States concerning the deadlines for transposition set out in Annex V, Part B~~

⇩ new

(61) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union as general principles of Community law.

(62) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with the earlier Directives. The obligation to transpose the provisions which are unchanged arises under the earlier Directives.

(63) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of the Directives set out in Annex XIII, Part B.

🡻 2000/12/EC

HAVE ADOPTED THIS DIRECTIVE:

⇩ new

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↓ 2000/12/EC (adapted)

TITLE I

⌦ SUBJECT MATTER, SCOPE AND ⌫ DEFINITIONS ~~AND SCOPE~~

↓ 2000/12/EC Article 2(1) and (2) (adapted)

Article 1

1. This Directive ~~concerns~~ ⌦ lays down rules concerning ⌫ the taking up and pursuit of the business of credit institutions ⌦ , and their prudential supervision ⌫. ~~This Directive shall apply to all credit institutions.~~

2. Article ⌦39⌫ and ~~52 to 56~~ ⌦ Title V, Chapter 4, Section 1 ⌫ shall ~~also~~ apply to financial holding companies and mixed-activity holding companies which have their head offices in the Community.

3. The institutions permanently excluded ~~by paragraph 3~~ ⌦ pursuant to Article 5 ⌫, with the exception, however, of the ~~Member States'~~ central banks ⌦ of the Member States ⌫, shall be treated as financial institutions for the purposes of Article~~s 25 and 52 to 56~~ ⌦ 39 and Title V, Chapter 4, Section 1⌫.

↓ 2000/12/EC Article 2(3) (adapted)

Article 2

This Directive shall not apply to ⌦ the following ⌫ :

– the central banks of Member States,

– post office giro institutions,

– in Belgium, the «Institut de Réescompte et de Garantie/Herdiscontering- en Waarborginstituut»,

– in Denmark, the «Dansk Eksportfinansieringsfond», the «Danmarks Skibskreditfond», and «Dansk Landbrugs Realkreditfond»,

– in Germany, the «Kreditanstalt für Wiederaufbau», undertakings which are recognised under the «Wohnungsgemeinnützigkeitsgesetz» as bodies of State housing policy and are not mainly engaged in banking transactions, and undertakings recognised under that law as non-profit housing undertakings,

– in Greece, the «Ελληνική Τράπεζα Βιομηχανικής Αναπτύξεως,», (Elliniki Trapeza Viomichanikis Anaptyxeos), the «Ταμείο Παρακαταθηκών και Δανείων» (Tamio Parakatathikon kai Danion), and the «Ταχυδρομικό Ταμιευτήριο» (Tachidromiko Tamieftirio),

– in Spain, the «Instituto de Crédito Oficial»,

– in France, the «Caisse des dépôts et consignations»,

– in Ireland, credit unions and the friendly societies,

– in Italy, the «Cassa depositi e prestiti»,

– in the Netherlands, the «Netherlandse Investeringsbank voor Ontwikkelingslanden NV», the «NV Noordelijke Ontwikkelingsmaatschappij», the «NV Industriebank Limburgs Instituut voor Ontwikkeling en Financiering» and the «Overijsselse Ontwikkelingsmaatschappij NV»,

– in Austria, undertakings recognised as housing associations in the public interest and the «Österreichische Kontrollbank AG»,

– in Portugal, «Caixas Económicas» existing on 1 January 1986 with the exception of those incorporated as limited companies and of the «Caixa Económica Montepio Geral»,

– in Finland, the «Teollisen yhteistyön rahasto Oy/Fonden för industriellt samarbete AB», and the «Kera Oy/Kera Ab»,

– in Sweden, the «Svenska Skeppshypotekskassan»,

– in the United Kingdom, the National Savings Bank, the Commonwealth Development Finance Company Ltd, the Agricultural Mortgage Corporation Ltd, the Scottish Agricultural Securities Corporation Ltd, the Crown Agents for overseas governments and administrations, credit unions and municipal banks.

↓ Act of accession 2003

– in Latvia, the “kra¯jaizdevu sabiedrı¯bas”, undertakings that are recognised under the “kra¯jaizdevu sabiedrı¯bu likums” as cooperative undertakings rendering financial services solely to their members,

– in Lithuania, the “kredito unijos” other than the “Centrine˙ kredito unija”,

– in Hungary, the “Magyar Fejlesztési Bank Rt.” and the “Magyar Export-Import Bank Rt.”,

– in Poland, the “Spółdzielcze Kasy Oszcze¸dnos´ciowo - Kreditowe” and the “Bank Gospodarstwa Krajowego”.’

↓ Directive 2004/xx/EC Art. 3.1 (adapted)

~~4. The Commission, pursuant to the procedure set out in Article 60(2) shall decide on any amendments to the list in paragraph 3.~~

↓ 2000/12/EC Article 2(5) and (6) (adapted)

Article 3

1. ⌦ One or more ⌫ ~~c~~Credit institutions situated in the same Member State and ⌦ which are ⌫ permanently affiliated, on 15 December 1977, to a central body which supervises them and which is established in ~~that~~ ⌦ the ⌫ same Member State, may be exempted from the requirements of Articles ⌦ 7 and 11(1) ⌫ ~~6(1), 8 and 59~~ if, no later than 15 December 1979, national law provides that:

(a) the commitments of the central body and affiliated institutions are joint and several liabilities or the commitments of its affiliated institutions are entirely guaranteed by the central body,

(b) the solvency and liquidity of the central body and of all the affiliated institutions are monitored as a whole on the basis of consolidated accounts,

(c) the management of the central body is empowered to issue instructions to the management of the affiliated institutions.

Credit institutions operating locally which are ⌦ permanently ⌫ affiliated, subsequent to 15 December 1977, to a central body within the meaning of the first subparagraph, may benefit from the conditions laid down therein if they constitute normal additions to the network belonging to that central body.

↓ Directive 2004/xx/EC Art. 3.2 (adapted)

In the case of credit institutions other than those which are set up in areas newly reclaimed from the sea or have resulted from scission or mergers of existing institutions dependent or answerable to the central body, the Commission, pursuant to the procedure set out in Article ~~60(2)~~ ⌦ 150 ⌫ may lay down additional rules for the application of the second subparagraph including the repeal of exemptions provided for in the first subparagraph, where it is of the opinion that the affiliation of new institutions benefiting from the arrangements laid down in the second subparagraph might have an adverse effect on competition.

↓ 2000/12/EC Article 2(5) and (6) (adapted)

2. A credit institution ~~which, as defined~~ ⌦ referred to ⌫ in the first subparagraph of paragraph ~~5~~ ⌦ 1 ⌫, may also be exempted from the provisions of Articles ⌦ 9 and 10 ⌫ ~~5~~, and also ~~Articles 40 to 51, and 65~~ ⌦ Title V, Chapter 2, Sections 2, 3, 4, 5 and 6 and

Chapter 3 ⌫ provided that, without prejudice to the application of those provisions to the central body, the whole as constituted by the central body together with its affiliated institutions is subject to ~~the abovementioned~~ ⌦ those ⌫ provisions on a consolidated basis.

In case of exemption, Articles ⌦ 16, 23, 24, 25, 26(1) to (3), 28 and 29 to 37 ⌫ ~~13, 18, 19, 20(1) to (6), 21 and 22~~ shall apply to the whole as constituted by the central body together with its affiliated institutions.

↓ 2000/12/EC Art. 1 (adapted)

Article 4

~~Definitions~~

For the purposes of this Directive, ⌦ the following definitions shall apply: ⌫

↓ 2000/28/EC Art. 1(1) to (5) (adapted)

(1) «credit institution» ~~shall mean~~ ⌦ means ⌫ :

(a) an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account;~~or~~

(b) an electronic money institution within the meaning of Directive 2000/46/EC of the European Parliament and of the Council ~~of 18 September 2000 on the taking up, pursuit and prudential supervision of the business of electronic money institutions~~[20].

~~For the purposes of applying the supervision on a consolidated basis, shall be considered as a credit institution, a credit institution according to the first paragraph and any private or public undertaking which corresponds to the definition in the first paragraph and which has been authorised in a third country~~.

~~For the purposes of applying the supervision and control of large exposures, shall be considered as a credit institution, a credit institution according to the first paragraph, including branches of a credit institution in third countries and any private or public undertaking, including its branches, which corresponds to the definition in the first paragraph and which has been authorised in a third country;~~

(2) «authorisation» ~~shall mean~~ ⌦ means ⌫ an instrument issued in any form by the authorities by which the right to carry on the business of a credit institution is granted;

(3) «branch» ~~shall mean~~ ⌦ means ⌫a place of business which forms a legally dependent part of a credit institution and which carries out directly all or some of the transactions inherent in the business of credit institutions; ~~any number of places of~~

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[20] OJ L 275, 27.10.2000, p. 39.

~~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;~~

(4) «competent authorities» ~~shall mean~~ ⌦ means ⌫ the national authorities which are empowered by law or regulation to supervise credit institutions;

(5) «financial institution» ~~shall mean~~ ⌦ means ⌫ an undertaking other than a credit institution, the principal activity of which is to acquire holdings or to carry on one or more of the activities listed in points 2 to 12 of Annex I;

⇩ new

(6) «institutions», for the purposes of Sections 2 and 3 of Title V, Chapter 2, means institutions as defined in [Article 2(3) of Council Directive 96/3/EEC[21]];

🡻 2000/12/EC Art. 1 (6) to (8) adapted (adapted)

(7) «home Member State» ~~shall mean~~ ⌦ means ⌫ the Member State in which a credit institution has been authorised in accordance with Articles ~~4 to 11~~ ⌦ 6 to 9 and 11 to 14 ⌫ ;

(8) «host Member State» ~~shall mean~~ ⌦ means ⌫ the Member State in which a credit institution has a branch or in which it provides services;

(9) «control» ~~shall mean~~ ⌦ means ⌫ the relationship between a parent undertaking and a subsidiary, as defined in Article 1 of Directive 83/349/EEC, or a similar relationship between any natural or legal person and an undertaking;

🡻 2002/87/EC Art. 29(1)(a) (adapted)
⇨ new

(10) «participation» for the purposes of ~~supervision on a consolidated basis and for the purposes of~~ points ⌦ (o) and (p) ⌫ ~~15 and 16~~ of Article<u>s</u> ~~34~~ ⌦ 57 ⌫ (2), ⌦ 71 to 73 ⌫ ~~Article 42~~ and Title V, Chapter 4 ~~shall mean~~ ⌦ means ⌫ participation within the meaning of the first sentence of Article 17 of ⌦ Council ⌫ Directive 78/660/EEC ⌦ [22] ⌫, or the ownership, direct or indirect, of 20 % or more of the voting rights or capital of an undertaking;

🡻 2000/12/EC Art. 1 (10) to (13) (adapted)

(11) «qualifying holding» ~~shall mean~~ ⌦ means ⌫ a direct or indirect holding in an undertaking which represents 10 % or more of the capital or of the voting rights or

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[21] OJ L 141, 11.6.1993, p. 1.
[22] OJ L 222, 14.8.1978, p.11.

which makes it possible to exercise a significant influence over the management of ~~the~~ ⌦ that ⌫ undertaking ~~in which a holding subsists.~~ ⌦ ; ⌫

~~(12) «initial capital» shall mean capital as defined in Article 34 (2)(1) and (2);~~

(12) «parent undertaking» ~~shall mean~~ ⌦ means ⌫

(a) a parent undertaking as defined in Articles 1 and 2 of Directive 83/349/EEC.

(b) ~~It shall,~~ for the purposes of ~~supervision on a consolidated basis and control of large exposures, mean~~ ⌦ Articles 71 to 73, Title V, Chapter 2, Section 5 and Chapter 4 ⌫, a parent undertaking within the meaning of Article 1(1) of Directive 83/349/EEC and any undertaking which, in the opinion of the competent authorities, effectively exercises a dominant influence over another undertaking;

(13) «subsidiary» ~~shall mean~~ ⌦ means ⌫

(a) a subsidiary undertaking as defined in Articles 1 and 2 of Directive 83/349/EEC;

(b) ~~It shall,~~ for the purposes of ~~supervision on a consolidated basis and control of large exposures, mean~~ ⌦ Articles 71 to 73, Title V, Chapter 2, Section 5, and Chapter 4 ⌫ a subsidiary undertaking within the meaning of Article 1(1) of Directive 83/349/EEC and any undertaking over which, in the opinion of the competent authorities, a parent undertaking effectively exercises a dominant influence.

All subsidiaries of subsidiary undertakings shall also be considered subsidiaries of the undertaking that is their original parent;

⇩ new

(14) “parent credit institution in a Member State” means a credit institution which has a credit institution or a financial institution as a subsidiary or which holds a participation in such an institution, and which is not itself a subsidiary of another credit institution authorised in the same Member State, or of a financial holding company set up in the same Member State, and in which no other credit institution authorised in the same Member State holds a participation;

(15) “parent financial holding company in a Member State” means a financial holding company which is not itself a subsidiary of a credit institution authorised in the same Member State, or of a financial holding company set up in the same Member State;

(16) “EU parent credit institution” means a parent credit institution in a Member State which is not a subsidiary of another credit institution authorised in any Member State, or of a financial holding company set up in any Member State, and in which no other credit institution authorised in any Member State holds a participation;

(17) “EU parent financial holding company” mean a parent financial holding company in a Member State which is not a subsidiary of a credit institution authorised in any Member State;

↓ 2000/12/EC Art. 1 (14) to (18) (adapted)

~~(14) “Zone A» shall comprise all the Member States and all other countries which are full members of the Organisation for Economic Cooperation and Development (OECD) and those countries which have concluded special lending arrangements with the International Monetary Fund (IMF) associated with the Fund's general arrangements to borrow (GAB). Any country which reschedules its external sovereign debt is, however, precluded from Zone A for a period of five years;~~

~~(15) «Zone B» shall comprise all countries not in Zone A;~~

~~(16) «Zone A credit institutions» shall mean all credit institutions authorised in the Member States, in accordance with Article 4, including their branches in third countries, and all private and public undertakings covered by the definitions in point 1, first subparagraph and authorised in other Zone A countries, including their branches;~~

~~(17) Zone B credit institutions» shall mean all private and public undertakings authorised outside Zone A covered by the definition in point 1, first subparagraph, including their branches within the Community;~~

~~(18) «non-bank sector» shall mean all borrowers other than credit institutions as defined in points 16 and 17, central governments and central banks, regional governments and local authorities, the European Communities, the European Investment Bank (EIB) and multilateral development banks as defined in point 19~~;

↓ 2004/69/EC Art. 1 (adapted)

~~«multilateral development banks» shall mean the International Bank for Reconstruction and Development, the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the Council of Europe Resettlement Fund, the Nordic Investment Bank, the Caribbean Development Bank, the European Bank for Reconstruction and Development, the European Investment Fund, the Inter-American Investment Corporation and the Multilateral Investment Guarantee Agency;~~

↓ 2000/12/EC Art. 1 (20)

~~(20) «full-risk», «medium-risk», «medium/low-risk» and «low-risk» off-balance-sheet items» shall mean the items described in Article 43(2) and listed in Annex II;~~

⇩ new

(18) “public sector entities” means non-commercial administrative bodies responsible to central governments, regional governments or local authorities, or authorities that in the view of the competent authorities exercise the same responsibilities as regional and local authorities;

↓ 2002/87/EC Art. 29.1(b) adapted (adapted)

(19) «financial holding company» ~~shall mean~~ ⌦ means ⌫ a financial institution, the subsidiary undertakings of which are either exclusively or mainly credit institutions or financial institutions, at least one of such subsidiaries being a credit institution, and which is not a mixed financial holding company within the meaning of Directive 2002/87/EC of the European Parliament and of the Council ~~of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate~~[23];

(20) «mixed-activity holding company» ~~shall mean~~ ⌦ means ⌫ a parent undertaking, other than a financial holding company or a credit institution or a mixed financial holding company within the meaning of Directive 2002/87/EC, the subsidiaries of which include at least one credit institution;

↓ 2000/12/EC Art. 1 (23) (adapted)

(21) «ancillary ~~banking~~ services undertaking» ~~shall mean~~ ⌦ means ⌫ an undertaking the principal activity of which consists in owning or managing property, managing data-processing services, or any other similar activity which is ancillary to the principal activity of one or more credit institutions;

⇩ new

(22) "operational risk" means the risk of loss resulting from inadequate or failed internal processes, people and systems or from external events, and includes legal risk;

↓ 2000/12/EC Art. 1 (24) (adapted)

~~«exposures» for the purpose of applying Articles 47, 48 and 49 shall mean the assets and off-balance-sheet items referred to in Article 43 and in Annexes II and IV thereto Title V, Chapter 2, Section 2, and 3, without application of the risk weightings or degrees of risk there provided for; the risks referred to in Annex IV must be calculated in accordance with one of the methods set out in Annex III, without application of the weightings for counterparty risk; all elements entirely covered by own funds may, with the agreement of the competent authorities, be excluded from the definition of exposures provided that such own funds are not included in the credit institution's own funds calculation of the solvency ratio for the purposes of Article 44 or in the calculation of other monitoring ratios provided for in this Directive and in other Community acts; exposures shall not include:~~

– ~~in the case of foreign exchange transactions, exposures incurred in the ordinary course of settlement during the 48 hours following payment, or~~

[23] OJ L 35, 11.2.2003, p. 1.

– ~~in the case of transactions for the purchase or sale of securities, exposures incurred in the ordinary course of settlement during the five working days following payment or delivery of the securities, whichever is the earlier;~~

⇩ new

(23) "central banks" include the European Central Bank unless otherwise indicated;

(24) "dilution risk" means the risk that an amount receivable is reduced through cash or non-cash credits to the obligor;

(25) "probability of default" means the probability of default of a counterparty over a one year period;

(26) "loss" means economic loss, including material discount effects, and material direct and indirect costs associated with collecting on the instrument;

(27) "loss given default" means the ratio of the loss on an exposure due to the default of a counterparty to the amount outstanding at default;

(28) "conversion factor" means the ratio, to the currently undrawn amount of the commitment, of the currently undrawn amount of a commitment subject to an advised limit that will be drawn and outstanding at default;

(29) "expected loss (EL)" shall mean the ratio of the amount expected to be lost on an exposure from a potential default of a counterparty or dilution over a one year period to the amount outstanding at default;

(30) "credit risk mitigation" means a technique used by a credit institution to reduce the credit risk associated with an exposure or exposures which the credit institution continues to hold;

(31) "funded credit protection" means a technique of credit risk mitigation where the reduction of the credit risk on the exposure of a credit institution derives from the right of the credit institution - in the event of the default of the counterparty or on the occurrence of other specified credit events relating to the counterparty - to liquidate, or to obtain transfer or appropriation of, or to retain certain assets or amounts, or to reduce the amount of the exposure to, or to replace it with, the amount of the difference between the amount of the exposure and the amount of a claim on the credit institution;

(32) "unfunded credit protection" means a technique of credit risk mitigation where the reduction of the credit risk on the exposure of a credit institution derives from the undertaking of a third party to pay an amount in the event of the default of the borrower or on the occurrence of other specified events;

(33) "repurchase transaction" means any transaction governed by an agreement falling within the definition of 'repurchase agreement' or 'reverse repurchase agreement' as defined in [Article 3 point (m) of Directive 93/6/EEC];

(34) "securities or commodities lending or borrowing transaction" means any transaction falling within the definition of 'securities or commodities lending' or 'securities or commodities borrowing' as defined in [Article 3 point (n) of Directive 93/6/EEC];

(35) "cash assimilated instrument" means a certificate of deposit or other similar instrument issued by the lending credit institution;

(36) "securitisation" means a transaction or scheme, whereby the credit risk associated with an exposure or pool of exposures is tranched, having the following characteristics:

(a) payments in the transaction or scheme are dependent upon the performance of the exposure or pool of exposures;

(b) the subordination of tranches determines the distribution of losses during the ongoing life of the transaction or scheme;

(37) "traditional securitisation" means a securitisation involving the economic transfer of the exposures being securitised to a securitisation special purpose entity which issues securities. This shall be accomplished by the transfer of ownership of the securitised exposures from the originator credit institution or through sub-participation. The securities issued do not represent payment obligations of the originator credit institution;

(38) "synthetic securitisation" means a securitisation where the tranching is achieved by the use of credit derivatives or guarantees, and the pool of exposures is not removed from the balance sheet of the originator credit institution;

(39) "tranche" means a contractually established segment of the credit risk associated with an exposure or number of exposures, where a position in the segment entails a risk of credit loss greater than or less than a position of the same amount in each other such segment, without taking account of credit protection provided by third parties directly to the holders of positions in the segment or in other segments;

(40) "securitisation position" shall mean an exposure to a securitisation;

(41) "originator" means either of the following:

(a) an entity which, either itself or through related entities, directly or indirectly, was involved in the original agreement which created the obligations or potential obligations of the debtor or potential debtor giving rise to exposure being securitised;

(b) an entity which purchases a third party's exposures onto its balance sheet and then securitises them;

(42) "sponsor" means a credit institution other than an originator credit institution that establishes and manages an asset-backed commercial paper programme or other securitisation scheme that purchases exposures from third party entities;

(43) "credit enhancement" means a contractual arrangement whereby the credit quality of a position in a securitisation is improved in relation to what it would have been if the

enhancement had not been provided, including the enhancement provided by more junior tranches in the securitisation and other types of credit protection;

(44) "securitisation special purpose entity (SSPE)" means a corporation trust or other entity, other than a credit institution, organised for carrying on a securitisation or securitisations, the activities of which are limited to those appropriate to accomplishing that objective, the structure of which is intended to isolate the obligations of the SSPE from those of the originator credit institution, and the holders of the beneficial interests in which have the right to pledge or exchange those interests without restriction;

↓ 2000/12/EC Article 1(25) to (27) (adapted)

(45) «group of connected clients» ~~shall mean~~ ⌦ means ⌫ :

(a) two or more natural or legal persons who, unless it is shown otherwise, constitute a single risk because one of them, directly or indirectly, has control over the other or others; ~~or~~

(b) two or more natural or legal persons between whom there is no relationship of control as ~~defined~~ ⌦ set out ⌫ in the first indent but who are to be regarded as constituting a single risk because they are so interconnected that, if one of them were to experience financial problems, the other or all of the others would be likely to encounter repayment difficulties;

(46) «close links» ~~shall mean~~ ⌦ means ⌫ a situation in which two or more natural or legal persons are linked ~~by~~ ⌦ in any of the following ways ⌫ :

(a) participation ~~, which shall mean the~~ ⌦ in the form of ⌫ ownership, direct or by way of control, of 20% or more of the voting rights or capital of an undertaking~~, or~~;

(b) control~~, which shall mean the relationship between a parent undertaking and a subsidiary, in all the cases referred to in Article 1(1) and (2) of Directive 83/349/EEC, or a similar relationship between any natural or legal person and an undertaking; any subsidiary undertaking of a subsidiary undertaking shall also be considered a subsidiary of the parent undertaking which is at the head of those undertakings.~~;

(c) ~~A situation in which two or more natural or legal persons are permanently linked~~ ⌦ the fact that both or all are permanently linked ⌫ to one and the same ⌦ third ⌫ person by a control relationship ~~shall also be regarded as constituting a close link between such persons~~;

(47) «recognised exchanges» ~~shall mean~~ ⌦ means ⌫ exchanges ⌦ which are ⌫ recognised ⌦ as such ⌫ by the competent authorities ⌦ and ⌫ which ⌦ meet the following conditions: ⌫

(a) ⌦ they ⌫ function regularly;

(b) ⌦they ⌫have rules, issued or approved by the appropriate authorities of the home country of the exchange, ~~which define~~ ⌦ defining ⌫the conditions for the operation of the exchange, the conditions of access to the exchange as well as the conditions that must be satisfied by a contract before it can effectively be dealt on the exchange;

(c) ⌦they ⌫have a clearing mechanism ~~that provides for~~ ⌦ whereby ⌫ contracts listed in Annex IV ~~to be~~ ⌦ are ⌫ subject to daily margin requirements ~~providing an appropriate protection~~ ⌦ which, ⌫ in the opinion of the competent authorities ⌦, provide appropriate protection ⌫ ~~in the opinion of the competent authorities~~.

↓ 2000/12/EC Art. 3 (adapted)

Article 5

~~Prohibition for undertakings other than credit institutions from carrying on the business of taking deposits or other repayable funds from the public~~

The Member States shall prohibit persons or undertakings that are not credit institutions from carrying on the business of taking deposits or other repayable funds from the public.

⌦ The first paragraph ⌫ ~~This prohibition~~ shall not apply to the taking of deposits or other funds repayable by a Member State or by a Member State's regional or local authorities or by public international bodies of which one or more Member States are members or to cases expressly covered by national or Community legislation, provided that those activities are subject to regulations and controls intended to protect depositors and investors and applicable to those cases.

↓ 2000/12/EC

TITLE II

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

↓ 2000/12/EC Art. 4 (adapted)
➔$_1$ Directive 2004/xx/EC Art. 3

Article 6

~~Authorisation~~

Member States shall require credit institutions to obtain authorisation before commencing their activities. ⌦ Without prejudice to Articles 7 to 9, 11 and 12⌫ ~~T~~they shall lay down the

requirements for such authorisation ~~subject to Articles 5 to 9,~~ and notify them to ➔1 the Commission ← .

↓ 2000/12/EC Art. 8 (adapted)

Article 7

~~Programme of operations and structural organisation~~

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 institution.

↓ 2000/12/EC Article 9 (adapted)

Article 8

~~Economic needs~~

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

↓ 2000/12/EC Art. 5(1) (adapted)

Article 9

~~Initial capital~~

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.

↓ 2000/12/EC Art. 1 (11) (adapted)

«Initial capital» shall ~~mean~~ ⌦ comprise ⌫ capital ⌦ and reserves as referred to ⌫ ~~as defined~~ in Article ~~34~~ ⌦ 57(a) and (b) ⌫ ~~(2)(1) and (2)~~.

↓ 2000/12/EC Article 5(1) and (2) (adapted)

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 ⌫ ~~6~~(1).

2. The Member States ⊠ may, subject to the following conditions, grant ⌫ ~~shall, however, have the option of granting~~authorisation to particular categories of credit institutions the initial capital of which is less than that ⊠ specified ⌫ ~~prescribed~~ in paragraph 1~~. In such cases~~:

(a) the initial capital ⊠ must ⌫ ~~shall~~ not be less than EUR 1 million;

(b) the Member States concerned must notify the Commission of their reasons for ⊠ exercising ⌫ ~~using~~ ⊠ this option ⌫~~making use of the option provided for in this paragraph,~~

(c) ~~when the list referred to in Article 11 is published,~~ the name of each credit institution that does not have the minimum capital ⊠ specified ⌫ ~~prescribed~~ in paragraph 1 ⊠ must ⌫ ~~shall~~ be annotated to that effect ⊠ in the list referred to in Article 14. ⌫

↓ 2000/12/EC Art. 5(3) to (7) (adapted)

Article 10

1. A credit institution's own funds may not fall below the amount of initial capital required ~~by~~ ⊠ under Article 9 ⌫ ~~paragraphs 1 and 2~~ at the time of its authorisation.

2. The 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 ⌫ ~~paragraphs 1 and 2~~, 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 ⌫ ~~4~~ is taken by a natural or legal person other than the person who controlled the institution previously, the own funds of that ⊠ credit ⌫ institution must attain at least the level ⊠ specified ⌫ ~~prescribed~~ for initial capital in ⊠ Article 9 ⌫ ~~paragraphs 1 and 2.~~

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 ~~4~~ ⊠ 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 ⌫ ~~pursuant to~~ ⊠ Article 9 ⌫ ~~paragraphs 1 and 2~~ have not been attained.

5. If, in the cases referred to in paragraphs ⊠ 1, 2 and 4 ⌫ ~~3, 4 and 6,~~ the own funds should be reduced, the competent authorities may, where the circumstances justify it, allow a~~n~~ ⊠ credit ⌫ institution a limited period in which to rectify its situation or cease its activities.

↓ 2000/12/EC Article 6 (adapted)

Article 11

~~Management body and place of the head office of credit institutions~~

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 ⌫ ~~Moreover, the authorities concerned~~ 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;

   (b) any other credit institution ⌦ shall ⌫ have its head office in the Member State which issued its authorisation and in which it actually carries on its business.

↓ 2000/12/EC Art. 7 (adapted)

Article 12

~~Shareholders and members~~

1. The competent authorities shall not grant authorisation for the taking-up of the business of credit institutions ⌦ unless ⌫ ~~before~~ 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 ⌫ ~~For the purpose of the definition of~~ qualifying holding in the context of this Article, the voting rights referred to in Article ~~7~~ ⌦ 92 ⌫ of ~~Council~~Directive ~~88/627/EEC~~[24] ⌦ 2001/34/EC of the European Parliament and of the Council[25] ⌫ shall be taken into consideration.

2. The competent authorities shall refuse 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 ~~abovementioned~~ shareholders or members.

[24] ~~Council Directive 88/627/EEC of 12 December 1988 on the information to be published when a major holding in a listed company is acquired or disposed of (OJ L 348, 17.12.1988, p. 62).~~

[25] OJ L 184 , 6.7.2001, p. 1.

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.

The competent authorities shall also refuse authorisation if the laws, regulations or administrative provisions of a ⌦ third ⌫ ~~non-member~~ country governing one or more natural or legal persons with which the credit institution has close links, or difficulties involved in the~~ir~~ 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.

↓ 2000/12/EC Articles 8 & 9 (adapted)

~~*Article 8*~~

~~**Programme of operations and structural organisation**~~

~~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 institution.~~

~~*Article 9*~~

~~**Economic needs**~~

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

↓ 2000/12/EC Article 10 (adapted)

Article 13

~~**Authorisation refusal**~~

Reasons shall be given whenever an authorisation is refused 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.

↓ 2000/12/EC Article 11 (adapted)

Article 14

~~Notification of the authorisation to the Commission~~

Every authorisation shall be notified to the Commission.

⌦ The name of e ⌫ ~~E~~ach credit institution ⌦ to ⌫ ~~shall be entered in a list~~ ⌦ which authorisation has been granted shall be entered in a list ⌫. ~~which t~~ ⌦ The ⌫ ~~the~~ Commission shall publish ⌦ that list ⌫ in the *Official Journal of the European* ⌦ *Union* ⌫ ~~*Communities*~~ and shall keep ⌦ it ⌫ up to date.

↓ 2000/12/EC Art. 12 (adapted)

Article 15

~~Prior consultation with the competent authorities of other Member States~~

1. ⌦ The competent authority shall, before granting authorisation to a credit institution, ⌫ ~~There must be prior consultation with~~ ⌦ consult ⌫ the competent authorities of the other Member State involved ~~on the authorisation of a credit institution~~ ⌦ in the following cases ⌫ ~~which is~~:

⌦ (a) the credit institution concerned is ⌫ a subsidiary of a credit institution authorised in another Member State~~, or~~

⌦ (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.

↓ 2002/87/EC Art. 29.2 (adapted)

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~~, shall be consulted prior to the granting of an authorisation to a credit institution which is:~~ ⌦ in the following cases: ⌫

(a) ⌦ the credit institution concerned is ⌫ a subsidiary of an insurance undertaking or investment firm authorised in the Community~~, or~~;

(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 ⌫ ~~who~~ controls an insurance undertaking or investment firm authorised in the Community.

3. The relevant competent authorities referred to in ~~the first and second~~ 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 ⌫ ~~inform each other of~~ any information regarding the suitability of shareholders and the reputation and experience of directors which is of relevance ~~to the other competent authorities involved~~ for the granting of an authorisation as well as for the ongoing assessment of compliance with operating conditions.

↓ 2000/12/EC Article 13 (adapted)

Article 16

~~Branches of credit institutions authorised in another Member State~~

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 ⌫ ~~as prescribed in Articles 17, 20(1) to (6) and Articles 22 and 26~~.

↓ 2000/12/EC Art. 14 (adapted)

Article 17

~~Withdrawal of authorisation~~

1. The competent authorities may withdraw the authorisation issued 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;

(e) falls within one of the other cases where national law provides for withdrawal of authorisation.

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

↓ 2000/12/EC Article 15 (adapted)

Article 18

~~Name~~

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 ~~which may exist in the host Member State~~, 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.

↓ 2000/12/EC Art. 16 (1) (adapted)

Article 19

~~Qualifiying holding in a credit institution~~

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 must 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 ~~the provisions of~~ 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 ⊠ ~~subparagraph~~ 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 ⊠ ~~referred to in the first subparagraph~~. If they do not oppose the plan ~~referred to in the first subparagraph~~, they may fix a maximum period for its implementation.

↓ 2002/87/EC Art. 29.3 (adapted)

2. If the ⊠ person proposing to acquire ⊠ ~~acquirer of~~ 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 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 ⌫ ~~must~~ be subject to the prior consultation ⌦ provided for ⌫ ~~referred to~~ in Article ⌦ 15 ⌫ ~~12~~.

🡻 2000/12/EC Article 16(3)

Article 20

~~3.~~ 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 must 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.

🡻 2000/12/EC Art. 16 (4) to (6) (adapted)

Article 21

1~~4~~. ~~On becoming aware of them, c~~ ⌦ Credit ⌫ ~~credit~~ institutions shall ⌦ , on becoming aware ⌫ ~~inform the competent authorities~~ 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 ⌫ ~~paragraphs 1 and 3~~ ⌦ , inform the competent authorities of those acquisitions or disposals. ⌫

They shall also, at least once a year, inform ⌦ the competent authorities ⌫ ~~them~~ 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~~5~~. The Member States shall require that, where the influence exercised by the persons referred to in ⌦ Article 19(1) ⌫ ~~paragraph 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 ~~for example~~ 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 ⌫ ~~failing~~ to comply with the obligation to provide prior information, as laid down in ⌦ Article 19 (1). ⌫ ~~paragraph 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~~6~~. ⌦ In determining a ⌫ ~~For the purposes of the definition of~~ qualifying holding and other levels of holding ⌦ referred to ⌫ ~~set out~~ in this Article, the voting rights referred to in Article ~~7~~ ⌦ 92 ⌫ of ~~Council Directive 88/627/EEC~~ ⌦ Directive 2001/34/EC ⌫ shall be taken into consideration.

↓ 2000/12/EC Article 17 (adapted)
⇨ new

Article 22

~~Procedures and internal control mechanisms~~

1. Home Member State competent authorities shall require that every credit institution ~~have sound administrative and accounting procedures and adequate internal control mechanisms.~~ ⇨ 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. ⇦

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.

↓ 2000/12/EC

TITLE III

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

↓ 2000/12/EC (adapted)

⌦ SECTION 1 CREDIT INSTITUTIONS ⌫

↓ 2000/12/EC Art. 18 (adapted)

Article 23

~~Credit institutions~~

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 ⌫ ~~20(1) to (6), 21(1) and (2), and 22,~~ 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.

🡻 2000/12/EC (adapted)

⌦ SECTION 2 FINANCIAL INSTITUTIONS ⌫

🡻 2000/12/EC Article 19 1st & 3rd paragraphs (adapted)

Article 24

~~Financial institutions~~

1. The Member States shall ~~also~~ 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 ⌫ ~~20(1) to (6), 21(1) and (2), and 22~~, 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 ~~a~~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 must be authorised as credit institutions in the Member State by the law of which the ⌦ financial institution ⌫ ~~subsidiary~~ is governed~~.~~;

   (b) the activities in question must actually be carried on within the territory of the same Member State~~.~~;

   (c) the parent undertaking or undertakings must hold 90% or more of the voting rights attaching to shares in the capital of the ⌦ financial institution; ⌫ ~~subsidiary.~~

   (d) the parent undertaking or undertakings must satisfy the competent authorities regarding the prudent management of the ⌦ financial institution ⌫ ~~subsidiary~~ and must 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; ⌫ ~~subsidiary,~~

   (e) the ⌦ financial institution ⌫ ~~subsidiary~~ must 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 ~~Articles 52 to 56~~ ⌦ Title V, Chapter 4, Section 1 ⌫ , in particular for the calculation

of the solvency ratio, for the control of large exposures and for purposes of the limitation of holdings provided for in Article ⊠ 120 ⊠ ~~50~~.

Compliance with these conditions ⊠ shall ⊠ ~~must~~ be verified by the competent authorities of the home Member State and the latter ⊠ shall ⊠ ~~must~~ supply the ⊠ financial institution ⊠ ~~subsidiary~~ with a certificate of compliance which must form part of the notification referred to in Articles ⊠ 25 and 28 ⊠ ~~20(1) to (6), and 21(1) and (2~~).

The competent authorities of the home Member State shall ensure the supervision of the ⊠ financial institution ⊠ ~~subsidiary~~ in accordance with Articles ⊠10 (1), 19 to 22, 40, 42 to 52 and 54 ⊠ ~~5(3), 16, 17, 26, 28, 29, 30, and 32~~.

↓ 2000/12/EC Art. 19 (sixth paragraph) (adapted)

2. If a financial institution ⊠ as referred to in the first subparagraph of paragraph 1 ⊠ ~~eligible under this Article should~~ 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.

↓ 2000/12/EC Art. 19 fourth paragraph (adapted)

3. The provisions mentioned in ⊠ paragraphs 1 and 2 ⊠ ~~this Article~~ shall apply *mutatis mutandis* to subsidiaries ⊠of a financial institution as referred to in the first subparagraph of paragraph 1 ⊠~~subject to the necessary modifications. In particular, the words «credit institution» should be read as «financial institution fulfilling the conditions laid down in Article 19» and the word «authorisation» as «memorandum and Articles of association».~~

↓ 2000/12/EC Art. (19) 5th & 6th paragraphs (adapted)

~~The second subparagraph of Article 20(3) shall read:~~

~~«The home Member State competent authorities shall also communicate the amount of own funds of the subsidiary financial institution and the consolidated solvency ratio of the credit institution which is its parent undertaking».~~

~~If a financial institution eligible under this Article should cease 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 institution in the host Member State become subject to the legislation of the host Member State.~~

↓ 2000/12/EC (adapted)

⌦ SECTION 3 EXERCISE OF THE RIGHT OF ESTABLISHMENT ⌫

↓ 2000/12/EC Art. 20 (1) (2) & (3) 1st & 2nd subparagraphs (adapted)

Article 25

~~Exercise of the right of establishment~~

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. ~~The~~Member States ~~State~~ 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;

   (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 competent authorities shall also communicate the amount of own funds and the solvency ratio of the credit institution.

↓ 2000/12/EC Art. 19 5th subparagraph (adapted)

⌦ By way of derogation from the second subparagraph, in the case referred to in Article 24,⌫ "~~The~~ the home Member State competent authorities shall ~~also~~ communicate the amount of own funds of ~~the subsidiary~~ the financial institution and the consolidated solvency ratio of the credit institution which is its parent undertaking."

↓ 2000/12/EC Art. 20 (3) 3rd subparagraph (adapted)

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.

↓ 2000/12/EC Art. 20(4) to (7) (adapted)

Article 26

14. 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 ⊠ ~~mentioned~~ in ⊠ Article 25 ⊠ (~~paragraph~~3), prepare for the supervision of the credit institution in accordance with ⊠ Section 5 ⊠ ~~Article 22~~ and if necessary indicate the conditions under which, in the interest of the general good, those activities must be carried on in the host Member State.

25. 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 14 without receipt of any communication from the latter, the branch may be established and ⊠ may ⊠ commence its activities.

36. In the event of a change in any of the particulars communicated pursuant to ⊠ points (b), (c) or (d) of Article 25 ⊠ (~~paragraph~~2) ~~(b), (c) or (d)~~, 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 ⊠(~~paragraph~~3) and the competent authorities of the host Member State to take a decision on the change pursuant to paragraph 14 ⊠ of this Article. ⊠ ~~4.~~

47. 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 ⊠ ~~to 5~~ ⊠ of this Article. ⊠ They shall be governed, from ⊠ that ⊠ ~~the abovementioned~~ date, by paragraph ~~6~~ ⊠ 3 of this Article ⊠ , and by ⊠ Article 23, Sections 2 and 5 and Article 43 ⊠ ~~Articles 18, 19, 22 and 29~~.

↓ 2000/12/EC Art. 1 (3) final clause

Article 27

Any ~~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~~.~~.

↓ 2000/12/EC (adapted)

⌦ SECTION 4 EXERCISE OF THE FREEDOM TO PROVIDE SERVICES ⌫

↓ 2000/12/EC Art. 21 (adapted)

Article 28

~~Exercise of the freedom to provide services~~

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 ⌫ ~~mentioned~~ 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.

↓ 2000/12/EC (adapted)

⌦ SECTION 5 POWERS OF THE COMPETENT AUTHORITIES OF THE HOST MEMBER STATE ⌫

↓ 2000/12/EC Art. 22(1) (adapted)

Article 29

~~Power of the competent authorities of the host Member State~~

~~1.~~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 ⌫ ~~27~~, 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.

↓ 2000/12/EC Art. 22(2) to (4) (adapted)

Article 30

1~~2~~. Where the competent authorities of a host Member State ascertain ⌦ that ⌫ ~~than a~~ ~~n~~ ⌦ 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~~3~~. 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~~4~~. 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 ~~2~~ ⌦ 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.

↓ 2000/12/EC Art. 22(5) (adapted)

Article 31

~~5.~~The provisions of ⌦ Articles 29 and 30 ⌫ ~~paragraph 1 to 4~~ 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 any further transactions within their territories.

↓ 2000/12/EC Art. 22(6) (adapted)

Article 32

~~6.~~ Any measure adopted pursuant to ~~paragraph (2)~~ ⌦ Article 30(2) and (3), or Article 31 ⌫ ~~paragraph 3, 4 and 5~~ involving penalties or restrictions on the exercise of the freedom to provide services must 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 the authorities of which adopted it.

↓ 2000/12/EC Art. 22(7) (adapted)

Article 33

~~7.~~ Before following the procedure provided for in ⌦ Article 30 ⌫ ~~paragraph 2, 3 and 4~~, 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 must 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 must amend or abolish those measures.

↓ 2000/12/EC Art. 22 (8) (adapted)

Article 34

~~8.~~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 ⌦ credit ⌫ institutions from initiating further transactions within their territories.

↓ 2000/12/EC Art. 22(9) (adapted)

Article 35

~~9.~~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.

↓ 2000/12/EC Art. 22 (10) (adapted)

Article 36

~~10.~~ The Member States shall inform the Commission of the number and type of cases in which there has been a refusal pursuant to Article ⌦ 25 and 26 ⌫ ~~20(1) to (6)~~ or in which measures have been taken in accordance with ~~paragraph 4 of this Article~~ ⌦ Article 30(3) ⌫ ~~paragraph 4 of this Article~~.

↓ 2000/12/EC Art. 22(11) (adapted)

Article 37

~~11.~~⌦ This Section shall not ⌫ ~~Nothing in this Article shall~~ 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.

↓ 2000/12/EC

TITLE IV

RELATIONS WITH THIRD COUNTRIES

↓ 2000/12/EC (adapted)

⌦ SECTION 1 NOTIFICATION IN RELATION TO THIRD COUNTRIES' UNDERTAKINGS AND CONDITIONS OF ACCESS TO THE MARKETS OF THESE COUNTRIES ⌫

↓ 2000/12/EC Art. 23 (adapted)

~~Notification of the subsidiaries of third countries' undertakings and conditions of access to the markets of these countries~~

~~1. The competent authorities of the Member States shall inform the Commission 1 and the competent authorities of the other Member States :~~

~~(a) of any authorisation of a direct or indirect subsidiary one or more parent undertakings of which are governed by the laws of a third country;~~

~~(b) whenever such a parent undertaking acquires a holding in a Community credit institution such that the latter would become its subsidiary.~~

~~When authorisation is granted to the direct or indirect subsidiary of one or more parent undertakings governed by the law of third countries, the structure of the group shall be specified in the notification which the competent authorities shall address to the Commission in accordance with Article 11.~~

~~2. The Member States shall inform the Commission of any general difficulties encountered by their credit institutions in establishing themselves or carrying on banking activities in a third country.~~

~~3. The Commission shall periodically draw up a report examining the treatment accorded to Community credit institutions in third countries, in the terms referred to in paragraphs 4 and 5, as regards establishment and the carrying-on of banking activities, and the acquisition of holdings in third-country credit institutions. The Commission shall submit those reports to the Council, together with any appropriate proposals.~~

~~4. Whenever it appears to the Commission, either on the basis of the reports referred to in paragraph 3 or on the basis of other information, that a third country is not granting Community credit institutions effective market access comparable to that granted by the Community to credit institutions from that third country, the Commission may submit proposals to the Council for the appropriate mandate for negotiation with a view to obtaining comparable competitive opportunities for Community credit institutions. The Council shall decide by a qualified majority.~~

~~5. Whenever it appears to the Commission, either on the basis of the reports referred to in paragraph 1 or on the basis of other information that Community credit institutions in a third country do not receive national treatment offering the same competitive opportunities as are available to domestic credit institutions and the conditions of effective market access are not fulfilled, the Commission may initiate negotiations in order to remedy the situation.~~

~~6. In the circumstances described in the first subparagraph, it may also be decided at any time, and in addition to initiating negotiations, in accordance with the procedure laid down in Article 60 (2), that the competent authorities of the Member States must limit or suspend their decisions regarding requests pending at the moment of the decision or future requests for authorisations and the acquisition of holdings by direct or indirect parent undertakings governed by the laws of the third country in question. The duration of the measures referred to may not exceed three months.~~

~~Before the end of that three-month period, and in the light of the results of the negotiations, the Council may, acting on a proposal from the Commission, decide by a qualified majority whether the measures shall be continued.~~

~~6. Whenever it appears to the Commission that one of the situations described in paragraphs 4 and 5 of Article 39 obtains, the Member States shall inform it at its request:~~

~~(a) of any request for the authorisation of a direct or indirect subsidiary one or more parent undertakings of which are governed by the laws of the third country in question;~~

~~(b) whenever they are informed in accordance with Article 16 that such an undertaking proposes to acquire a holding in a Community credit institution such that the latter would become its subsidiary.~~

~~This obligation to provide information shall lapse whenever an agreement is reached with the third country referred to in paragraph 4 or 5or when the measures referred to in the second and third subparagraphs of paragraph 5 cease to apply.~~

~~7. Measures taken pursuant to this Article comply with the Community's obligations under any international agreements, bilateral or multilateral, governing the taking up and pursuit of the business of credit institutions.~~

~~ê 2000/12/EC Art. 24 (adapted)~~
➔1 Directive 2004/xx/EC Art. 3.7

Article 38

~~Branches of credit institutions having their head offices outside the Community~~

1. Member States shall not apply to branches of credit institutions having their head office outside the Community, when commencing or carrying on their business, provisions which result in more favourable treatment than that accorded to branches of credit institutions having their head office in the Community.

2. The competent authorities shall notify the Commission and the ➔1 European Banking Committee ← of all authorisations for branches granted to credit institutions having their head office outside the Community.

3. Without prejudice to paragraph 1, the Community may, through agreements concluded ~~in accordance with the Treaty~~ with one or more third countries, agree to apply provisions which~~, on the basis of the principle of reciprocity,~~ accord to branches of a credit institution having its head office outside the Community identical treatment throughout the territory of the Community.

⇩ new

SECTION 2

COOPERATION WITH THIRD COUNTRIES' COMPETENT AUTHORITIES REGARDING SUPERVISION ON A CONSOLIDATED BASIS

🡻 2000/12/EC Art. 25 (adapted)

Article 39

1. The Commission may submit proposals to the Council, either at the request of a Member State or on its own initiative, for the negotiation of agreements with one or

more third countries regarding the means of exercising supervision on a consolidated basis over ⌦ the following ⌫:

(a) credit institutions the parent undertakings of which have their head offices situated in a third country; ~~and~~

(b) credit institutions situated in third countries the parent undertakings of which, whether credit institutions or financial holding companies, have their head offices in the Community.

2. The agreements referred to in paragraph 1 shall, in particular, seek to ensure ⌦ the following ⌫ ~~both~~:

(a) that the competent authorities of the Member States are able to obtain the information necessary for the supervision, on the basis of their consolidated financial situations, of credit institutions or financial holding companies situated in the Community and which have as subsidiaries credit institutions or financial institutions situated outside the Community, or holding participation in such institutions;

(b) that the competent authorities of third countries are able to obtain the information necessary for the supervision of parent undertakings the head offices of which are situated within their territories and which have as subsidiaries credit institutions or financial institutions situated in one or more Member States or holding participation in such institutions.

↓ Directive 2004/xx/EC Art. 3.8

3. Without prejudice to Article 300(1) and (2) of the Treaty establishing the European Community, the Commission shall, with the assistance of the European Banking Committee, examine the outcome of the negotiations referred to in paragraph 1 and the resulting situation.

↓ 2000/12/EC

TITLE V

↓ 2000/12/EC
⇨ new

PRINCIPLES AND TECHNICAL INSTRUMENTS FOR PRUDENTIAL SUPERVISION ⇨ AND DISCLOSURE ⇦

↓ 2000/12/EC

CHAPTER 1

PRINCIPLES OF PRUDENTIAL SUPERVISION

⇩ new

SECTION 1

COMPETENCE OF HOME AND HOST MEMBER STATE

↓ 2000/12/EC Art. 26 (adapted)

Article 40

~~Competence of control of the home Member State~~

1. The prudential supervision of a credit institution, including that of the activities it carries on accordance with Articles ~~18 and 19~~ ⌦ 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 authorities of the host Member State.

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

↓ 2000/12/EC Art 27 (adapted)

Article 41

~~Competence of the host Member State~~

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 ~~pending further coordination.~~

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.

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

↓ 2000/12/EC Art 28 (adapted)

Article 42

~~Collaboration concerning supervision~~

The competent authorities of the Member States concerned shall collaborate closely in order to supervise the activities of credit institutions operating, in particular by having established branches there, 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.

↓ 2000/12/EC Art. 29 (adapted)

Article 43

~~On-the-spot verification of branches established in another Member State~~

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 ⌫ ~~28~~.

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 ⌫ ~~55(7)~~.

3. ~~This Article~~ ⌦ 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.

↓ 2000/12/EC (adapted)

⌦ SECTION 2 EXCHANGE OF INFORMATION AND PROFESSIONAL SECRECY ⌫

↓ 2000/12/EC Art. 30 (1) to (3) (adapted)

Article 44

~~Exchange of information and professional secrecy~~

1. ~~The~~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 ⌫ ~~This means that 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.

↓ 2000/12/EC Art. 30 (4) (adapted)

Article 45

~~4.~~Competent authorities receiving confidential information under ⌦ Article 44 ⌫ ~~paragraphs 1 or 2~~ 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;~~, or~~

(b) to impose sanctions;~~, or~~

(c) in an administrative appeal against a decision of the competent authority;~~, or~~

(d) in court proceedings initiated pursuant to Article ~~33~~ ⊠ 55 ⊠ or to special provisions provided for in this in other Directives adopted in the field of credit institutions.

↓ 2000/12/EC Art. 30 (3) (adapted)

Article 46

~~3.~~ 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 ~~paragraphs 5 and 6~~ ⊠ 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 this Article. Such exchange of information must 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.

↓ 2000/12/EC Art 30 (5) (adapted)

Article 47

~~5. Paragraphs 1 and 4~~ ⊠ 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~~,~~;

(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~~, and~~

⊠ Nor shall they preclude ⊠ the disclosure to bodies which administer deposit-guarantee schemes of information necessary to the exercise of their functions.

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

↓ 2000/12/EC Art. 30 (6) & (7) (adapted)

Article 48

16. Notwithstanding ⊠ Articles 44 to 46 ◅ ~~paragraphs 1 to 4~~, Member States may authorise ~~the~~ exchange~~s~~ 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 other similar procedures; ~~, or~~

(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 ~~which have recourse to the provisions of the first subparagraph~~ shall require ⊠ fulfilment of ◅ at least ~~that~~ the following conditions ~~are met~~:

(a) the information ⊠ must ◅ ~~shall~~ be for the purpose of performing the supervisory task referred to in the first subparagraph~~.~~;

(b) information received in this context ⊠ must ◅ ~~shall~~ be subject to the conditions of professional secrecy imposed in ⊠ Article 44(1) ◅ ~~paragraph 1).~~;

(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.

27. Notwithstanding ⊠ Articles 44 to 46 ◅ ~~paragraphs 1 to 4~~, 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 ~~which have recourse to the provision in the first subparagraph~~ shall require ⊠ fulfilment of ◅ at least that the following conditions ~~are met~~:

(a) the information is for the purpose of performing the task referred to in the first subparagraph~~.~~;

(b) information received in this context ⌦ is ⌫ ~~shall be~~ subject to the conditions of professional secrecy imposed in ⌦ Article 44(1) ⌫ ~~(paragraph 1).~~;

(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 ⌫ ~~stipulated~~ in the second subparagraph.

In order to implement the third ~~indent of the second~~ 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 ⌫ ~~paragraph~~.

~~Before 31 December 2000, t~~The Commission shall draw up a report on the application of the provisions of this ⌦ Article ⌫ ~~paragraph~~.

↓ 2000/12/EC Art 30 (8) (adapted)

Article 49

~~8.~~This ⌦ Section ⌫ ~~Article~~ 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~~.~~;

(b) where appropriate, to other public authorities responsible for overseeing payment systems.

~~information intended for the performance of their task, nor~~ ⌦ Nor ⌫ shall it prevent such authorities or bodies from communicating to the competent authorities such information as they may need for the purposes of ⌦ Article 45 ⌫ ~~paragraph 4~~.

Information received in this context shall be subject to the conditions of professional secrecy ⌦ set out ⌫ ~~imposed~~ in ~~this~~ Article ⌦ 44(1) ⌫.

↓ 2000/12/EC Art. 30 (9) 1st and 2nd paragraphs (adapted)

Article 50

~~9. In addition, n~~Notwithstanding the provisions referred to in ⌦ Articles 44(1) and 45 ⌫ ~~paragraph 1 and 4~~, 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.

↓ 2000/12/EC Art 30 (9) 3rd paragraph (adapted)

Article 51

~~However, t~~The Member States shall provide that information received under ⌦ Articles 44(2) and 47 ⌫ ~~paragraph 2 and 5~~ and ⌦ information ⌫ ~~that~~ obtained by means of the on-the-spot verification referred to in Article ⌦ 43 ⌫ ~~29~~(1) and (2) may never be disclosed in the cases referred to in this ⌦ Article ⌫ ~~paragraph~~ 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.

↓ 2000/12/EC Art. 30 (10) (adapted)

Article 52

~~10.~~⌦ This Section ⌫ ~~Article~~ shall not prevent the competent authorities ⌦ of a Member State ⌫ from communicating the information referred to in ⌦ Articles 44 to 46 ⌫ ~~paragraph 1 to 4~~ to a clearing house or other similar body recognised under national law for the provision of clearing or settlement services for one of their Member States' 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 ⌦ laid down ⌫ ~~imposed~~ in ⌦ Article 44(1) ⌫ ~~paragraph 1~~.

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

⇩ new

SECTION 3

DUTY OF PERSONS RESPONSIBLE FOR THE LEGAL CONTROL OF ANNUAL AND CONSOLIDATED ACCOUNTS

🡻 2000/12/EC Art. 31 (adapted)

Article 53

~~Duty of persons responsible for the legal control of annual and consolidated accounts~~

1. Member States shall provide at least that ~~(a)~~ any person authorised within the meaning of ⌦ eight ⌫ Council Directive 84/253/EEC[26], performing in a credit institution the task described in Article 51 of ⌦ fourth ⌫ Council Directive 78/660/EEC[27], or Article 37 of Council Directive 83/349/EEC, or Article 31 of ⌦ Council ⌫ Directive 85/611/EEC[28], or any other statutory task, shall have a duty to report promptly to the competent authorities any fact or decision concerning that ⌦ credit ⌫ institution of which he has become aware while carrying out that task which is liable to:

   (a) constitute a material breach of the laws, regulations or administrative provisions which lay down the conditions governing authorisation or which specifically govern pursuit of the activities of credit institutions ~~, or~~;

   (b) affect the continuous functioning of the credit institution ~~, or~~;

   (c) lead to refusal to certify the accounts or to the expression of reservations.

   ⌦ Member States shall provide at least that ⌫ ~~(b)~~ that person shall likewise have a duty to report any fact ⌦ or ⌫ ~~and~~ decision of which he becomes aware in the course of carrying out a task as described in ⌦ the first sub-paragraph ⌫ ~~(a)~~ in an undertaking having close links resulting from a control relationship with the credit institution within which he is carrying out ⌦ that ⌫ ~~the abovementioned~~ task.

2. The disclosure in good faith to the competent authorities, by persons authorised within the meaning of Directive 84/253/EEC, of any fact or decision referred to in paragraph 1 shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision and shall not involve such persons in liability of any kind.

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26 OJ L 126, 12.5.1984, p. 20.
27 OJ L 222, 14.8.1978, p. 11, as last amended by Directive 1999/60/EC (OJ L 62, 26.6.1999, p. 65).
28 OJ L 375, 31.12.1985, p. 3, as last amended by Directive 95/26/EC (OJ L 168, 18.7.1995, p. 7).

↓ 2000/12/EC (adapted)

⌦SECTION 4 POWER OF SANCTION AND RIGHT TO APPLY TO THE COURTS ⌫

↓ 2000/12/EC Art. 32 (adapted)

Article 54

~~Power of sanction of the competent authorities~~

Without prejudice to the procedures for the withdrawal of authorisations and the provisions of criminal law, the Member States shall provide that their respective competent authorities may, as against credit institutions, or those who effectively control the business of credit institutions, which breach laws, regulations or administrative provisions concerning the supervision or pursuit of their activities, adopt or impose ~~in respect of them~~ penalties or measures aimed specifically at ending ⌦ the ⌫ observed breaches or the causes of such breaches.

↓ 2000/12/EC Art. 33 (adapted)

Article 55

~~Right to apply to the courts~~

Member States shall ensure that decisions taken in respect of a credit institution in pursuance of laws, regulations and administrative provisions adopted in accordance with this Directive may be subject to the right to apply to the courts. The same shall apply where no decision is taken, within six months of its submission, in respect of an application for authorisation which contains all the information required under the provisions in force.

↓ 2000/28/EC 1.2 (adapted)

~~Article 33a~~

~~Article 3 of Directive 2000/46/EC shall apply to credit institutions~~

↓ 2000/12/EC

CHAPTER 2

TECHNICAL INSTRUMENTS OF PRUDENTIAL SUPERVISION

SECTION 1

OWN FUNDS

↓ 2000/12/EC Art. 34 (1) (adapted)

Article 56

~~General principles~~

~~1.~~Wherever a Member State lays down by law, regulation or administrative action a provision in implementation of Community legislation concerning the prudential supervision of an operative credit institution which uses the term or refers to the concept of own funds, it shall bring this term or concept into line with the definition given in ⌦ Articles 57 to 61 and Articles 63 to 66 ⌫~~paragraph 2, 3 and 4 and Articles 35 to 38~~.

↓ 2000/12/EC Art. 34 (2) 1st paragraph (adapted)
⇨ new

Article 57

Subject to the limits imposed in Article ~~38~~ ⌦ 66 ⌫ , the unconsolidated own funds of credit institutions shall consist of the following items:

(~~1~~a) capital within the meaning of Article 22 of Directive 86/635/EEC, in so far as it has been paid up, plus share premium accounts but excluding cumulative preferential shares;

(~~2~~b) reserves within the meaning of Article 23 of Directive 86/635/EEC and profits and losses brought forward as a result of the application of the final profit or loss;~~. The Member States may permit inclusion of interim profits before a formal decision has been taken only if these profits have been verified by persons responsible for the auditing of the accounts and if it is proved to the satisfaction of the competent authorities that the amount thereof has been evaluated in accordance with the principles set out in Directive 86/635/EEC and is net of any foreseeable charge or dividend;~~

(~~3~~c) funds for general banking risks within the meaning of Article 38 of Directive 86/635/EEC;

(~~4~~d) revaluation reserves within the meaning of Article 33 of Directive 78/660/EEC;

(~~5~~e) value adjustments within the meaning of Article 37(2) of Directive 86/635/EEC;

(~~6~~f) other items within the meaning of Article ~~35~~ ⌦ 63 ⌫ ;

(~~7~~g) the commitments of the members of credit institutions set up as cooperative societies and the joint and several commitments of the borrowers of certain institutions organised as funds, as referred to in Article ~~36~~ ⌦ 64 ⌫ (1);

(~~8~~h) fixed-term cumulative preferential shares and subordinated loan capital as referred to in Article ~~36~~ ⌦ 64 ⌫ (3).

The following items shall be deducted in accordance with Article ~~38~~ ⌦ 66 ⌫ :

(~~9~~i) own shares at book value held by a credit institution;

(~~10~~j) intangible assets within the meaning of Article 4(9) («Assets») of Directive 86/635/EEC;

(k~~11~~) material losses of the current financial year;

↓ 2002/87/EC Art. 29.4(a) (adapted)

(l~~12~~) holdings in other credit and financial institutions amounting to more than 10 % of their capital;

(m~~13~~)subordinated claims and instruments referred to in Article ~~35~~ ⌦ 63 ⌫ and Article ~~36~~ ⌦ 64 ⌫ (3) which a credit institution holds in respect of credit and financial institutions in which it has holdings exceeding 10 % of the capital in each case;

(n~~14~~) holdings in other credit and financial institutions of up to 10 % of their capital, the subordinated claims and the instruments referred to in Article ~~35~~ ⌦ 63 ⌫ and Article ~~36~~ ⌦ 64 ⌫ (3) which a credit institution holds in respect of credit and financial institutions other than those referred to in ~~points 12 and 13 of~~ this subparagraph in respect of the amount of the total of such holdings, subordinated claims and instruments which exceed 10 % of that credit institution's own funds calculated before the deduction of items in points ⌦ (l) to (p) ⌫ ~~12 to 16~~ of this subparagraph;

(o~~15~~) participations within the meaning of Article ⌦ 4(10) ⌫ ~~1(9)~~ which a credit institution holds in:

(i) insurance undertakings within the meaning of Article 6 of ⌦ First Council ⌫ Directive 73/239/EEC ⌦ [29] ⌫ , Article 6 of ⌦ First Council ⌫ Directive 79/267/EEC ⌦ [30] ⌫ or Article 1(b) of Directive 98/78/EC of the European Parliament and of the Council[31];

(ii) reinsurance undertakings within the meaning of Article 1(c) of Directive 98/78/EC;

(iii) insurance holding companies within the meaning of Article 1(i) of Directive 98/78/EC;

(p~~16~~) each of the following items which the credit institution holds in respect of the entities defined in point (~~15~~o) in which it holds a participation:

(i) instruments referred to in Article 16(3) of Directive 73/239/EEC,

(ii) instruments referred to in Article 18(3) of Directive 79/267/EEC.

⇩ new

(q) For credit institutions calculating risk-weighted exposure amounts under Section 3, Subsection 2, negative amounts resulting from the calculation in Annex VII, Part 1, paragraph 34 and expected loss amounts calculated in accordance with Annex VII, Part 1 paragraphs 30 and 31;

(r) The exposure amount of securitisation positions which receive a risk weight of 1250% under Annex IX, Part 4, calculated in the manner there specified.

🡻 2000/12/EC Art. 34 (2) point 2, final sentence (adapted)
⇨ new

⌦ For the purposes of point (b), the ⌫ ~~The~~ Member States may permit inclusion of interim profits before a formal decision has been taken only if these profits have been verified by persons responsible for the auditing of the accounts and if it is proved to the satisfaction of the competent authorities that the amount thereof has been evaluated in accordance with the principles set out in Directive 86/635/EEC and is net of any foreseeable charge or dividend~~.~~.

⇨ In the case of a credit institution which is the originator of a securitisation, net gains arising from the capitalisation of future income from the securitised assets and providing credit enhancement to positions in the securitisation shall be excluded from the item specified in point (b). ⇦

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[29] ⌦ OJ L 228, 16.8.1973, p. 3 ⌫
[30] ⌦ OJ L 63, 13.3.1979, p. 1 ⌫
[31] OJ L 330, 5.12.1998, p. 1.

↓ 2002/87/EC Art. 29.4(b) (adapted)

Article 58

Where shares in another credit institution, financial institution, insurance or reinsurance undertaking or insurance holding company are held temporarily for the purposes of a financial assistance operation designed to reorganise and save that entity, the competent authority may waive the provisions on deduction referred to in points ⌦ (l) to (p) ⌫ ~~12 to 16~~.

Article 59

As an alternative to the deduction of the items referred to in points ⌦ (o) to (p) ⌫ ~~15 and 16~~, Member States may allow their credit institutions to apply *mutatis mutandis* methods 1, 2, or 3 of Annex I to Directive 2002/87/EC. Method 1 (Accounting consolidation) ⌦ may ⌫ ~~shall only~~ be applied ⌦ only ⌫ if the competent authority is confident about the level of integrated management and internal control regarding the entities which would be included in the scope of consolidation. The method chosen shall be applied in a consistent manner over time.

Article 60

Member States may provide that for the calculation of own funds on a stand-alone basis, credit institutions subject to supervision on a consolidated basis in accordance with Chapter ⌦ 4, Section 1 ⌫ ~~3~~, or to supplementary supervision in accordance with Directive 2002/87/EC, need not deduct the items referred to in points ⌦ (l) to (p) ⌫ ~~12 to 16~~ which are held in credit institutions, financial institutions, insurance or reinsurance undertakings or insurance holding companies, which are included in the scope of consolidated or supplementary supervision.

This provision shall apply to all the prudential rules harmonised by Community acts.

↓ 2000/12/EC Art 34 (3) (adapted)

Article 61

~~3.~~The concept of own funds as defined in points ⌦ (a) to (h) ⌫ ~~(1) to (8)~~ of ~~paragraph 2~~ ⌦ Article 57 ⌫ embodies a maximum number of items and amounts. The use of those items and the fixing of lower ceilings, and the deduction of items other than those listed in points ~~(9) to~~ ~~(13)~~ ⌦ (i) to (r) ⌫ of ⌦ Article 57 ⌫ ~~paragraph 2~~ shall be left to the discretion of the Member States. ~~Member States shall nevertheless be obliged to consider increased convergence with a view to a common definition of own funds.~~

~~To that end, the Commission shall, by 1 January 1996 at the latest, submit a report to the European Parliament and to the Council on the application of this Article and Articles 35 to 39, accompanied, where appropriate, by such proposals for amendment as it shall deem~~

~~necessary. Not later than 1 January 1998, the European Parliament and the Council shall, acting in accordance with the procedure laid down in Article 251 of the Treaty and after consultation of the Economic and Social Committee, examine the definition of own funds with a view to the uniform application of the common definition.~~

↓ 2000/12/EC Art 34 (4) (adapted)

~~4~~The items listed in points ⊠ (a) to (e) ⊠ ~~(1) to (5)~~ of ⊠ Article 57 ⊠ ~~paragraph 2~~ must be available to a credit institution for unrestricted and immediate use to cover risks or losses as soon as these occur. The amount must be net of any foreseeable tax charge at the moment of its calculation or be suitably adjusted in so far as such tax charges reduce the amount up to which these items may be applied to cover risks or losses.

⇩ new

Article 62

Member States will report to the Commission on the progress achieved in convergence with a view to a common definition of own funds. On the basis of these reports the Commission shall, if appropriate, by 1 January 2009 at the latest, submit a proposal to the European Parliament and to the Council for amendment of this Article and Articles 35 to 39.

↓ 2000/12/EC Art 35 (adapted)

Article 63

~~Other items~~

1. The concept of own funds used by a Member State may include other items provided that, whatever their legal or accounting designations might be, they have the following characteristics:

   (a) they are freely available to the credit institution to cover normal banking risks where revenue or capital losses have not yet been identified;

   (b) their existence is disclosed in internal accounting records;

   (c) their amount is determined by the management of the credit institution, verified by independent auditors, made known to the competent authorities and placed under the supervision of the latter.

2. Securities of indeterminate duration and other instruments that fulfil the following conditions may also be accepted as other items:

   (a) they may not be reimbursed on the bearer's initiative or without the prior agreement of the competent authority;

(b) the debt agreement must provide for the credit institution to have the option of deferring the payment of interest on the debt;

(c) the lender's claims on the credit institution must be wholly subordinated to those of all non-subordinated creditors;

(d) the documents governing the issue of the securities must provide for debt and unpaid interest to be such as to absorb losses, whilst leaving the credit institution in a position to continue trading;

(e) only fully paid-up amounts shall be taken into account.

To these may be added cumulative preferential shares other than those referred to in point ⊠ (h) ⊠ ~~8~~ of Article ~~34~~ ⊠ 57 ⊠ (2).

⇩ new

3. For credit institutions calculating risk-weighted exposure amounts under Section 3, Subsection 2, positive amounts resulting from the calculation in Annex VII, Part 1, paragraph 34, may, up to 0.6% of risk weighted exposure amounts calculated under Subsection 2, be accepted as other items. For these credit institutions value adjustments and provisions included in the calculation referred to in Annex VII, Section 3, Part 1, paragraph 34 and value adjustments and provisions for exposures referred to in point (e) of Article 57 shall not be included in own funds other than in accordance with this provision. For these purposes, risk-weighted exposure amounts shall not include those calculated in respect of securitisation positions which have a risk weight of 1250%.

🡻2000/12/EC Art 36 (adapted)

Article 64

~~Other provisions concerning own funds~~

1. The commitments of the members of credit institutions set up as cooperative societies referred to in point ⊠ (g) ⊠ ~~7~~ of Article ~~34(2)~~⊠57⊠, shall comprise those societies' uncalled capital; together with the legal commitments of the members of those cooperative societies to make additional non-refundable payments should the credit institution incur a loss, in which case it must be possible to demand those payments without delay.

   The joint and several commitments of borrowers in the case of credit institutions organised as funds shall be treated in the same way as the preceding items.

   All such items may be included in own funds in so far as they are counted as the own funds of institutions of this category under national law.

2. Member States shall not include in the own funds of public credit institutions guarantees which they or their local authorities extend to such entities.

3. Member States or the competent authorities may include fixed-term cumulative preferential shares referred to in point ⊠ (h) ◅ ~~(8)~~ of Article ~~34(2)~~⊠ 57 ◅ and subordinated loan capital referred to in that provision in own funds, if binding agreements exist under which, in the event of the bankruptcy or liquidation of the credit institution, they rank after the claims of all other creditors and are not to be repaid until all other debts outstanding at the time have been settled.

Subordinated loan capital must ~~also~~ fulfil the following additional criteria:

(a) only fully paid-up funds may be taken into account;

(b) the loans involved must have an original maturity of at least five years, after which they may be repaid~~; if the maturity of the debt is not fixed, they shall be repayable only subject to five years' notice unless the loans are no longer considered as own funds or unless the prior consent of the competent authorities is specifically required for early repayment. The competent authorities may grant permission for the early repayment of such loans provided the request is made at the initiative of the issuer and the solvency of the credit institution in question is not affected;~~

(c) the extent to which they may rank as own funds must be gradually reduced during at least the last five years before the repayment date;

(d) the loan agreement must not include any clause providing that in specified circumstances, other than the winding-up of the credit institution, the debt will become repayable before the agreed repayment date.

🡻 2000/12/EC Art. 36(3)(b), excluding first 19 words
⇨ new

⇨ For the purposes of point (b) of the second subparagraph, ⇦ if the maturity of the debt is not fixed, they shall be repayable only subject to five years' notice unless the loans are no longer considered as own funds or unless the prior consent of the competent authorities is specifically required for early repayment. The competent authorities may grant permission for the early repayment of such loans provided the request is made at the initiative of the issuer and the solvency of the credit institution in question is not affected;

⇩ new

4. Credit institutions shall not include in own funds either the fair value reserves related to gains or losses on cash flow hedges of financial instruments measured at amortised cost, or any gains or losses on their liabilities valued at fair value that are due to changes in the credit institutions' own credit standing.

↓2000/12/EC Art 37 (adapted)

Article 65

~~Calculation of own funds on a consolidated basis~~

1. Where the calculation is to be made on a consolidated basis, the consolidated amounts relating to the items listed under Article ~~34~~ ⊠ 57 ⊠(2) shall be used in accordance with the rules laid down in ~~Articles 52 to 56~~⊠ Chapter 4, Section 1 ⊠. Moreover, the following may, when they are credit («negative») items, be regarded as consolidated reserves for the calculation of own funds:

   (a) any minority interests within the meaning of Article 21 of Directive 83/349/EEC, where the global integration method is used;

   (b) the first consolidation difference within the meaning of Articles 19, 30 and 31 of Directive 83/349/EEC;

   (c) the translation differences included in consolidated reserves in accordance with Article 39(6) of Directive 86/635/EEC;

   (d) any difference resulting from the inclusion of certain participating interests in accordance with the method prescribed in Article 33 of Directive 83/349/EEC.

2. ~~Where the above debit ("positive") items, they must be deducted in the calculation of consolidated own funds~~ ⊠ Where the items referred to in points (a) to (d) of paragraph 1 are debit («positive») items, they shall be deducted in the calculation of consolidated own funds. ⊠

↓ 2000/12/EC Art 38 (1) (adapted)
⇨ new

Article 66

~~Deductions and limits~~

1. The items referred to in points ⊠ (d) to (h) ⊠ ~~(4) to (8)~~ of Article ~~34(2)~~⊠ 57 ⊠, shall be subject to the following limits:

   (a) the total of the items in points ⊠ (d) to (h) ⊠ ~~(4) to (8)~~ may not exceed a maximum of 100% of the items in points ⊠ (a) plus (b) and (c) ⊠ ~~(1) plus (2) and (3)~~ minus ⊠ (i) to (k) ⊠ ~~(9), (10) (11)~~ ⇨ and 50% of the amounts in item (q) ⇦;

   (b) the total of the items in points ⊠ (g) to (h) ⊠ ~~(7) and (8)~~ may not exceed a maximum of 50% of the items in points ⊠ (a) plus (b) and (c) ⊠ ~~(1) plus (2) and (3)~~ minus (i) to (k) ~~(9), (10) and (11)~~ ⇨ and 50% of the amounts in item (q) ⇦ ;

(c) the total of the items in points (l) ~~(12) and (13)~~ ⇨ to (q)⇦ shall be deducted from the total of the items.

⇩ new

2. The items referred to in point (r) of Article 57 shall be deducted from the total of the items specified in points (a) to (h) of that Article, unless the credit institution includes the former items in its calculation of risk-weighted exposure amounts for the purposes of Article 75 as specified in Annex IX, Part 4.

🡻 2000/12/EC Art 38 (2)

~~2~~3. The competent authorities may authorise credit institutions to exceed the limit laid down in paragraph 1 in temporary and exceptional circumstances.

🡻 2000/12/EC Art 39 (adapted)

Article 67

~~**Provision of proof to the competent authorities**~~

Compliance with the conditions laid down in ⌦ this Section ⌫ ~~Article 34 (2), (3) and (4) and Articles 35 to 38~~ must be proved to the satisfaction of the competent authorities.

⇩ new

SECTION 2

PROVISION AGAINST RISKS

SUBSECTION 1 - LEVEL OF APPLICATION

Article 68

1. Credit institutions shall comply with the obligations laid down in Articles 22 and 75 and Section 5 on an individual basis.

2. Every credit institution which is neither a subsidiary in the Member State where it is authorised and supervised, nor a parent undertaking, and every credit institution not included in the consolidation pursuant to Article 73, shall comply with the obligations laid down in Articles 120 and 123 on an individual basis.

3. Every credit institution which is neither a parent undertaking, nor a subsidiary, and every the credit institution not included in the consolidation pursuant to Article73, shall comply with the obligations laid down in Chapter 5 on an individual basis.

Article 69

1. The Member States may choose not to apply Article 68(1) to any subsidiary of a credit institution, where both the subsidiary and the credit institution are subject to authorisation and supervision by the Member State concerned, and the subsidiary is included in the supervision on a consolidated basis of the credit institution which is the parent undertaking, and all of the following conditions are satisfied, in order to ensure that own funds are distributed adequately among the parent undertaking and the subsidiaries:

   (a) there is no current or foreseen material or legal impediment to the prompt transfer of own funds or repayment of liabilities by its parent undertaking;

   (b) its parent undertaking is committed to an unconditional, explicit and irrevocable obligation to transfer own funds to the subsidiary and meet its liabilities, or the risks in the subsidiaries are of negligible interest;

   (c) the risk evaluation, measurement and control procedures of the parent undertaking cover the subsidiary;

   (d) the parent undertaking has the right to appoint or remove a majority the members of the management body of the subsidiary.

2. The Member States may exercise the option provided for in paragraph 1 where the parent undertaking is a financial holding company set up in the same Member State as the credit institution, provided that it is subject to the same supervision as that exercised over credit institutions, and in particular to the standards laid down in Article 71(1).

Article 70

The competent authorities may allow on a case by case basis parent credit institutions in a Member State to incorporate in the calculation of their requirement under Article 68(1) subsidiaries in the Community which meet the conditions laid down in the points (a), (c) and (d) of Article 69(1), and whose material exposures or material liabilities are to that parent credit institution in a Member State.

Article 71

1. Without prejudice to Articles 68 to 70, parent credit institutions in a Member State shall comply, to the extent and in the manner prescribed in Article 133, with the obligations laid down in Articles 75, 120, 123 and Section 5 on the basis of their consolidated financial situation.

2. Without prejudice to Articles 68 to 70, credit institutions controlled by a parent financial holding company in a Member State shall comply, to the extent and in the manner prescribed in Article 133, with the obligations laid down in Articles 75, 120, 123 and Section 5 on the basis of the consolidated financial situation of that financial holding company.

Where more than one credit institution is controlled by a parent financial holding company in a Member State, the first subparagraph shall apply only to the credit institution to which supervision on a consolidated basis applies in accordance with Articles 125 and 126.

Article 72

1. EU parent credit institutions shall comply with the obligations laid down in Chapter 5 on the basis of their consolidated financial situation.

   However, in respect of their significant subsidiaries, they shall disclose the information specified in Annex XII, Part 1, paragraph 5, on an individual or sub-consolidated basis.

2. Credit institutions controlled by an EU parent financial holding company shall comply with the obligations laid down in Chapter 5 on the basis of the consolidated financial situation of that financial holding company.

   However, in respect of their significant subsidiaries, they shall disclose the information specified in Annex XII, Part 1, paragraph 5, on an individual or sub-consolidated basis.

3. The competent authorities responsible for exercising supervision on a consolidated basis pursuant to Articles 125 to 131 may decide not to apply in full or in part paragraphs 1 and 2 to the credit institutions which are included within comparable disclosures provided on a consolidated basis by a parent undertaking established in a third country.

↓ 2000/12/EC Art. 52 (3) (adapted)

Article 73

~~6~~1. The Member States or the competent authorities responsible for exercising supervision on a consolidated basis pursuant to Article ~~53~~ ⌦ 125 to 131 ⌫ may decide in the ⌦ following ⌫ cases ~~listed below~~ that a credit institution, financial institution or ancillary ~~banking~~ services undertaking which is a subsidiary or in which a participation is held need not be included in the consolidation:

   (a) where ~~if~~ the undertaking ⌦ concerned ⌫ ~~that should be included~~ is situated in a third country where there are legal impediments to the transfer of the necessary information~~.~~;

   (b) where ~~if~~, in the opinion of the competent authorities, the undertaking ⌦ concerned ⌫ ~~that should be included~~ is of negligible interest only with respect to the objectives of monitoring credit institutions and in ⌦ any event where ⌫ ~~all cases~~ the balance-sheet total of the undertaking ⌦ concerned ⌫ ~~that should be included~~ is less than the smaller of the following two amounts:

(i) EUR 10 million;

(ii) ~~or~~1% of the balance-sheet total of the parent undertaking or the undertaking that holds the participation.

~~If several undertakings meet the above criteria, they must nevertheless be included in the consolidation where collectively they are of non-negligible interest with respect to the aforementioned objectives, or~~

(c) where ~~if~~, in the opinion of the competent authorities responsible for exercising supervision on a consolidated basis, the consolidation of the financial situation of the undertaking ⌦ concerned ⌫ ~~that should be included~~ would be inappropriate or misleading as far as the objectives of the supervision of credit institutions are concerned.

↓ 2000/12/EC Art. 52 (3) 2nd indent, final sentence (adapted)

If ⌦ , in the cases referred to in point (b) of the first subparagraph ⌫ , several undertakings meet the above criteria ⌦ set out therein ⌫ , they must nevertheless be included in the consolidation where collectively they are of non-negligible interest with respect to the specified ~~aforementioned~~ objectives~~, or~~.

⇩ new

2. Competent authorities shall require subsidiary credit institutions to apply the requirements laid down in Articles 75, 120, 123 and Section 5 on a sub-consolidated basis if those credit institutions, or the parent undertaking where it is a financial holding company, have a credit institution or a financial institution or an asset management company as defined in Article 2(5) of Directive 2002/87/EC as a subsidiary in a third country, or hold a participation in such an undertaking.

3. The competent authorities shall require the parent undertakings and subsidiaries subject to this Directive to meet the obligations laid down in Article 22 on a consolidated or sub-consolidated basis, to ensure that their arrangements, processes and mechanisms are consistent and well-integrated and that any data and information relevant to the purpose of supervision can be produced.

SUBSECTION 2 - CALCULATION OF REQUIREMENTS

Article 74

1. Save where otherwise provided, the valuation of assets and off-balance-sheet items shall be effected in accordance with the accounting framework to which the credit institution is subject under Regulation (EC) No 1606/2002 and Directive 86/635/EEC.

2. Notwithstanding the requirements laid down in Articles 68 to 72, the competent authorities shall ensure that the calculations to verify the compliance of credit

institutions with the obligations laid down in Article 75 are carried out not less than twice each year.

The calculations shall be carried out either by the credit institutions themselves, in which case they shall communicate the results and any component data required to the competent authorities, or by the competent authorities, using data supplied by the credit institutions.

SUBSECTION 3 - MINIMUM LEVEL OF OWN FUNDS

Article 75

Without prejudice to Article 136, Member States shall require credit institutions to provide own funds which are at all times more than or equal to the sum of the following capital requirements:

(a) for credit risk and dilution risk in respect of all of their business activities with the exception of their trading book business and illiquid assets if deducted from own funds under [Directive 93/6/EEC, Article 13(2)(d)], 8 per cent of the total of their risk-weighted exposure amounts calculated in accordance with Section 3;

(b) in respect of their trading-book business, for position risk, settlement and counter-party risk and, in so far as the limits laid down in Articles 111 to 117 are authorised to be exceeded, for large exposures exceeding such limits, the capital requirements determined in accordance with [Directive 93/6/EEC, Chapter V, Section 4];

(c) in respect of all of their business activities, for foreign-exchange risk and for commodities risk, the capital requirements determined according to [Article 18 of Directive 93/6/EEC];

(d) in respect of all of their business activities, for operational risk, the capital requirements determined in accordance with Section 4.

↓ 2000/12/EC

~~**SECTION 2**~~

~~**SOLVENCY RATIO**~~

~~*Article 40*~~

~~**General principles**~~

~~1. The solvency ratio expresses own funds, as defined in Article 41, as a proportion of total assets and off-balance-sheet items, risk-adjusted in accordance with Article 42.~~

2. The solvency ratios of credit institutions which are neither parent undertakings as defined in Article 1 of Directive 83/349/EEC, nor subsidiaries of such undertakings shall be calculated on an individual basis.

3. The solvency ratios of credit institutions which are parent undertakings shall be calculated on a consolidated basis in accordance with the methods laid down in this Directive and in Directive 86/635/EEC.

4. The competent authorities responsible for authorising and supervising a parent undertaking which is a credit institution may also require the calculation of a subconsolidated or unconsolidated ratio in respect of that parent undertaking and of any of its subsidiaries which are subject to authorisation and supervision by them. Where such monitoring of the satisfactory allocation of capital within a banking group is not carried out, other measures must be taken to attain that end.

5. Without prejudice to credit institutions' compliance with the requirements of paragraphs 2, 3 and 4, and of Article 52(8) and (9), the competent authorities shall ensure that ratios are calculated not less than twice each year, either by credit institutions themselves, which shall communicate the results and any component data required to the competent authorities, or by the competent authorities, using data supplied by the credit institutions.

6. The valuation of assets and off-balance-sheet items shall be effected in accordance with Directive 86/635/EEC.

Article 41

The numerator: own funds

Own funds as defined in this Directive shall form the numerator of the solvency ratio.

Article 42

The denominator: risk-adjusted assets and off-balance-sheet items

1. Degrees of credit risk, expressed as percentage weightings, shall be assigned to asset items in accordance with Articles 43 and 44, and exceptionally Articles 45, 62 and 63. The balance-sheet value of each asset shall then be multiplied by the relevant weighting to produce a risk-adjusted value.

2. In the case of the off-balance-sheet items listed in Annex II, a two-stage calculation as prescribed in Article 43(2) shall be used.

3. In the case of the off-balance-sheet items referred to in Article 43(3), the potential costs of replacing contracts in the event of counterparty default shall be calculated by means of one of the two methods set out in Annex III. Those costs shall be multiplied by the relevant counterparty weightings in Article 43(1), except the 100% weightings as provided for there shall be replaced by 50% weightings to produce risk-adjusted values.

4. The total of the risk-adjusted values of the assets and off-balance-sheet items mentioned in paragraphs 2 and 3 shall be the denominator of the solvency ratio.

Article 43

Risk weightings

1. The following weightings shall be applied to the various categories of asset items, although the competent authorities may fix higher weightings as they see fit:

(a) Zero weighting

(1) cash in hand and equivalent items;

(2) asset items constituting claims on Zone A central governments and central banks;

(3) asset items constituting claims on the European Communities;

(4) asset items constituting claims carrying the explicit guarantees of Zone A central governments and central banks or of the European Communities;

(5) asset items constituting claims on Zone B central governments and central banks denominated and funded in the national currencies of the borrowers;

(6) asset items constituting claims carrying the explicit guarantees of Zone B central governments and central banks denominated and funded in the national currency common to the guarantor and the borrower;

(7) asset items secured to the satisfaction of the competent authorities, by collateral in the form of Zone A central government or central bank securities or securities issued by the European Communities or by cash deposits placed with the lending institution or by certificates of deposit or similar instruments issued by and lodged with the latter;

(b) 20% weighting

(1) asset items constituting claims on the EIB;

(2) asset items constituting claims on multilateral development banks;

(3) asset items constituting claims carrying the explicit guarantee of the EIB;

(4) asset items constituting claims carrying the explicit guarantees of multilateral development banks;

(5) asset items constituting claims on Zone A regional governments or local authorities, subject to Article 44;

(6) asset items constituting claims carrying the explicit guarantees of Zone A regional governments or local authorities, subject to Article 44;

(7) asset items constituting claims on Zone A credit institutions but not constituting such institutions' own funds;

(8) asset items constituting claims with a maturity of one year or less, on Zone B credit institutions, other than securities issued by such institutions which are recognised as components of their own funds;

(9) asset items carrying the explicit guarantees of Zone A credit institutions;

(10) asset items constituting claims with a maturity of one year or less carrying the explicit guarantees of Zone B credit institutions;

(11) asset items secured, to the satisfaction of the competent authorities, by collateral in the form of securities issued by the EIB or by multilateral development banks;

(12) cash items in the process of collection;

(e) 50% weighting

(1) loans fully and completely secured, to the satisfaction of the competent authorities, by mortgages on residential property which is or will be occupied or let by the borrower, and loans fully and completely 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, in respect of residential property which is or will be occupied or let by the borrower;

«mortgage-backed securities» which may be treated as loans referred to in the first subparagraph or in Article 62(1), if the competent authorities consider, having regard to the legal framework in force in each Member State, that they are equivalent in the light of the credit risk. Without prejudice to the types of securities which may be included in and are capable of fulfilling the conditions in this point 1, «mortgage-backed securities» may include instruments within the meaning of Section B(1)(a) and (b) of the Annex to Council Directive 93/22/EEC[32]. The competent authorities must in particular be satisfied that:

(i) such securities are fully and directly backed by a pool of mortgages which are of the same nature as those defined in the first subparagraph or in Article 62(1) and are fully performing when the mortgage-backed securities are created;

(ii) an acceptable high-priority charge on the underlying mortgage-asset items is held either directly by investors in mortgage-backed securities or on their behalf by a trustee or mandated representative in the same proportion to the securities which they hold;

(2) prepayments and accrued income: these assets shall be subject to the weighting corresponding to the counterparty where a credit institution is able to determine it in accordance with Directive 86/635/EEC. Otherwise, where it is unable to determine the counterparty, it shall apply a flat-rate weighting of 50%;

32 Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field (OJ L 141, 11.6.1993, p. 27). Directive as last amended by Directive 97/9/EC (OJ L 84, 26.3.1997, p. 22).

(d) 100% weighting

(1) asset items constituting claims on Zone B central governments and central banks except where denominated and funded in the national currency of the borrower;

(2) asset items constituting claims on Zone B regional governments or local authorities;

(3) asset items constituting claims with a maturity of more than one year on Zone B credit institutions;

(4) asset items constituting claims on the Zone A and Zone B non-bank sectors;

(5) tangible «Assets» within the meaning of Article 4(10) of Directive 86/635/EEC;

(6) holdings of shares, participation and other components of the own funds of other credit institutions which are not deducted from the own funds of the lending institutions;

(7) all other assets except where deducted from own funds.

2. The following treatment shall apply to off-balance-sheet items other than those covered in paragraph 3. They shall first be grouped according to the risk groupings set out in Annex II. The full value of the full-risk items shall be taken into account, 50% of the value of the medium-risk items and 20% of the medium/low-risk items, while the value of low-risk items shall be set at zero. The second stage shall be to multiply the off-balance-sheet values, adjusted as described above, by the weightings attributable to the relevant counterparties in accordance with the treatment of asset items prescribed in paragraph 1 and Article 44. In the case of asset sale and repurchase agreements and outright forward purchases, the weightings shall be those attaching to the assets in question and not to the counterparties to the transactions. The portion of unpaid capital subscribed to the European Investment Fund may be weighted at 20%.

3. The methods set out in Annex III shall be applied to the off-balance-sheet items listed in Annex IV except for:

– contracts traded on recognised exchanges,

– foreign-exchange contracts (except contracts concerning gold) with an original maturity of 14 calendar days or less.

Until 31 December 2006, the competent authorities of Member States may exempt from the application of the methods set out in Annex III over-the-counter (OTC) contracts cleared by a clearing house where the latter acts as the legal counterparty and all participants fully collateralise on a daily basis the exposure they present to the clearing house, thereby providing a protection covering both the current exposure and the potential future exposure. The competent authorities must be satisfied that the posted collateral gives the same level of protection as collateral which complies with paragraph 1(a)(7) and that the risk of a build-up of the clearing house's exposures beyond the market value of posted collateral is eliminated. Member States shall inform the Commission of the use they make of this option.

~~4. Where off-balance-sheet items carry explicit guarantees, they shall be weighted as if they had been incurred on behalf of the guarantor rather than the counterparty. Where the potential exposure arising from off-balance-sheet transactions is fully and completely secured, to the satisfaction of the competent authorities, by any of the asset items recognised as collateral in paragraph 1(a)(7) and (b)(11), weightings of 0% or 20% shall apply depending on the collateral in question.~~

~~The Member States may apply a 50% weighting to off-balance-sheet items which are sureties or guarantees having the character of credit substitutes and which are fully guaranteed, to the satisfaction of the competent authorities, by mortgages meeting the conditions set out in paragraph 1(c)(1), subject to the guarantor having a direct right to such collateral.~~

~~5. Where asset and off-balance-sheet items are given a lower weighting because of the existence of explicit guarantees or collateral acceptable to the competent authorities, the lower weighting shall apply only to that part which is guaranteed or which is fully covered by the collateral.~~

~~*Article 44*~~

~~**Weighting of claims for regional governments or local authorities of the Member States**~~

~~1. Notwithstanding the requirements of Article 43(1)(b), the Member States may fix a weighting of 0% for their own regional governments and local authorities if there is no difference in risk between claims on the latter and claims on their central governments because of the revenue-raising powers of the regional governments and local authorities and the existence of specific institutional arrangements the effect of which is to reduce the chances of default by the latter. A zero-weighting fixed in accordance with these criteria shall apply to claims on and off-balance-sheet items incurred on behalf of the regional governments and local authorities in question and claims on others and off-balance-sheet items incurred on behalf of others and guaranteed by those regional governments and local authorities or secured, to the satisfaction of the competent authorities concerned, by collateral in the form of securities issued by those regional governments or local authorities.~~

~~2. The Member States shall notify the Commission if they believe a zero-weighting to be justified according to the criteria laid down in paragraph 1. The Commission shall circulate that information. Other Member States may offer the credit institutions under the supervision of their competent authorities the possibility of applying a zero-weighting where they undertake business with the regional governments or local authorities in question or where they hold claims guaranteed by the latter, including collateral in the form of securities.~~

~~*Article 45*~~

~~**Other weighting**~~

~~1. Without prejudice to Article 44(1) the Member States may apply a weighting of 20% to asset items which are secured, to the satisfaction of the competent authorities concerned, by collateral in the form of securities issued by Zone A regional governments or local authorities, by deposits placed with Zone A credit institutions other than the lending institution, or by certificates of deposit or similar instruments issued by such credit institutions.~~

2. The Member States may apply a weighting of 10% to claims on institutions specialising in the inter-bank and public-debt markets in their home Member States and subject to close supervision by the competent authorities where those asset items are fully and completely secured, to the satisfaction of the competent authorities of the home Member States, by a combination of asset items mentioned in Article 43(1)(a) and (b) recognised by the latter as constituting adequate collateral.

3. The Member States shall notify the Commission of any provisions adopted pursuant to paragraphs 1 and 2 and of the grounds for such provisions. The Commission shall forward that information to the Member States. The Commission shall periodically examine the implications of those provisions in order to ensure that they do not result in any distortions of competition.

Article 46

Administrative bodies and non-commercial undertakings

For the purposes of Article 43 (1)(b), the competent authorities may include within the concept of regional governments and local authorities non-commercial administrative bodies responsible to regional governments or local authorities or authorities which, in the view of the competent authorities, exercise the same responsibilities as regional and local authorities.

The competent authorities may also include within the concept of regional governments and local authorities, churches and religious communities constituted in the form of a legal person under public law, in so far as they raise taxes in accordance with legislation conferring on them the right to do so. However, in this case the option set out in Article 44 shall not apply.

Article 47

Solvency ratio level

1. Credit institutions shall be required permanently to maintain the ratio defined in Article 40 at a level of at least 8%.

2. Notwithstanding paragraph 1, the competent authorities may prescribe higher minimum ratios as they consider appropriate.

3. If the ratio falls below 8% the competent authorities shall ensure that the credit institution in question takes appropriate measures to restore the ratio to the agreed minimum as quickly as possible.

⇩ new

SECTION 3

MINIMUM OWN FUNDS REQUIREMENTS FOR CREDIT RISK

Article 76

Credit institutions shall apply either the Standardised Approach provided for in Articles 78 to 83 or, if permitted by the competent authorities in accordance with Article 84, the Internal Ratings Based Approach provided for in Articles 84 to 89 to calculate their risk-weighted exposure amounts for the purposes of Article 75(a).

Article 77

"Exposure" for the purposes of this Section means an asset or off-balance sheet item.

SUBSECTION 1 – STANDARDISED APPROACH

Article 78

1. Subject to paragraph 2, the exposure value of an asset item shall be its balance-sheet value and the exposure value of an off-balance sheet item listed in Annex II shall be the following percentage of its value: 100% if it is a full-risk item, 50% if it is a medium-risk item, 20% if it is a medium/low-risk item, 0% if its is a low-risk item. The off-balance sheet items referred to in the first sentence of this paragraph shall be assigned to risk categories as indicated in Annex II.

2. The exposure value of a derivative instrument listed in Annex IV shall be determined in accordance with one of the two methods set out in Annex III with the effects of contracts of novation and other netting agreements taken into account for the purposes of those methods in accordance with Annex III.

3. Where an exposure is subject to funded credit protection, the exposure value applicable to that item may be modified in accordance with Subsection 3.

4. In the case of a credit institution using the Financial Collateral Comprehensive Method under Annex VIII, Part 3, where an exposure takes the form of securities or commodities sold, posted or lent under a repurchase transaction or under a securities or commodities lending or borrowing transaction, the exposure value shall be the value of the securities or commodities determined in accordance with Article 74(1) and shall be increased by the volatility adjustment appropriate to such securities or commodities as prescribed in Annex VIII, Part 3, paragraphs 35 to 60.

Article 79

1. Each exposure shall be assigned to one of the following exposure classes:

(a) claims or contingent claims on central governments or central banks;

(b) claims or contingent claims on regional governments or local authorities;

(c) claims or contingent claims on administrative bodies and non-commercial undertakings;

(d) claims or contingent claims on multilateral development banks;

(e) claims or contingent claims on international organisations;

(f) claims or contingent claims on institutions;

(g) claims or contingent claims on corporates;

(h) retail claims or contingent retail claims;

(i) claims or contingent claims secured on real estate property;

(j) past due items;

(k) items belonging to regulatory high-risk categories;

(l) claims in the form of covered bonds;

(m) securitisation positions;

(n) short-term claims on institutions and corporate;

(o) claims in the form of collective investment undertakings (CIU);

(p) other items.

2. To be eligible for the retail exposure class referred to in point (h) of paragraph 1, an exposure shall meet the following conditions:

(a) the exposure must be either to an individual person or persons, or to a small or medium sized entity;

(b) the exposure must be one of a significant number of exposures with similar characteristics such that the risks associated with such lending are substantially reduced;

(c) the total amount owed to the credit institution and any parent undertaking and its subsidiaries, including any past due exposure, by the obligor client or group of connected clients must not, to the knowledge of the credit institution, exceed EUR 1 million. The credit institution must take reasonable steps to acquire this knowledge.

Securities shall not be eligible for the retail exposure class.

Article 80

1. To calculate risk-weighted exposure amounts, risk weights shall be applied to all exposures, unless deducted from own funds, in accordance with the provisions of Annex VI, Part 1. The application of risk weights shall be based on the exposure class to which the exposure is assigned and, to the extent specified in Annex VI, Part 1, its credit quality. Credit quality may be determined by reference to the credit assessments of External Credit Assessment Institutions ('ECAIs') in accordance with the provisions of Articles 81 to 83 or the credit assessments of Export Credit Agencies as described in Annex VI, Part 1.

2. For the purposes of applying a risk weight, as referred to in paragraph 1, the exposure value shall be multiplied by the risk weight specified or determined in accordance with this Subsection.

3. For the purposes of calculating risk-weighted exposure amounts for exposures to institutions, competent authorities shall decide whether to adopt the method based on the credit quality of the central government of the jurisdiction in which the credit institution is incorporated or the method based on the credit quality of the counterparty institution in accordance with Annex VI.

4. Notwithstanding paragraph 1, where an exposure is subject to credit protection the risk weight applicable to that item may be modified in accordance with Subsection 3.

5. Risk-weighted exposure amounts for securitised exposures shall be calculated in accordance with Subsection 4.

6. Exposures the calculation of risk-weighted exposure amounts for which is not otherwise provided for under this Subsection shall be assigned a risk-weight of 100%.

7. With the exception of exposures giving rise to liabilities in the form of the items referred to in points (1) to (8) of Article 57(1), competent authorities may exempt from the requirements of paragraph 1 of this Article the exposures of a credit institution to a counterparty which is its parent undertaking, its subsidiary or a subsidiary of its parent undertaking, provided that the following conditions are met:

   (a) the counterparty is an institution or a financial holding company, financial institution, asset management company or ancillary services undertaking subject to appropriate prudential requirements;

   (b) the counterparty is included in the same consolidation as the credit institution on a full basis;

   (c) the counterparty is subject to the same risk evaluation, measurement and control procedures as the credit institution;

   (d) the counterparty is established in the same Member State as the credit institution;

(e) there is no current or foreseen material or legal impediment to the prompt transfer of own funds or repayment of liabilities from the counterparty to the credit institution.

In such a case, a risk weight of 0% shall be applied.

Article 81

1. An external credit assessment may be used to determine the risk weight of an exposure in accordance with Article 80 only if the ECAI which provides it has been recognised as eligible for those purposes by the competent authorities, hereinafter "an eligible ECAI'.

2. Competent authorities shall recognise an ECAI as eligible for the purposes of Article 80 only if they are satisfied that its assessment methodology complies with the requirements of objectivity, independence, ongoing review and transparency, and that the resulting credit assessments meet the requirements of credibility and transparency. For those purposes; the competent authorities shall take into account the technical criteria set out in Annex VI, Part 2.

3. If an ECAI has been recognised as eligible by the competent authorities of a Member State, the competent authorities of other Member States may recognise that ECAI as eligible without carrying out their own evaluation process.

4. Competent authorities shall make publicly available an explanation of the recognition process, and a list of eligible ECAIs.

Article 82

1. The competent authorities shall determine, taking into account the technical criteria set out in Annex VI, Part 2, with which of the credit quality steps set out in Part 1 of that Annex the relevant credit assessments of an eligible ECAI are to be associated. Those determinations shall be objective and consistent.

2. When the competent authorities of a Member State have made a determination under paragraph 1, the competent authorities of other Member States may recognise that determination without carrying out their own determination process.

Article 83

1. The use of ECAI credit assessments for the calculation of a credit institution's risk-weighted exposure amounts shall be consistent and in accordance with Annex VI, Part 3. Credit assessments shall not be used selectively.

2. Credit institutions shall use solicited credit assessments. However, with the permission of the relevant competent authority, they may use unsolicited assessments.

SUBSECTION 2 - INTERNAL RATINGS BASED APPROACH

Article 84

1. In accordance with this Subsection, the competent authorities may permit credit institutions to calculate their risk-weighted exposure amounts using the Internal Ratings Based Approach (IRB Approach). Explicit permission shall be required in the case of each credit institution.

2. Permission shall be given only if the competent authority is satisfied that the credit institution's systems for the management and rating of credit risk exposures are sound and implemented with integrity and, in particular, that they meet the following standards in accordance with Annex VII, Part 4:

   (a) the credit institution's rating systems provide for a meaningful assessment of obligor and transaction characteristics, a meaningful differentiation of risk and accurate and consistent quantitative estimates of risk;

   (b) internal ratings and default and loss estimates used in the calculation of capital requirements and associated systems and processes play an essential role in the risk management and decision-making process, and in the credit approval, internal capital allocation and corporate governance functions of the credit institution;

   (c) the credit institution has a credit risk control unit responsible for its rating systems that is appropriately independent and free from undue influence;

   (d) the credit institution collects and stores all relevant data to provide effective support to its credit risk measurement and management process;

   (e) the credit institution documents its rating systems, the rationale for their design and validates its rating systems.

   Where an EU parent credit institution and its subsidiaries or an EU parent financial institution and its subsidiaries use the IRB Approach on a unified basis for the parent and its subsidiaries, the competent authorities may allow minimum requirements of Annex VII, Part 4 to be met by the parent and its subsidiaries considered together.

3. A credit institution applying for the use of the IRB Approach shall demonstrate that it has been using for the IRB exposure classes in question rating systems that were broadly in line with the minimum requirements set out in this Annex for internal risk measurement and management purposes for at least three years prior to its qualification to use the IRB Approach. This requirement shall apply from the 31 December 2010 onwards.

4. A credit institution applying for the use of own estimates of LGDs and/or conversion factors shall demonstrate that it has been estimating and employing own estimates of LGDs and/or conversion factors in a manner that was broadly consistent with the minimum requirements for use of own estimates of those parameters set out in this Annex for at least three years prior to qualification to use own estimates of LGDs

and/or conversion factors. This requirement shall apply from the 31 December 2010 onwards.

5. If a credit institution ceases to comply with the requirements set out in this Subsection, it shall either present to the competent authority a plan for a timely return to compliance or demonstrate that the effect of non-compliance is immaterial.

6. When the IRB Approach is intended to be used by the EU parent credit institution and its subsidiaries, or by the EU parent financial holding company and its subsidiaries, the competent authorities of the different legal entities shall co-operate closely as provided for in Articles 129 to 132.

Article 85

1. Without prejudice to Article 89, credit institutions and any parent undertaking and its subsidiaries shall implement the IRB Approach for all exposures.

Subject to the approval of the competent authorities, implementation may be carried out sequentially across the different exposure classes, referred to in Article 86, within the same business unit, across different business units in the same group or for the use of own estimates of LGDs or conversion factors for the calculation of risk weights for exposures to corporates, institutions, and central governments and central banks.

In the case of the retail exposure class referred to in Article 86, implementation may be carried out sequentially across the categories of exposures to which the different correlations in Annex VII, Part 1, paragraphs 9, 10 and 11 correspond.

2. Implementation as referred to in paragraph 1 shall be carried out within a reasonable period of time to be agreed with the competent authorities. The implementation shall be carried out subject to strict conditions determined by the competent authorities. Those conditions shall be designed to ensure that the flexibility under paragraph 1 is not used selectively with the purpose of achieving reduced minimum capital requirements in respect of those exposure classes or business units that are yet to be included in the IRB Approach or in the use of own estimates of LGDs and conversion factors.

3. Credit institutions using the IRB Approach for any exposure class shall at the same time use the IRB Approach for the equity exposure class.

4. Subject to paragraphs 1 to 3 and Article 89, credit institutions which have obtained permission under Article 84 to use the IRB Approach shall not revert to the use of Subsection 1 for the calculation of risk-weighted exposure amounts except for demonstrated good cause and subject to the approval of the competent authorities.

5. Subject to paragraphs 1 and 2 and Article 89, credit institutions which have obtained permission under Article 87(9) to use own estimates of LGDs and conversion factors, shall not revert to the use of LGD values and conversion factors referred to in Article 87(8) except for demonstrated good cause and subject to the approval of the competent authorities.

Article 86

1. Each exposure shall be assigned to one of the following exposure classes:

(a) claims or contingent claims on central governments and central banks;

(b) claims or contingent claims on institutions;

(c) claims or contingent claims on corporates;

(d) retail claims or contingent retail claims;

(e) equity claims;

(f) securitisation positions;

(g) other non credit-obligation assets.

2. The following exposures shall be treated as exposures to central governments and central banks:

(a) exposures to regional governments and local authorities which are treated as exposures to central governments under Subsection 1;

(b) exposures to Multilateral Development Banks and International Organisations which attract a risk weight of 0% under Subsection 1.

3. The following exposures shall be treated as exposures to institutions:

(a) exposures to regional governments and local authorities which are not treated as exposures to central governments under Subsection 1;

(b) exposures to Public Sector Entities which are treated as exposures to institutions under the Subsection 1;

(c) exposures to Multilateral Development Banks which do not attract a 0% risk weight under Subsection 1.

4. To be eligible for the retail exposure class referred to in point (d) of paragraph 1, exposures shall meet the following criteria:

(a) they shall be either to an individual person or persons, or to a small or medium sized entity, provided in the latter case that the total amount owed to the credit institution and to any parent undertaking and its subsidiaries by the obligor client or group of connected clients does not, to the knowledge of the credit institution, which must have taken reasonable steps to confirm the situation, exceed EUR 1 million;

(b) they are treated by the credit institution in its risk management consistently over time and in a similar manner;

(c) they are not managed individually in a way comparable to exposures in the corporate exposure class;

(d) they each represent one of a significant number of similarly managed exposures.

5. The following exposures shall be classed as equity exposures:

(a) non-debt exposures conveying a subordinated, residual claim on the assets or income of the issuer;

(b) debt exposures the economic substance of which is similar to the exposures specified in point (a).

6. Within the corporate exposure class, credit institutions shall separately identify as specialised lending exposures, exposures which possess the following characteristics:

(a) the exposure is to an entity which was created specifically to finance and/or operate physical assets;

(b) the contractual arrangements give the lender a substantial degree of control over the assets and the income that they generate;

(c) the primary source of repayment of the obligation is the income generated by the assets being financed, rather than the independent capacity of a broader commercial enterprise.

7. Any credit obligation not assigned to the exposure classes referred to in points (a), (b) and (d) to (f) of paragraph 1 shall be assigned to the exposure class referred to in point (c) of that paragraph.

8. The exposure class referred to in point (g) of paragraph 1 shall include the residual value of leased properties, if not covered elsewhere in this Directive.

9. The methodology used by the credit institution for assigning exposures to different exposure classes shall be appropriate and consistent over time.

Article 87

1. The risk-weighted exposure amounts for credit risk for exposures belonging to one of the exposure classes referred to in points (a) to (e) or (g) of Article 86(1) shall, unless deducted from own funds, be calculated in accordance with Annex VII, Part 1, paragraphs 1 to 25.

2. The risk-weighted exposure amounts for dilution risk for purchased receivables shall be calculated according to Annex VII, Part 1, paragraph 26.

3. The calculation of risk-weighted exposure amounts for credit risk and dilution risk shall be based on the relevant parameters associated with the exposure in question. These shall include probability of default (PD), loss given default (LGD), maturity (M) and the exposure value of the exposure. PD and LGD may be considered separately or jointly, in accordance with Annex VII, Part 2.

4. Notwithstanding paragraph 3, the calculation of risk-weighted exposure amounts for credit risk for all exposures belonging to the exposure class referred to in point (e) of Article 86(1) shall be calculated in accordance with Annex VII, Part 1, paragraphs 15 to 24 subject to approval of competent authorities. Competent authorities shall only allow a credit institution to use the approach set out in Annex VII, Part 1, paragraphs 24 to 25, if the credit institution meets the minimum requirements Annex VII, Part 4, paragraphs 114 to 122.

5. Notwithstanding paragraph 3, the calculation of risk weighted exposure amounts for credit risk for specialised lending exposures may be calculated in accordance with Annex VII, Part 1, paragraph 5. Competent authorities shall publish guidance on how institutions should assign risk weights to specialised lending exposures under Annex VII, Part 1, paragraph 5 and shall approve institutions assignment methodologies.

6. For exposures belonging to the exposure classes referred to in points (a) to (d) of Article 86(1), credit institutions shall provide their own estimates of PDs in accordance with Article 84 and Annex VII, Part 4.

7. For exposures belonging to the exposure class referred to in point (d) of Article 86(1), credit institutions shall provide own estimates of LGDs and conversion factors in accordance with Article 84 and Annex VII, Part 4.

8. For exposures belonging to the exposure classes referred to in points (a) to (c) of Article 86(1), credit institutions shall apply the LGD values set out in Annex VII, Part 2, paragraph 8, and the conversion factors set out in Annex VII, Part 3, paragraph 11 points (a) to (c).

9. Notwithstanding paragraph 8, for all exposures belonging to the exposure classes referred to in points (a) to (c) of Article 86(1), competent authorities may permit credit institutions to use own estimates of LGDs and conversion factors in accordance with Article 84 and Annex VII, Part 4.

10. The risk-weighted exposure amounts for securitised exposures and for exposures belonging to the exposure class referred to in point (f) of Article 86(1) shall be calculated in accordance with Subsection 4.

11. Where exposures to a collective investment undertaking (CIU) meet the criteria set out in Annex VI, Part 1, paragraphs 74 to 75 and the credit institution is aware of all of the underlying exposures of the CIU, the credit institution shall look through to those underlying exposures in order to calculate risk-weighted exposure amounts and expected loss amounts in accordance with the methods set out in this Subsection.

Where the credit institution does not meet the conditions for using the methods set out in this Subsection, risk weighted exposure amounts and expected loss amounts shall be calculated in accordance with the following approaches:

(a) for exposures belonging to the exposure class referred to in point (e) of Article 86(1), the approach set out in Annex VII, Part 1, paragraphs 17 to 19. If, for those purposes; the credit institution is unable to differentiate between private equity, exchange-traded and other equity exposures, it shall treat the exposures concerned as other equity exposures.

(b) for all other underlying exposures, the approach set out in Subsection 1, subject to the following modifications:

(i) the exposures are assigned to the appropriate exposure class and attributed the risk weight of the credit quality step immediately above the credit quality step that would normally be assigned to the exposure;

(ii) exposures assigned to the higher credit quality steps, to which a risk weight of 150% would normally be attributed, are assigned a risk weight of 200%.

12. Where exposures to a CIU do not meet the criteria set out in Annex VI, Part 1, paragraphs 74 to 75, or the credit institution is not aware of all of the underlying exposures of the CIU, the credit institution shall look through to the underlying exposures and calculate risk-weighted exposure amounts and expected loss amounts in accordance with the approach set out in Annex VII, Part 1, paragraphs 17 to 19. If, for those purposes, the credit institution is unable to differentiate between private equity, exchange-traded and other equity exposures, it shall treat the exposures concerned as other equity exposures. For these purposes, non-equity exposures are assigned to one of the classes (private equity, exchange traded equity or other equity) set out in Annex VII, Part 1, paragraph 17 and unknown exposures are assigned to other equity class.

Alternatively to the method described above, credit institutions may rely on a third party to calculate and report the average risk weighted exposure amounts based on the CIUs underling exposures and calculated in accordance with the following approaches, provided that the correctness of the calculation and the report is adequately ensured:

(a) for exposures belonging to the exposure class referred to in point (e) of Article 86(1), the approach set out in Annex VII, Part 1, paragraphs 17 to 19. If, for those purposes, the credit institution is unable to differentiate between private equity, exchange-traded and other equity exposures, it shall treat the exposures concerned as other equity exposures.

(b) for all other underlying exposures, the approach set out in Subsection 1, subject to the following modifications:

(i) the exposures are assigned to the appropriate exposure class and attributed the risk weight of the credit quality step immediately above the credit quality step that would normally be assigned to the exposure;

(ii) exposures assigned to the higher credit quality steps, to which a risk weight of 150% would normally be attributed, are assigned a risk weight of 200%.

Article 88

1. The expected loss amounts for exposures belonging to one of the exposure classes referred to in points (a) to (e) of Article 86(1) shall be calculated in accordance with the methods set out in Annex VII, Part 1, paragraphs 27 to 33.

2. The calculation of expected loss amounts in accordance with Annex VII, Part 1, paragraphs 27 to 33 shall be based on the same input figures of PD, LGD and the exposure value for each exposure as being used for the calculation of risk-weighted exposure amounts in accordance with Article 87.

3. The expected loss amounts for securitised exposures shall be calculated in accordance with Subsection 4.

4. The expected loss amount for exposures belonging to the exposure class referred to in point (g) of Article 86(1) shall be zero.

5. The expected loss amounts for dilution risk of purchased receivables shall be calculated in accordance with the methods set out in Annex VII, Part 1, paragraph 33.

6. The expected loss amounts for exposures referred to in Article 87(11) and (12) shall be calculated in accordance with the methods set out in Annex VII, Part 1, paragraphs 27 to 33.

Article 89

1. Subject to the approval of the competent authorities, credit institutions permitted to use the IRB Approach in the calculation of risk-weighted exposure amounts and expected loss amounts for one or more exposure classes may apply Subsection 1 for the following:

(a) the exposure class referred to in point (a) of Article 86(1), where the number of material counterparties is limited and it would be unduly burdensome for the credit institution to implement a rating system for these counterparties;

(b) the exposure class referred to in point (b) of Article 86(1), where the number of material counterparties is limited and it would be unduly burdensome for the credit institution to implement a rating system for these counterparties;

(c) exposures in non-significant business units as well as exposure classes that are immaterial in terms of size and perceived risk profile;

(d) exposures to central governments of the home Member State and to their regional governments, local authorities and administrative bodies, provided that:

(i) there is no difference in risk between the exposures to that central government and those other exposures because of specific public arrangements;

(ii) exposures to the central government are associated with credit quality assessment step 1 under Subsection 1.

(e) exposures of a credit institution to a counterparty which is its parent undertaking, its subsidiary or a subsidiary of its parent undertaking provided that the counterparty is an institution or a financial holding company, financial institution, asset management company or ancillary services undertaking subject to appropriate prudential requirements.

f) equity exposures to entities whose credit obligations qualify for a zero risk weight under Subsection 1 (including those publicly sponsored entities where a zero weight can be applied).

g) equity exposures incurred under legislated programmes to promote specified sectors of the economy that provide significant subsidies for the investment to the credit institution and involve some form of government oversight and restrictions on the equity investments. This exclusion is limited to an aggregate of 10% of original own funds plus additional own funds.

This paragraph shall not prevent the competent authorities of other Member State to allow the application of the rules of Subsection 1 for equity exposures which have been allowed for this treatment in other Member States.

2. For the purposes of point (c), the equity exposure class of a credit institution shall be considered material if their aggregate value, excluding equity exposures incurred under legislative programmes as referred to in point (g), exceeds, on average over the preceding year, 10% of the credit institution's own funds. If the number of those equity exposures is less than 10 individual holdings, that threshold shall be 5% of the credit institution's own funds.

SUBSECTION 3 - CREDIT RISK MITIGATION

Article 90

For the purposes of this Subsection, 'lending credit institution' shall mean the credit institution which has the exposure in question, whether or not deriving from a loan.

Article 91

Credit institutions using the Standardised Approach under Articles 78 to 83 or using the IRB Approach under Articles 84 to 89, but not using their own estimates of LGD and conversion factors under Articles 87 and 88, may recognise credit risk mitigation in accordance with this Subsection in the calculation of risk-weighted exposure amounts for the purposes of Article 75 point (a) or as relevant expected loss amounts for the purposes of the calculation referred to in point (q) of Article 57, and Article 63(3).

Article 92

1. The technique used to provide the credit protection together with the actions and steps taken and procedures and policies implemented by the lending credit institution shall be such as to result in credit protection arrangements which are legally effective and enforceable in all relevant jurisdictions.

2. The lending credit institution shall take all appropriate steps to ensure the effectiveness of the credit protection arrangement and to address related risks.

3. In the case of funded credit protection, to be eligible for recognition the assets relied upon must be sufficiently liquid and their value over time sufficiently stable to provide appropriate certainty as to the credit protection achieved having regard to the approach used to calculate risk-weighted exposure amounts and to the degree of

recognition allowed. Eligibility shall be limited to the assets set out in Annex VIII, Part 1.

4. In the case of funded credit protection, the lending credit institution shall have the right to liquidate or retain, in a timely manner, the assets from which the protection derives in the event of the default, insolvency or bankruptcy - or other credit event set out in the transaction documentation - and, where applicable, of the custodian holding the collateral. The degree of correlation between the value of the assets relied upon for protection and the credit quality of the borrower must not be undue.

5. In the case of unfunded credit protection, to be eligible for recognition the party giving the undertaking must be sufficiently reliable, and the protection agreement legally effective in the relevant jurisdictions, to provide appropriate certainty as to the credit protection achieved having regard to the approach used to calculate risk-weighted exposure amounts and to the degree of recognition allowed. Eligibility shall be limited to the protection providers and types of protection agreement set out in Annex VIII, Part 1.

6. The minimum requirements set out in Annex VIII, Part 2 shall be complied with.

Article 93

1. Where the requirements of Article 92 are met the calculation of risk-weighted exposure amounts, and, as relevant, expected loss amounts, may be modified in accordance with Annex VIII, Parts 3 to 6.

2. No exposure in respect of which credit risk mitigation is obtained shall produce a higher risk-weighted exposure amount or expected loss amount than an otherwise identical exposure in respect of which there is no credit risk mitigation.

3. Where the risk-weighted exposure amount already takes account of credit protection under Articles 78 to 83 or Articles 84 to 93, as relevant, the calculation of the credit protection shall not be further recognised under this Subsection.

SUBSECTION 4 - SECURITISATION

Article 94

Where a credit institution uses the Standardised Approach set out in Subsection 1 for the calculation of risk-weighted exposure amounts for the exposure class to which the securitised exposures would be assigned under Article 79, it shall calculate the risk-weighted exposure amount for a securitisation position in accordance with Annex IX, Part 4, paragraphs 6 to 35.

In all other cases, it shall calculate the risk-weighted exposure amount in accordance with Annex IX, Part 4, paragraphs 36 to 74.

Article 95

1. Where significant credit risk associated with securitised exposures has been transferred from the originator credit institution in accordance with the terms of Annex IX, Part 2, that credit institution may:

(a) in the case of a traditional securitisation, exclude from its calculation of risk-weighted exposure amounts, and, as relevant, expected loss amounts, the exposures which it has securitised;

(b) in the case of a synthetic securitisation, calculate risk-weighted exposure amounts, and, as relevant, expected loss amounts, in respect of the securitised exposures in accordance with Annex IX, part 2.

2. Where paragraph 1 applies, the originator credit institution shall calculate the risk-weighted exposure amounts prescribed in Annex IX for the positions that it may hold in the securitisation.

Where the originator credit institution fails to transfer significant credit risk in accordance with paragraph 1, it need not calculate risk-weighted exposure amounts for any positions it may have in the securitisation in question.

Article 96

1. To calculate the risk-weighted exposure amount of a securitisation position, risk weights shall be applied to the exposure value of the position in accordance with Annex IX, based on the credit quality of the position, which may be determined by reference to an ECAI credit assessment or otherwise, as set out in Annex IX.

2. Where there is an exposure to different tranches in a securitisation, the exposure to each tranche shall be considered a separate securitisation position. The providers of credit protection to securitisation positions shall be considered to hold positions in the securitisation. Securitisation positions shall include exposures to a securitisation arising from interest rate or currency derivative contracts.

3. Where a securitisation position is subject to funded or unfunded credit protection the risk-weight to be applied to that position may be modified in accordance with Articles 90 to 93, read in conjunction with Annex IX.

4. Subject to point (r) of Article 57 and Article 66(2), the risk-weighted exposure amount shall be included in the credit institution's total of risk-weighted exposure amounts for the purposes of Article 75(a).

Article 97

1. An ECAI credit assessment may be used to determine the risk weight of a securitisation position in accordance with Article 96 only if the ECAI has been recognised as eligible by the competent authorities for this purpose, hereinafter "an eligible ECAI".

2. The competent authorities shall recognise an ECAI as eligible for the purposes of paragraph 1 only if they are satisfied as to its compliance with the requirements laid down in Article 81, taking into account the technical criteria in Annex VI, Part 2, and that it has a demonstrated ability in the area of securitisation, which may be evidenced by a strong market acceptance.

3. If an ECAI has been recognised as eligible by the competent authorities of a Member State for the purposes of paragraph 1, the competent authorities of other Member States may recognise that ECAI as eligible for those purposes without carrying out their own evaluation process.

4. The competent authorities shall make publicly available an explanation of the recognition process and a list of eligible ECAIs.

5. To be used for this purpose a credit assessment of an eligible ECAI shall comply with the principles of credibility and transparency as elaborated in Annex IX, Part 3.

Article 98

1. For the purposes of applying risk weights to securitisation positions, the competent authorities shall determine with which of the credit quality steps set out in Annex IX the relevant credit assessments of an eligible ECAI are to be associated. Those determinations shall be objective and consistent.

2. When the competent authorities of a Member State have made a determination under paragraph 1, the competent authorities of other Member States may recognise that determination without carrying out their own determination process.

Article 99

The use of ECAI credit assessments for the calculation of a credit institution's risk-weighted exposure amounts under Article 96 shall be consistent and in accordance with Annex IX, Part 3. Credit assessments shall not be used selectively.

Article 100

1. Where there is a securitisation of revolving exposures subject to an early amortisation provision, the originator credit institution or sponsor credit institution shall calculate, in accordance with Annex IX, an additional risk-weighted exposure amount in respect of the risk that the levels of credit risk to which it is exposed may increase following the operation of the early amortisation provision.

2. For those purposes, a revolving exposure shall be an exposure whereby a customer may vary the amount drawn within an agreed limit, and an early amortisation provision shall be a contractual clause which requires, on the occurrence of defined events, investors' positions to be redeemed before the originally stated maturity of the securities issued.

3. In the case of securitisations subjects to an early amortisation provision of retail exposures which are uncommitted and unconditionally cancellable without prior notice, where the early amortisation is triggered by a quantitative value in respect of something other than the three months average excess spread, the competent authorities may apply a treatment which approximates closely to that prescribed in Annex IX, Part 4, paragraphs 27 to 30 for determining the conversion figure indicated.

4. Where a competent authority intends to apply a treatment in accordance with paragraph 3 in respect of a particular securitisation, it shall first of all inform the relevant competent authorities of all the other Member States. Before the application of such a treatment becomes part of the general policy approach of the competent authority to securitisations containing early amortisation clauses of the type in question, the competent authority shall consult the relevant competent authorities of all the other member States and take into consideration the views expressed. The views expressed in such consultation and the treatment adopted shall be publicly disclosed by the competent authority in question.

Article 101

1. An originator credit institution or sponsor credit institution shall not, with a view to reducing potential or actual losses to investors, provide support to the securitisation beyond its contractual obligations.

2. If an originator credit institution or a sponsor credit institution fails to comply with paragraph 1 in respect of a securitisation, the competent authority shall require it at a minimum, to hold capital against all of the securitised exposures as if they had not been securitised. The credit institution shall disclose publicly that it has provided non-contractual support and the regulatory capital impact of having done so.

SECTION 4

MINIMUM OWN FUNDS REQUIREMENTS FOR OPERATIONAL RISK

Article 102

1. Competent authorities shall require credit institutions to hold own funds against operational risk in accordance with the approaches set out in Articles 103, 104 and 105.

2. Without prejudice to paragraph 4, credit institutions that use the approach set out in Article 104 shall not revert to the use of the approach set out in Article 103, except for demonstrated good cause and subject to approval by the competent authorities.

3. Without prejudice to paragraph 4, credit institutions that use the approach set out in Article 105 shall not revert to the use of the approaches set out in Articles 103 or 104 except for demonstrated good cause and subject to approval by the competent authorities.

4. Competent authorities may allow credit institutions to use a combination of approaches in accordance with Annex X, Part 4.

Article 103

The capital requirement for operational risk under the Basic Indicator Approach shall be a certain percentage of a relevant indicator, in accordance with the parameters set out in Annex X, Part 1.

Article 104

1. Under the Standardised Approach, credit institutions shall divide their activities into a number of business lines as set out in Annex X, Part 2.

2. For each business line, credit institutions shall calculate a capital requirement for operational risk as a certain percentage of a relevant indicator, in accordance with the parameters set out in Annex X, Part 2.

3. For certain business lines, the competent authorities may under certain conditions authorise a credit institution to use an alternative indicator for determining its capital requirement for operational risk.

4. The capital requirement for operational risk under the Standardised Approach shall be the sum of the capital requirements for operational risk across all individual business lines.

5. The parameters for the Standardised Approach are in Annex X, Part 2.

6. To qualify for use of the Standardised Approach, credit institutions shall meet the criteria set out in Annex X, Part 2.

Article 105

1. Credit institutions may use Advanced Measurement Approaches based on their own internal risk measurement systems, provided that the competent authority expressly approves the use of the models concerned for calculating the own funds requirement.

2. Credit institutions must satisfy their competent authorities that they meet the qualifying criteria set out in Annex X, Part 3.

3. When an Advanced Measurement Approach is intended to be used by an EU parent credit institution and its subsidiaries or by the subsidiaries of an EU parent financial holding company, the competent authorities of the different legal entities shall cooperate closely as provided for in Articles 128 to 132. The application shall include the elements listed in Annex X, Part 3.

4. Where an EU parent credit institution and its subsidiaries or an EU parent financial institution and its subsidiaries use an Advanced Measurement Approach on a unified basis for

the parent and its subsidiaries, the competent authorities may allow the qualifying criteria set out in Annex X, Part 3 to be met by the parent and its subsidiaries considered together.

↓ 2000/12/EC

SECTION ~~3~~5

LARGE EXPOSURES

↓ 2000/12/EC Art 1(24) (adapted)
⇨ new

Article 106

1. «~~e~~Exposures», for the purposes of ~~applying Articles 48, 49 and 50~~ ⌦ this Section ⌫ , shall mean ~~the assets~~ ⌦ any asset ⌫ or off-balance-sheet item~~s~~ referred to in ~~Article 43 and in Annexes II and IV thereto~~ ⌦ Section 3, Subsection 1 ⌫ , without application of the ⌦ risk ⌫ weight~~ing~~s or degrees of risk there provided for~~:~~.

~~the risks~~ ⌦ Exposures arising from the items ⌫ referred to in Annex IV ~~must~~ ⌦ shall ⌫ be calculated in accordance with one of the methods set out in Annex III~~:~~.

~~without application of the weightings for counterparty risk; all~~ ⌦ All ⌫ elements entirely covered by own funds may, with the agreement of the competent authorities, be excluded from the determination of exposures, provided that such own funds are not included in the ⇨ credit institution's own funds ⇦ ~~calculation of the solvency ratio~~ ⇨ for the purposes of Article 75⇦ or ⇨ in the calculation ⇦ of other monitoring ratios provided for in this Directive and in other Community acts~~:~~.

2. ~~e~~Exposures shall not include either of the following:

(a) in the case of foreign exchange transactions, exposures incurred in the ordinary course of settlement during the 48 hours following payment~~, or~~ ⌦ ; ⌫

(b) in the case of transactions for the purchase or sale of securities, exposures incurred in the ordinary course of settlement during the five working days following payment or delivery of the securities, whichever is the earlier~~:~~.

↓ 2000/12/EC Art. 1(1) 3rd subparagraph (adapted)

Article 107

For the purposes of applying ~~the supervision and control of large exposures~~ ⌦ this Section ⌫ , ~~shall be considered as a credit institution,~~ ⌦ the term "credit institution" shall cover the following: ⌫

(a) a credit institution ~~according to the first paragraph~~, including ⌦ its ⌫ branches ~~of a credit institution~~ in third countries~~;~~ ~~and~~

(b) any private or public undertaking, including its branches, which ~~corresponds to~~ ⌦ meets ⌫ the definition ~~in the first paragraph~~ of "credit institution" and ~~which~~ has been authorised in a third country~~.~~.

↓ 2000/12/EC Art. 48(1) (adapted) ⇨ new

Article 108

~~Reporting of large exposures~~

~~1.~~ A credit institution's exposure to a client or group of connected clients shall be considered a large exposure where its value is equal to or exceeds 10% of its own funds.

⇨ For those purposes, Section 1 may be read without the inclusion of point (q) of Article 57 and Article 63(3) and shall be read without the inclusion of Article 66(2). ⇦

↓ 2000/12/EC Art 48 (4) 1st paragraph (adapted)

Article 109

The competent authorities shall require that every credit institution have sound administrative and accounting procedures and adequate internal control mechanisms for the purposes of identifying and recording all large exposures and subsequent changes to them, ⌦ in accordance with ⌫ ~~as defined and required by~~ this Directive, and for that of monitoring those exposures in the light of each credit institution's own exposure policies.

↓ 2000/12/EC Art. 48(2) (adapted)

Article 110

~~Reporting of large exposures~~

~~2~~1. A credit institution shall report every large exposure ~~within the meaning of paragraph 1~~to the competent authorities.

Member States shall provide that reporting is to be carried out, at their discretion, in accordance with one of the following two methods:

(a) reporting of all large exposures at least once a year, combined with reporting during the year of all new large exposures and any increases in existing large exposures of at least 20% with respect to the previous communication;

(b) reporting of all large exposures at least four times a year.

↓ 2000/12/EC Art. 48.3 (adapted) ⇨ new

~~3.~~2 ⇨ Except in the case of credit institutions relying on Article 114 for the recognition of collateral in calculating the value of exposures for the purposes of paragraphs 1, 2 and 3 of Article 111, ⇦ ~~e~~Exposures exempted under Article ~~49~~ ⌦ 111 ⌫ (~~7~~)⇨ (3) ⇦(a), (b), (c), (d), (f), (g) and (h) need not~~, however,~~ be reported as laid down in paragraph ⇨ 1 ⇦ ~~2~~ and the reporting frequency laid down in ⇨ point (b) of ⇦ ~~the second indent to~~ paragraph ⇨ 1 ⇦ ~~2~~ may be reduced to twice a year for the exposures referred to in Article ~~49~~ ⌦ 111 ⌫ (~~7~~)⇨ (3) ⇦(e) and (i), and~~also~~ in ~~paragraphs 8, 9 and 10~~ ⇨Articles 115 and 116 ⇦.

↓ 2000/12/EC Art. 48(4) 2nd subparagraph (adapted)

Where a credit institution invokes paragraph ⌦ 2 ⌫ ~~3~~, it shall keep a record of the grounds advanced for at least one year after the event giving rise to the dispensation, so that the competent authorities may establish whether it is justified.

⇩ new

3. Member States may require the reporting of concentrated exposures to the issuers of collateral taken by the credit institution.

↓ 2000/12/EC Art 49(1) to (5) (adapted)
→1 2004/xx/EC Art. 3.7
⇨ new

Article 111

~~Limits on large exposures~~

1. A credit institution may not incur an exposure to a client or group of connected clients the value of which exceed 25% of its own funds ⇨ . For these purposes and the purposes of the other provisions of this Article, Section 1 may be read without taking into account point (q) of Article 57 and Article 63(3) and shall be read without the inclusion of Article 66(2).⇦

2. Where that client or group of connected clients is the parent undertaking or subsidiary of the credit institution and/or one or more subsidiaries of that parent undertaking, the percentage laid down in paragraph 1 shall be reduced to 20%. Member States may, however, exempt the exposures incurred to such clients from the 20% limit if they provide for specific monitoring of such exposures by other measures or procedures. They shall inform the Commission and the →1 European Banking Committee ← of the content of such measures or procedures.

3. A credit institution may not incur large exposures which in total exceed 800% of its own funds.

↓ 2000/12/EC Art. 49.4 (adapted)

~~4. Member States may impose limits more stringent than those laid down in paragraphs 1, 2 and 3.~~

↓ 2000/12/EC Art 49(1) to (5)

~~5~~4. A credit institution shall at all times comply with the limits laid down in paragraphs 1, 2 and 3 in respect of its exposures. If in an exceptional case exposures exceed those limits, that fact must be reported without delay to the competent authorities which may, where the circumstances warrant it, allow the credit institution a limited period of time in which to comply with the limits.

⇩ new

Article 112

1. For the purposes of Articles 113 to 117, 'guarantee' shall include credit derivatives recognised under Articles 90 to 93 other than credit linked notes.

2. Subject to paragraph 3, where, under Articles 113 to 117, the recognition of funded or unfunded credit protection may be permitted, this shall be subject to compliance

with the eligibility requirements and other minimum requirements, set out under Articles 90 to 93 for the purposes of calculating risk-weighted exposure amounts under Articles 78 to 83.

3. Where a credit institution relies upon Article 114(2), the recognition of credit protection shall be subject to the relevant requirements under Articles 84 to 89.

↓ 2000/12/EC Art 49(4) & (6) adapted (adapted)

Article 113

1. Member States may impose limits more stringent than those laid down in Article ⌦ 111 ⌫ ~~75 paragraphs 1, 2 and 3.~~

~~6~~2. Member States may fully or partially exempt from the application of Article ⌦ 111 ⌫ ~~75 paragraphs~~ 1, 2 and 3 exposures incurred by a credit institution to its parent undertaking, to other subsidiaries of that parent undertaking or to its own subsidiaries, in so far as those undertakings are covered by the supervision on a consolidated basis to which the credit institution itself is subject, in accordance with this Directive or with equivalent standards in force in a third country.

↓ 2000/12/EC Art 49(7) (adapted) ⇨ new

~~7~~3. Member States may fully or partially exempt the following exposures from the application of ~~paragraphs (1), (2) and (3)~~ ⌦ Article 111 ⌫:

(a) asset items constituting claims on ~~Zone A central governments or central banks;~~ ⇨ central governments or central banks which would unsecured receive a 0% risk weighting under Articles 78 to 83; ⇦

(b) asset items constituting claims on ~~the European Communities~~⇨ international organisations or multilateral development banks which would unsecured receive a 0% risk weight under Articles 78 to 83; ⇦

(c) asset items constituting claims carrying the explicit guarantees of ~~Zone A central governments or central banks or of the European Communities~~ ⇨ central governments, central banks, international organisations or multilateral development banks, where unsecured claims on the entity providing the guarantee would achieve a 0% risk weight under Articles 78 to 83; ⇦

(d) other exposures attributable to, or guaranteed by, ~~Zone A central governments or central banks or the European Communities~~ ⇨ central governments, central banks, international organisations, or multilateral development banks where unsecured claims on the entity to which the exposure is attributable or by which it is guaranteed would receive a 0% risk weight under Articles 78 to 83⇦;

(e) asset items constituting claims on and other exposures to ~~Zone B~~ central governments or central banks ⇨ not mentioned in paragraph a) above ⇦ which are denominated and, where applicable, funded in the national currencies of the borrowers;

(f) asset items and other exposures secured, to the satisfaction of the competent authorities, by collateral in the form of ⇨ debt securities issued by ⇦~~Zone A~~ central governments or central banks, ~~securities, or securities issued by the European Communities or by Member State regional or local authorities for which Article 44 lays down a zero weighting for solvency purposes~~ ⇨ international organisations, multilateral development banks or Member States' regional governments or local authorities, which securities constitute claims on their issuer which would receive a 0% risk weighting under Articles 78 to 83⇦;

(g) asset items and other exposures secured, to the satisfaction of the competent authorities, by collateral in the form of cash deposits placed with the lending ⌦ credit ⌫ institution or with a credit institution which is the parent undertaking or a subsidiary of the lending institution;

(h) asset items and other exposures secured, to the satisfaction of the competent authorities, by collateral in the form of certificates of deposit issued by the lending ⌦ credit ⌫ institution or by a credit institution which is the parent undertaking or a subsidiary of the lending ⌦ credit ⌫ institution and lodged with either of them;

(i) asset items constituting claims on and other exposures to ~~credit~~ institutions, with a maturity of one year or less, but not constituting such institutions' own funds;

(j) asset items constituting claims on and other exposures to those institutions which are not credit institutions but which fulfil the conditions referred to in ~~Article 45(2)~~⇨ Annex VI, Part 1, paragraph 82 ⇦, with a maturity of one year or less, and secured in accordance with the same paragraph;

(k) bills of trade and other similar bills, with a maturity of one year or less, bearing the signatures of other credit institutions;

(l) ~~debt securities as defined in Article 22(4) of Directive 85/611/EEC;~~⇨ covered bonds as defined in Articles 78 to 83;⇦

↓ 2000/12/EC (adapted)

(m) pending subsequent coordination, holdings in the insurance companies referred to in Article ~~51(3)~~ ⌦ 122(1) ⌫ up to 40% of the own funds of the credit institution acquiring such a holding;

(n) asset items constituting claims on regional or central credit institutions with which the lending ⌦ credit ⌫ institution is associated in a network in accordance with legal or statutory provisions and which are responsible, under those provisions, for cash-clearing operations within the network;

↓ 2000/12/EC

(o) exposures secured, to the satisfaction of the competent authorities, by collateral in the form of securities other than those referred to in (f); ~~provided that those securities are not issued by the credit institution itself, its parent company or one of their subsidiaries, or by the client or group of connected clients in question. The securities used as collateral must be valued at market price, have a value that exceeds the exposures guaranteed and be either traded on a stock exchange or effectively negotiable and regularly quoted on a market operated under the auspices of recognised professional operators and allowing, to the satisfaction of the competent authorities of the Member State of origin of the credit institution, for the establishment of an objective price such that the excess value of the securities may be verified at any time. The excess value required shall be 100% it shall, however, be 150% in the case of shares and 50% in the case of debt securities issued by credit institutions, Member State regional or local authorities other than those referred to in Article 44, and in the case of debt securities issued by the EIB and multilateral development banks Securities used as collateral may not constitute credit institutions' own funds;~~

↓ 2000/12/EC

(p) loans secured, to the satisfaction of the competent authorities, by mortgages on residential property or by shares in Finnish residential housing companies, operating in accordance with the Finnish Housing Company Act of 1991 or subsequent equivalent legislation and leasing transactions under which the lessor retains full ownership of the residential property leased for as long as the lessee has not exercised his option to purchase, in all cases up to 50% of the value of the residential property concerned; ~~The value of the property shall be calculated, to the satisfaction of the competent authorities, on the basis of strict valuation standards laid down by law, regulation or administrative provisions. Valuation shall be carried out at least once a year. For the purposes of this point residential property shall mean a residence to be occupied or let by the borrower;~~

⇩ new

(q) the following, where they would receive a 50% risk weight under Articles 78 to 83, and only up to 50% of the value of the property concerned:

(i) exposures secured by mortgages on offices or other commercial premises, or by shares in Finnish housing companies, operating in accordance with the Finnish Housing Company Act of 1991 or subsequent equivalent legislation, in respect of offices or other commercial premises;

(ii) exposures related to property leasing transactions concerning offices or other commercial premises;

For the purposes of point (ii), until 31 December 2011, the competent authorities of each Member State may allow credit institutions to recognise 100% of the value of

the property concerned. At the end of this period, this treatment shall be reviewed. Member states shall inform the Commission of the use they make of this preferential treatment.

↓ 2000/12/EC (adapted)

(~~q~~r) 50% of the medium/low-risk off-balance-sheet items referred to in Annex II;

(~~r~~s) subject to the competent authorities' agreement, guarantees other than loan guarantees which have a legal or regulatory basis and are given for their members by mutual guarantee schemes possessing the status of credit institutions, subject to a weighting of 20% of their amount.

~~Member States shall inform the Commission of the use they make of this option in order to ensure that it does not result in distortions of competition;~~

(~~s~~t) the low-risk off-balance-sheet items referred to in Annex II, to the extent that an agreement has been concluded with the client or group of connected clients under which the exposure may be incurred only if it has been ascertained that it will not cause the limits applicable under ⌦ Article 111(1) to (3) ⌫ ~~paragraphs 1, 2 and 3~~ to be exceeded.

⇩ new

Cash received under a credit linked note issued by the credit institution and loans and deposits of a counterparty to or with the credit institution which are subject to an on-balance sheet netting agreement recognised under Articles 90 to 93 shall be deemed to fall under point (g).

↓ 2000/12/EC Art 49(o) 2nd & 3rd sentences (adapted)
⇨ new

⌦ For the purposes of point (o), the ⌫ ~~The~~ securities used as collateral must be valued at market price, have a value that exceeds the exposures guaranteed and be either traded on a stock exchange or effectively negotiable and regularly quoted on a market operated under the auspices of recognised professional operators and allowing, to the satisfaction of the competent authorities of the Member State of origin of the credit institution, for the establishment of an objective price such that the excess value of the securities may be verified at any time. The excess value required shall be 100%. ~~i~~It shall, however, be 150% in the case of shares and 50% in the case of debt securities issued by ~~credit~~ institutions, Member State regional ⌦ governments ⌫ or local authorities other than those referred to in ~~Article 44~~ ⌦ sub-point (f) ⌫, and in the case of debt securities issued by ~~the EIB and~~ multilateral development banks ⇨ other than those receiving a 0% risk weighting under the Standardised Approach. Where there is a mismatch between the maturity of the exposure and the maturity of the credit protection, the collateral shall not be recognised. ⇦ ⌦ Securities used as collateral may not constitute credit institutions' own funds. ⌫

⌦ For the purposes of point (p), the ⌫ ~~The~~ value of the property shall be calculated, to the satisfaction of the competent authorities, on the basis of strict valuation standards laid down by law, regulation or administrative provisions. Valuation shall be carried out at least once a year. For the purposes of ~~this~~ point ⌦ (p), ⌫ residential property shall mean a residence to be occupied or let by the borrower~~.~~.

Member States shall inform the Commission of any exemption granted ⌦ under point (s) ⌫ ~~the use they make of this option~~in order to ensure that it does not result in distortion of competition~~.~~.

⇩ new

Article 114

1. Subject to paragraph 3, for the purposes of calculating the value of exposures for the purposes of Article 111(1) to (3) Member States may, in respect of credit institutions using the Financial Collateral (Comprehensive Method) under Articles 90 to 93, in the alternative to availing of the full or partial exemptions permitted under points (f), (g), (h), and (o) of Article 113(3), permit such credit institutions to use a value lower than the value of the exposure, but no lower than the total of the fully-adjusted exposure values of their exposures to the client or group of connected clients.

For these purposes 'fully adjusted exposure value' means that calculated under Articles 90 to 93 taking into account the credit risk mitigation, volatility adjustments, and any maturity mismatch (E*).

Where this paragraph is applied to a credit institution, points (f), (g), (h), and (o) of Article 113(3) shall not apply to the credit institution in question.

2. Subject to paragraph 3, a credit institution permitted to use own estimates of LGDs and conversion factors for an exposure class under Articles 84 to 89 may be permitted, where it is able to the satisfaction of the competent authorities to estimate the effects of financial collateral on their exposures separately from other LGD-relevant aspects, to recognise such effects in calculating the value of exposures for the purposes of Article 113(3).

Competent authorities shall be satisfied as to the suitability of the estimates produced by the credit institution for use for the reduction of the exposure value for the purposes of compliance with the provisions of Article 111.

Where a credit institution is permitted to use its own estimates of the effects of financial collateral, it must do so on a consistent basis to the satisfaction of the competent authorities. In particular, this approach must be adopted for all large exposures.

Credit institutions permitted to use own estimates of LGDs and conversion factors for an exposure class under Articles 84 to 89 which does not calculate the value of their exposures using the method referred to in the first subparagraph, may be permitted to use the approach set out in paragraph 9(1) above or the approach set out in point (o) of Article 113(3) above for calculating the value of exposures. A credit institution shall use only one of these two methods.

3. A credit institution which is permitted to use the methods described in paragraphs 1 and 2 in calculating the value of exposures for the purposes of Article 111(1) to (3) shall conduct periodic stress tests of their credit risk concentrations including in relation to the realisable value of any collateral taken.

These shall address risks arising from potential changes in market conditions that could adversely impact the credit institutions' adequacy of own funds and risks arising from the realisation of collateral in stressed situations.

The credit institution shall satisfy the competent authorities that the stress tests carried out are adequate and appropriate for the assessment of such risks.

In the event that such a stress test indicates a lower realisable value of collateral taken than would be permitted to be taken into account under paragraphs 2 and 3 as appropriate, the value of collateral permitted to be recognised in calculating the value of exposures for the purposes of Article 111(1) to (3) shall be reduced accordingly.

Such credit institutions shall include the following in their strategies to address concentration risk:

(a) policies and procedures to address risks arising from maturity mismatches between exposures and any credit protection on those exposures;

(b) policies and procedures relating to concentration risk arising from the application of credit risk mitigation techniques, and in particular large indirect credit exposures (e.g. to a single issuer of securities taken as collateral).

4. Where the effects of collateral are recognised under the terms of paragraphs 1 or 2 above, Member States may treat any covered part of the exposure as having been incurred to the collateral issuer rather than to the client.

↓ 2000/12/EC Art 49 (8) & (9) (adapted)
⇨ new

Article 115

~~3~~1. For the purposes of ⌦ Article 111(1) to (3) ⌫~~paragraphs 1, 2 and 3~~, Member States may apply a weighting of 20% to asset items constituting claims on Member State regional ⌦ governments ⌫ and local authorities ⇨ where those claims would receive a 20% risk weight under Article 78 to 83 and to other exposures to or guaranteed by such governments and authorities claims on which receive a 20% risk weight under Article 78 to 83. ⇦~~and to other exposures to or guaranteed by such authorities; subject to the conditions laid down in Article 44, however, Member States may reduce that rate to 0%.~~

⇨ However, Member States may reduce that rate to 0% in respect of to asset items constituting claims on Member States' regional governments and local authorities where those claims would receive a 0% risk weight under Article 78 to 83 and to other exposures to or guaranteed by such governments and authorities claims on which receive a 0% risk weight under Article 78 to 83. ⇦

~~9.~~2. For the purposes of ⌦ Article 111(1) to (3) ⌫ ~~paragraphs 1, 2 and 3~~, Member States may apply a weighting of 20% to asset items constituting claims on and other exposures to ~~credit~~ institutions with a maturity of more than one but not more than three years and a weighting of 50% to asset items constituting claims on ~~credit~~ institutions with a maturity of more than three years, provided that the latter are represented by debt instruments that were issued by a ~~credit~~ institution and that those debt instruments are, in the opinion of the competent authorities, effectively negotiable on a market made up of professional operators and are subject to daily quotation on that market, or the issue of which was authorised by the competent authorities of the Member State of origin of the issuing ~~credit~~ institutions. In no case may any of these items constitute own funds.

🡻 2000/12/EC Art 49 (10)
(adapted)

Article 116

~~10~~.By way of derogation from ~~paragraphs 7 (i) and 9~~ ⌦ Article 113(3)(i) and Article 115(2) ⌫, Member States may apply a weighting of 20% to asset items constituting claims on and other exposures to credit institutions, regardless of their maturity.

🡻 2000/12/EC Art. 49 (11)
(adapted)

Article 117

~~11~~1. Where an exposure to a client is guaranteed by a third party, or by collateral in the form of securities issued by a third party under the conditions laid down in paragraph ~~7~~ ⌦ Article 113(3)⌫ (o), Member States may:

(a) treat the exposure as having been incurred to the ⌦ guarantor ⌫ ~~third party~~ rather than to the client~~, if the exposure is directly and unconditionally guaranteed by that third party, to the satisfaction of the competent authorities,~~;

(b) treat the exposure as having been incurred to the third party rather than to the client, if the exposure defined in ~~sub-paragraph 7~~ ⌦ Article 113(3) ⌫ (o) is guaranteed by collateral under the conditions there laid down.

⇩ new

2. Where Member States apply the treatment provided for in point (a) of paragraph 1:

(a) where the guarantee is denominated in a currency different from that in which the exposure is denominated the amount of the exposure deemed to be covered will be calculated in accordance with the provisions on the treatment of currency mismatch for unfunded protection in Annex VIII;

(b) a mismatch between the maturity of the exposure and the maturity of the protection will be treated in accordance with the provisions on the treatment of maturity mismatch in Annex VIII;

(c) partial coverage may be recognised in accordance with the treatment set out in Annex VIII.

↓ 2000/12/EC Art 49 (2) (adapted)

~~12. By 1 January 1999 at the latest, the Council shall, on the basis of a report from the Commission, examine the treatment of interbank exposures provided for in paragraphs 7(i), 9 and 10. The Council shall decide on any changes to be made on a proposal from the Commission.~~

↓ 2000/12/EC Art 50 (adapted) ⇨ new

Article 118

~~Supervision on a consolidated or unconsolidated basis of large exposures~~

~~1. If the credit institution is neither a parent undertaking nor a subsidiary, compliance with the obligations imposed in Articles 48 and 49 or in any other Community provision applicable to this area shall be monitored on an unconsolidated basis.~~

~~2. In the other cases, compliance with the obligations imposed in Articles 48 and 49 or in any other Community provision applicable to this area shall be monitored on a consolidated basis in accordance with Articles 52 to 56.~~

~~3. Member States may waive monitoring on an individual or subconsolidated basis of compliance with the obligations imposed in Articles 48 and 49 or in any other Community provision applicable to this area by a credit institution which, as a parent undertaking, is subject to monitoring on a consolidated basis and by any subsidiary of such a credit institution which is subject to their authorisation and supervision and is covered by monitoring on a consolidated basis.~~

~~Member States also waive such monitoring where the parent undertaking is a financial holding company established in the same Member State as the credit institution, provided that company is subject to the same monitoring as credit institutions.~~

~~In the cases referred to in the first and second subparagraphs.~~

⇨ Where compliance by a credit institution on an individual or sub-consolidated basis with the obligations imposed in this Section is disapplied under Article 69(1), or the provisions of Article 70 are applied in the case of parent credit institutions in a Member State, ⇦ measures must be taken to ensure the satisfactory allocation of risks within the group.

⇩ new

Article 119

By 31 December 2007, the Commission shall submit to the European Parliament and to the Council a report on the functioning of this Section, together with any appropriate proposals.

🡻 2000/12/EC

SECTION 6

QUALIFYING HOLDINGS OUTSIDE THE FINANCIAL SECTOR

🡻 2000/12/EC Art. 51 (1) & (2) (adapted)

Article 120

~~**Limits to non-financial qualifying holdings**~~

1. No credit institution may have a qualifying holding the amount of which exceeds 15% of its own funds in an undertaking which is neither a credit institution, nor a financial institution, nor an undertaking carrying on an activity referred to in the second subparagraph of Article 43(2)(f) of Directive 86/635/EEC.

2. The total amount of a credit institution's qualifying holdings in undertakings other than credit institutions, financial institutions or undertakings carrying on activities referred to in the second subparagraph of Article 43(2)(f) of Directive 86/635/EEC may not exceed 60% of its own funds.

🡻 2002/87/EC Art. 29(5) (adapted)

~~5. The Member States need not apply the limits laid down in paragraphs 1 and 2 to holdings in insurance companies as defined in Directive 73/239/EEC and Directive 79/267/EEC, or in reinsurance companies as defined in Directive 98/78/EC.~~

🡻 2000/12/EC Art. 51(4) (adapted)

~~4. Shares held temporarily during a financial reconstruction or rescue operation or during the normal course of underwriting or in an institution's own name on behalf of others shall not be counted as qualifying holdings for the purpose of calculating the limits laid down in paragraphs 1 and 2. Shares which are not financial fixed assets as defined in Article 35(2) of Directive 86/635/EEC shall not be included.~~

↓ 2000/12/EC Art. 51 (5)

~~5~~3. The limits laid down in paragraphs 1 and 2 may be exceeded only in exceptional circumstances. In such cases, however, the competent authorities shall require a credit institution either to increase its own funds or to take other equivalent measures.

↓ 2000/12/EC Art. 51 (6) (adapted)

~~6. The Member States may provide that the competent authorities shall not apply the limits laid down in paragraphs 1 and 2 if they provide that 100% of the amounts by which a credit institution's qualifying holdings exceed those limits must be covered by own funds and that the latter shall not be included in the calculation of the solvency ratio. If both the limits laid down in paragraphs 1 and 2 are exceeded, the amount to be covered by own funds shall be the greater of the excess amounts.~~

↓ 2000/12/EC Art. 51 (4)

Article 121

~~4.~~Shares held temporarily during a financial reconstruction or rescue operation or during the normal course of underwriting or in an institution's own name on behalf of others shall not be counted as qualifying holdings for the purpose of calculating the limits laid down in paragraphs 1 and 2. Shares which are not financial fixed assets as defined in Article 35(2) of Directive 86/635/EEC shall not be included.

↓ 2002/87/EC Art. 29(5)

Article 122

~~3~~1. The Member States need not apply the limits laid down in paragraphs 1 and 2 to holdings in insurance companies as defined in Directive 73/239/EEC and Directive 79/267/EEC, or in reinsurance companies as defined in Directive 98/78/EC.

↓ 2000/12/EC Art. 51(6) (adapted)

~~6~~2. The Member States may provide that the competent authorities are not to apply the limits laid down in ⊠ Article 120(1) and (2) ⊠ ~~paragraphs 1 and 2~~ if they provide that 100% of the amounts by which a credit institution's qualifying holdings exceed those limits must be covered by own funds and that the latter shall not be included in the calculation of the solvency ratio. If both the limits laid down in ⊠ Article 120(1) and (2) ⊠ ~~paragraphs 1 and 2~~ are exceeded, the amount to be covered by own funds shall be the greater of the excess amounts.

⇩ new

CHAPTER 3

CREDIT INSTITUTIONS' ASSESSMENT PROCESS

Article 123

Credit institutions shall have in place sound, effective and complete strategies and processes to assess and maintain on an ongoing basis the amounts, types and distribution of internal capital that they consider adequate to cover the nature and level of the risks to which they are or might be exposed.

These strategies and processes shall be subject to regular internal review to ensure that they remain comprehensive and proportionate to the nature, scale and complexity of the activities of the credit institution concerned.

🡻 2000/12/EC (adapted)

CHAPTER ~~3~~4

SUPERVISION ⌦ AND DISCLOSURE BY COMPETENT AUTHORITIES ⌫ ~~ON A CONSOLIDATED BASIS~~

🡻 2000/12/EC (new)
➔1 2002/87/EC Art. 29.6

~~*Article 52*~~

~~**Supervision on a consolidated basis of credit institutions**~~

~~1. Every credit institution which has a credit institution or a financial institution as a subsidiary or which holds a participation in such institutions shall be subject, to the extent and in the manner prescribed in Article 54, to supervision on the basis of its consolidated financial situation. Such supervision shall be exercised at least in the areas referred to in paragraphs 5 and 6.~~

~~2. Every credit institution the parent undertaking of which is a financial holding company shall be subject, to the extent and in the manner prescribed in Article 54, to supervision on the basis of the consolidated financial situation of that financial holding company. Such supervision shall be exercised at least in the areas referred to in paragraphs 5 and 6.~~ ➔1 ~~Without prejudice to Article 54a, the consolidation of the financial situation of the financial holding company shall not in any way imply that the competent authorities are~~

~~required to play a supervisory role in relation to the financial holding company on a stand-alone basis.~~ ←

↓ 2000/12/EC Art. 52.3

~~3. The Member States or the competent authorities responsible for exercising supervision on a consolidated basis pursuant to Article 53 may decide in the cases listed below that a credit institution, financial institution or auxiliary banking services undertaking which is a subsidiary or in which a participation is held need not be included in the consolidation:~~

~~– if the undertaking that should be included is situated in a third country where there are legal impediments to the transfer of the necessary information,~~

~~– if, in the opinion of the competent authorities, the undertaking that should be included is of negligible interest only with respect to the objectives of monitoring credit institutions and in all cases if the balance-sheet total of the undertaking that should be included is less than the smaller of the following two amounts: EUR 10 million or 1% of the balance-sheet total of the parent undertaking or the undertaking that holds the participation. If several undertakings meet the above criteria, they must nevertheless be included in the consolidation where collectively they are of non-negligible interest with respect to the aforementioned objectives, or~~

~~– if, in the opinion of the competent authorities responsible for exercising supervision on a consolidated basis, the consolidation of the financial situation of the undertaking that should be included would be inappropriate or misleading as far as the objectives of the supervision of credit institutions are concerned.~~

↓ 2000/12/EC Art. 52 (5) to (8

~~5. Supervision of solvency, and of the adequacy of own funds to cover market risks and control of large exposures shall be exercised on a consolidated basis in accordance with this Article and Articles 53 to 56. Member States shall adopt any measures necessary, where appropriate, to include financial holding companies in consolidated supervision, in accordance with paragraph 2.~~

~~Compliance with the limits set in Article 51(1) and (2) shall be supervised and controlled on the basis of the consolidated or subconsolidated financial situation of the credit institution.~~

~~6. The competent authorities shall ensure that, in all the undertakings included in the scope of the supervision on a consolidated basis that is exercised over a credit institution in implementation of paragraphs 1 and 2, there are adequate internal control mechanisms for the production of any data and information which would be relevant for the purposes of supervision on a consolidated basis.~~

~~7. Without prejudice to specific provisions contained in other directives, Member States may waive application, on an individual or subconsolidated basis, of the rules laid down in paragraph 5 to a credit institution that, as a parent undertaking, is subject to supervision on a consolidated basis, and to any subsidiary of such a credit institution which is subject to their authorisation and supervision and is included in the supervision on a consolidated basis of the credit institution which is the parent company. The same exemption option shall be allowed where the parent undertaking is a financial holding company which has its head office in the~~

~~same Member State as the credit institution, provided that it is subject to the same supervision as that exercised over credit institutions, and in particular the standards laid down in paragraph 5.~~

~~In both cases set out in the first subparagraph, steps must be taken to ensure that capital is distributed adequately within the banking group.~~

~~If the competent authorities apply those rules individually to such credit institutions, they may, for the purpose of calculating own funds, make use of the provision in the last subparagraph of Article 3(2).~~

~~8. Where a credit institution the parent of which is a credit institution has been authorised and is situated in another Member State, the competent authorities which granted that authorisation shall apply the rules laid down in paragraph 5 to that institution on an individual or, when appropriate, a subconsolidated basis.~~

↓ 2000/12/EC Art. 52.9 (adapted)
→1 2004/xx/EC Art. 3.9

~~9. Notwithstanding the requirements of paragraph 8, the competent authorities responsible for authorising the subsidiary of a parent undertaking which is a credit institution may, by bilateral agreement, delegate their responsibility for supervision to the competent authorities which authorised and supervise the parent undertaking so that they assume responsibility for supervising the subsidiary in accordance with this Directive. The Commission must be kept informed of the existence and content of such agreements.~~ →1 ~~The competent authority concerned shall forward such information to the competent authorities of the other Member States.~~ ←

⇩ new

SECTION 1 - SUPERVISION

Article 124

1. Taking into account the technical criteria set out in Annex XI, the competent authorities shall review the arrangements, strategies, processes and mechanisms implemented by the credit institutions to comply with this Directive and evaluate the risks to which the credit institutions are or might be exposed.

2. The scope of the review and evaluation referred to in paragraph 1 shall be that of the requirements of this Directive.

3. On the basis of the review and evaluation referred to in paragraph 1, the competent authorities shall determine whether the arrangements, strategies, processes and mechanisms implemented by the credit institutions and the own funds held by these ensure a sound management and coverage of their risks.

4. Competent authorities shall establish the frequency and intensity of the review and evaluation referred to in paragraph 1 having regard to the systemic importance,

nature, scale and complexity of the activities of the credit institution concerned. The review and evaluation shall be updated at least on an annual basis.

5. The review and evaluation performed by competent authorities shall include the exposure of credit institutions to the interest rate risk arising from non-trading activities. Measures shall be required in the case of institutions whose economic value declines by more than 20% of their own funds as a result of a sudden and unexpected change in interest rates the size of which shall be prescribed by the competent authorities and shall not differ between credit institutions.

↓ 2000/12/EC Art 53(1) and (2) first sub-paragraph (adapted) ⇨ new

Article 125

~~Competent authorities responsible for exercising~~

1. Where a parent undertaking is a ⇨ parent ⇦ credit institution ⇨ in a Member State or an EU parent credit institution ⇦, supervision on a consolidated basis shall be exercised by the competent authorities that authorised it under Article ~~4~~⌦ 6 ⌫.

2. Where the parent of a credit institution is a ⇨ parent ⇦ financial holding company ⇨ in a Member State or an EU parent financial holding company ⇦, supervision on a consolidated basis shall be exercised by the competent authorities which authorised that credit institution under Article ~~4~~⌦ 6 ⌫.

↓ 2000/12/EC Art. 53 (2) second and third sub-paragraph and (3) ⇨ new

Article 126

~~3.~~1. ~~However w~~Where credit institutions authorised in two or more Member States have as their parent the same ⇨ parent ⇦ financial holding company ⇨ in a Member State or the same EU parent financial holding company ⇦ , supervision on a consolidated basis shall be exercised by the competent authorities of the credit institution authorised in the Member State in which the financial holding company was set up.

~~If no credit institution subsidiary has been authorised in the Member State in which the financial holding company was set up, the competent authorities of the Member States concerned (including those of the Member State in which the financial holding company was set up) shall seek to reach agreement as to who amongst them will exercise supervision on a consolidated basis. In the absence of such agreement, supervision on a consolidated basis shall be exercised by the competent authorities that authorised the credit institution with the greatest balance sheet total; if that figure is the same, supervision on a consolidated basis shall be exercised by the competent authorities which first gave the authorisation referred to in Article 4.~~

~~3. The competent authorities concerned may by common agreement waive the rules laid down in the first and second subparagraph of paragraph 2.~~

⇩ new

Where credit institutions authorised in two or more Member States have as their parents more than one financial holding company with head offices in different Member States and there is a credit institution in each of these States, supervision on a consolidated basis shall be exercised by the competent authority of the credit institution with the largest balance sheet total.

2. Where more than one credit institution authorised in the Community has as its parent the same financial holding company and none of these credit institutions has been authorised in the Member State in which the financial holding company was set up, supervision on a consolidated basis shall be exercised by the competent authority that authorised the credit institution with the largest balance sheet total, which shall be considered, for the purposes of this Directive, as the credit institution controlled by an EU parent financial holding company.

🡻 2000/12/EC Art 53(4)

~~4. The agreements referred to in the third subparagraph of paragraph 2 and in paragraph 3 shall provide for procedures for cooperation and for the transmission of information such that the objectives of supervision on a consolidated basis can be attained.~~

⇩ new

3. In particular cases, the competent authorities may by common agreement waive the criteria referred to in paragraphs 1 and 2 if their application would be inappropriate, taking into account the credit institutions and the relative importance of their activities in different countries, and appoint a different competent authority to exercise supervision on a consolidated basis. In these cases, before taking their decision, the competent authorities shall give the EU parent credit institution, or EU parent financial holding company, or credit institution with the largest balance sheet, as appropriate, an opportunity to state its opinion on that decision.

4. The competent authorities shall notify the Commission of any agreement falling within paragraph 3

🡻 2000/12/EC Art. 52(2) last sentence (adapted)
⇨ new

Article 127

1. ⇨ Member States shall adopt any measures necessary, where appropriate, to include financial holding companies in consolidated supervision. Without prejudice to Article 135, ⇦ the consolidation of the financial situation of the financial holding company shall not in any way imply that the competent authorities are required to

play a supervisory role in relation to the financial holding company ⌦ on a stand-alone basis ⌫ ~~standing alone~~.

↓ 2000/12/EC Art. 52 (4) (adapted)

~~4~~2. When the competent authorities of a Member State do not include a credit institution subsidiary in supervision on a consolidated basis under one of the cases provided for in ~~the second and third indents of~~ ~~paragraph 3~~ ⌦ points (b) and (c) of Article 73(1) ⌫, the competent authorities of the Member State in which that credit institution subsidiary is situated may ask the parent undertaking for information which may facilitate their supervision of that credit institution.

↓ 2000/12/EC Art. 52 (10) (adapted)

~~10~~3. Member States shall provide that their competent authorities responsible for exercising supervision on a consolidated basis may ask the subsidiaries of a credit institution or a financial holding company, which are not included within the scope of supervision on a consolidated basis for the information referred to in Article ~~55~~ ⌦ 137 ⌫. In such a case, the procedures for transmitting and verifying the information laid down in that Article shall apply.

↓ 2000/12/EC Art 53(5)

Article 128

~~5~~Where Member States have more than one competent authority for the prudential supervision of credit institutions and financial institutions, Member States shall take the requisite measures to organise coordination between such authorities.

⇩ new

Article 129

1. The competent authority responsible for the exercise of supervision on a consolidated basis of EU parent credit institutions and credit institutions controlled by EU parent financial holding companies shall carry out the following tasks:

(a) supervisory overview and assessment of compliance with the requirements laid down in Articles 71, 72(1), 72(2) and 73(3);

(b) coordination of the gathering and dissemination of relevant or essential information in going concern and emergency situations;

(c) planning and coordination of supervisory activities in going concern as well as in emergency situations, including in relation to the activities in Article 124, in

cooperation with the competent authorities involved, and in relation to Articles 43 and 141.

2. In the case of applications for the permissions referred to in Articles 84(1), 87(9) and 105, respectively, submitted by an EU parent credit institution and its subsidiaries, or jointly by the subsidiaries of an EU parent financial holding company, the competent authorities shall work together, in full consultation, to determine whether or not to grant the permission sought and to determine the terms and conditions, if any, to which such permission should be subject.

An application as referred to in the first subparagraph shall be submitted only to the competent authority referred to in paragraph 1.

The competent authorities shall in a single document agree together, within no more than six months, their determination on the application. This document shall be provided to the applicant. In the absence of a determination within six months, the competent authority referred to in paragraph 1 shall make its own determination on the application.

Article 130

1. Where an emergency situation arises, which potentially jeopardises the stability, including the integrity, of the financial system, the competent authorities responsible for the exercise of supervision on a consolidated basis shall alert as soon as is practicable, subject to Title V, Chapter 1, Section 2, the authorities referred to in Article 49(a) and Article 50. This obligation shall apply to all competent authorities identified under Articles 125 and 126 in relation to a particular group, and to the competent authority identified under paragraph 1 of Article 129.

2. The competent authority responsible for supervision on a consolidated basis shall, when it needs information which has already been given to another competent authority, contact this authority whenever possible in order to prevent duplication of reporting to the various authorities involved in supervision.

Article 131

In order to facilitate and establish effective supervision, the competent authority responsible for supervision on a consolidated basis and the other competent authorities shall have written coordination and cooperation arrangements in place.

Under these arrangements additional tasks may be entrusted to the competent authority responsible for supervision on a consolidated basis and procedures for the decision-making process and for cooperation with other competent authorities, may be specified.

↓ 2000/12/EC Art. 52 (9) (adapted)

~~Notwithstanding the requirements of paragraph 8, the~~ ⌦ The ⌫ competent authorities responsible for authorising the subsidiary of a parent undertaking which is a credit institution

may, by bilateral agreement, delegate their responsibility for supervision to the competent authorities which authorised and supervise the parent undertaking so that they assume responsibility for supervising the subsidiary in accordance with this Directive. The Commission must be kept informed of the existence and content of such agreements. It shall forward such information to the competent authorities of the other Member States and to the Banking Advisory Committee.

⇩ new

Article 132

1. The competent authorities shall cooperate closely with each other. They shall provide one another with any information which is essential or relevant for the exercise of the other authorities' supervisory tasks under this Directive. In this regard, the competent authorities shall communicate on request all relevant information and shall communicate on their own initiative all essential information.

   In particular, competent authorities responsible for consolidated supervision of EU companies shall ensure that relevant information is provided to competent authorities in other Member States who supervise subsidiaries of these parents. In determining the extent of relevant information, the importance of these subsidiaries within the financial system in those Member States shall be taken into account.

   The essential information referred to in the first subparagraph shall include, in particular, the following items:

   (a) identification of the group structure of all major credit institutions in a group, as well as of the competent authorities of the credit institutions in the group;

   (b) procedures for the collection of information from the credit institutions in a group, and the verification of that information;

   (c) adverse developments in credit institutions or in other entities of a group, which could seriously affect the credit institutions;

   (d) major sanctions and exceptional measures taken by competent authorities in accordance with this Directive, including the imposition of an additional capital charge under Article 136 and the imposition of any limitation on the use of the Advanced Measurement Approach for the calculation of the own funds requirements under Article 105.

2. The competent authorities responsible for the supervision of credit institutions controlled by an EU parent credit institution shall contact the competent authority referred to in Article 129(1) when they need information regarding the implementation of approaches and methodologies set out in this Directive that may already be available to that competent authority.

3. The competent authorities concerned shall, prior to their decision, consult each other with regard to the following items, where these decisions are of importance for other competent authorities' supervisory tasks:

(a) changes in the shareholder, organisational or management structure of credit institutions in a group, which require the approval or authorisation of competent authorities;

(b) major sanctions or exceptional measures taken by competent authorities, including the imposition of an additional capital charge under Article 136 and the imposition of any limitation on the use of the Advances Measurement Approaches for the calculation of the own funds requirements under Article 105.

For the purposes of point (b), the competent authority responsible for supervision on a consolidated basis shall always be consulted.

However, a competent authority may decide not to consult in cases of urgency or where such consultation may jeopardise the effectiveness of the decisions. In this case, the competent authority shall, without delay, inform the other competent authorities.

↓ 2000/12/EC Art 54 (1) (adapted)

Article 133

~~Form and extent of consolidation~~

1. The competent authorities responsible for ~~exercising~~ supervision on a consolidated basis ⌦ shall ⌫ ~~must~~, for the purposes of supervision, require full consolidation of all the credit institutions and financial institutions which are subsidiaries of a parent undertaking.

However, ⌦ the competent authorities may require only ⌫proportional consolidation ~~may be prescribed~~ where, in ⌦ their ⌫ ~~the~~ opinion ~~of the competent authorities~~, the liability of a parent undertaking holding a share of the capital is limited to that share of the capital ⌦ in view ⌫ ~~because~~ of the liability of the other shareholders or members whose solvency is satisfactory. The liability of the other shareholders and members must be clearly established, if necessary by means of formal signed commitments.

↓ 2002/87/EC Art. 29(7)(a)

In the case where undertakings are linked by a relationship within the meaning of Article 12 (1) of Directive 83/349/EEC, the competent authorities shall determine how consolidation is to be carried out.

↓ 2000/12/EC Art 54(2) & (3) (adapted)

2. The competent authorities responsible for ~~carrying out~~ supervision on a consolidated basis ⌦ shall ⌫ ~~must, in order to do so,~~ require the proportional consolidation of

participations in credit institutions and financial institutions managed by an undertaking included in the consolidation together with one or more undertakings not included in the consolidation, where those undertakings' liability is limited to the share of the capital they hold.

3. In the case of participations or capital ties other than those referred to in paragraphs 1 and 2, the competent authorities shall determine whether and how consolidation is to be carried out. In particular, they may permit or require use of the equity method. That method shall not, however, constitute inclusion of the undertakings concerned in supervision on a consolidated basis.

↓ 2000/12/EC Art. 54(4) 1st paragraph (adapted)

Article 134

41. Without prejudice to ⌦ Article 133 ⌫ ~~paragraphs 1, 2 and 3~~, the competent authorities shall determine whether and how consolidation is to be carried out in the following cases:

(a) where, in the opinion of the competent authorities, a credit institution exercises a significant influence over one or more credit institutions or financial institutions, but without holding a participation or other capital ties in these institutions~~,~~;

(b) where two or more credit institutions or financial institutions are placed under single management other than pursuant to a contract or clauses of their memoranda or articles of association.

↓ 2002/87/EC Art. 29(7)(b)

↓ 2000/12/EC Art 54(4) 2nd paragraph

In particular, the competent authorities may permit, or require use of, the method provided for in Article 12 of Directive 83/349/EEC. That method shall not, however, constitute inclusion of the undertakings concerned in consolidated supervision.

↓ 2000/12/EC Art 54(5) (adapted) ⇨ new

~~5~~2. Where consolidated supervision is required pursuant to ~~Article 52 (1) and (2)~~ ⌦ Articles 125 and 126 ⌫, ancillary ~~banking~~ services undertakings ⇨ and asset management companies as defined in Directive 2002/87/EC ⇦ shall be included in consolidations in the cases, and in accordance with the methods, laid down in ⌦ Article 133 and paragraph~~s~~ 1 ⌫ ~~to 4~~ of this Article.

↓ 2002/87/EC Art. 29(8) (adapted)

Article 135

~~Management body of financial holding companies~~

The Member States shall require that persons who effectively direct the business of a financial holding company ⌦ be ⌫ of sufficiently good repute and have sufficient experience to perform those duties.

⇩ new

Article 136

1. Competent authorities shall require any credit institution that does not meet the requirements of this Directive to take the necessary actions or steps at an early stage to address the situation.

For those purposes, the measures available to the competent authorities shall include the following:

(a) obliging credit institutions to hold own funds in excess of the minimum level laid down in Article 75;

(b) reinforcing the arrangements and strategies implemented to comply with Articles 22 and 123;

(c) requiring credit institutions to apply a specific provisioning policy or treatment of assets in terms of own funds requirements;

(d) restricting or limiting the business, operations or network of credit institutions;

(e) reducing the risk inherent in activities, products and systems by credit institutions.

The adoption of these measures shall be subject to Title V, Chapter 1, Section 2.

2. A specific own funds requirement in excess of the minimum level laid down in Article 75 shall be imposed by the competent authorities at least on the credit institutions which have in place inadequate arrangements, processes, mechanisms and strategies for the management and coverage of their risks, if the sole application of other measures is unlikely to reinforce those arrangements within an appropriate timeframe.

↓ 2000/12/EC Art 55(1) (adapted)

Article 137

~~Information to be supplied by mixed-activity holding companies and their subsidiaries~~

1. Pending further coordination of consolidation methods, Member States shall provide that, where the parent undertaking of one or more credit institutions is a mixed-activity holding company, the competent authorities responsible for the authorisation and supervision of those credit institutions shall, by approaching the mixed-activity holding company and its subsidiaries either directly or via credit institution subsidiaries, require them to supply any information which would be relevant for the purpose of supervising the credit institution subsidiaries.

↓ 2000/12/EC Art. 55(2) (adapted)

2. Member States shall provide that their competent authorities may carry out, or have carried out by external inspectors, on-the-spot inspections to verify information received from mixed-activity holding companies and their subsidiaries. If the mixed-activity holding company or one of its subsidiaries is an insurance undertaking, the procedure laid down in Article ~~56(4)~~ ⌦ 140(1) ⌫ may also be used. If a mixed-activity holding company or one of its subsidiaries is situated in a Member State other than that in which the credit institution subsidiary is situated, on-the-spot verification of information shall be carried out in accordance with the procedure laid down in Article ~~56(7)~~ ⌦ 140(1) ⌫.

↓ 2002/87/EC Art. 29(9) (adapted)

Article 138

~~Intra-group transactions with mixed-activity holding companies~~

1. Without prejudice to ~~the provisions of~~Title V, Chapter 2, Section ~~3~~ ⌦ 5 ⌫, ~~this Directive,~~ Member States shall provide that, where the parent undertaking of one or more credit institutions is a mixed-activity holding company, the competent authorities responsible for the supervision of these credit institutions shall exercise general supervision over transactions between the credit institution and the mixed-activity holding company and its subsidiaries.

2. Competent authorities shall require credit institutions to have in place adequate risk management processes and internal control mechanisms, including sound reporting and accounting procedures, in order to identify, measure, monitor and control transactions with their parent mixed-activity holding company and its subsidiaries appropriately. Competent authorities shall require the reporting by the credit institution of any significant transaction with these entities other than the one referred to in Article ~~48~~ ⌦ 110 ⌫ . These procedures and significant transactions shall be subject to overview by the competent authorities.

Where these intra-group transactions are a threat to a credit institution's financial position, the competent authority responsible for the supervision of the institution shall take appropriate measures.

↓ 2000/12/EC Art. 56 (1) to (3) (adapted)

Article 139

~~Measures to facilitate supervision on a consolidated basis~~

1. Member States shall take the necessary steps to ensure that there are no legal impediments preventing the ⌦ exchange, as between ⌫ undertakings included within the scope of supervision on a consolidated basis, mixed-activity holding companies and their subsidiaries, or subsidiaries of the kind covered in Article ~~52(10)~~ ⌦ 127(3) ⌫, ⌦ of ⌫ ~~from exchanging amongst themselves~~ any information which would be relevant for the purposes of supervision in accordance with Articles ~~52 to 55~~ ⌦ 124 to 138 ⌫ and this Article.

2. Where a parent undertaking and any of its subsidiaries that are credit institutions are situated in different Member States, the competent authorities of each Member State shall communicate to each other all relevant information which may allow or aid the exercise of supervision on a consolidated basis.

Where the competent authorities of the Member State in which a parent undertaking is situated do not themselves exercise supervision on a consolidated basis pursuant to ~~Article~~ ~~53~~ ⌦ Articles 125 and 126 ⌫ , they may be invited by the competent authorities responsible for exercising such supervision to ask the parent undertaking for any information which would be relevant for the purposes of supervision on a consolidated basis and to transmit it to these authorities.

3. Member States shall authorise the exchange between their competent authorities of the information referred to in paragraph 2, on the understanding that, in the case of financial holding companies, financial institutions or ancillary ~~banking~~ services undertakings, the collection or possession of information shall not in any way imply that the competent authorities are required to play a supervisory role in relation to those institutions or undertakings standing alone.

Similarly, Member States shall authorise their competent authorities to exchange the information referred to in Article ~~55~~ ⌦ 137 ⌫ on the understanding that the collection or possession of information does not in any way imply that the competent authorities play a supervisory role in relation to the mixed-activity holding company and those of its subsidiaries which are not credit institutions, or to subsidiaries of the kind covered in Article ~~52(10)~~ ⌦ 127(3) ⌫.

↓ 2000/12/EC Art 56(4) to (6) adapted (adapted)

Article 140

~~4~~1. Where a credit institution, financial holding company or a mixed-activity holding company controls one or more subsidiaries which are insurance companies or other

undertakings providing investment services which are subject to authorisation, the competent authorities and the authorities entrusted with the public task of supervising insurance undertakings or those other undertakings providing investment services shall cooperate closely. Without prejudice to their respective responsibilities, those authorities shall provide one another with any information likely to simplify their task and to allow supervision of the activity and overall financial situation of the undertakings they supervise.

~~5~~2. Information received, in the framework of supervision on a consolidated basis, and in particular any exchange of information between competent authorities which is provided for in this Directive, shall be subject to the obligation of professional secrecy defined in ⌦ Title V, Chapter 1, Section 2 ⌫ ~~Article 30~~.

~~6~~3. The competent authorities responsible for supervision on a consolidated basis shall establish lists of the financial holding companies referred to in Article ~~52(2)~~ ⌦ 71(2) ⌫. Those lists shall be communicated to the competent authorities of the other Member States and to the Commission.

↓ 2000/12/EC Art 56(7) (adapted)
→1 2002/87/EC Art. 29.10

Article 141

~~7.~~Where, in applying this Directive, the competent authorities of one Member State wish in specific cases to verify the information concerning a credit institution, a financial holding company, a financial institution, an ancillary ~~banking~~ services undertaking, a mixed-activity holding company, a subsidiary of the kind covered in Article ~~55~~ ⌦ 137 ⌫ or a subsidiary of the kind covered in Article ~~52(10)~~ ⌦ 127(3) ⌫, situated in another Member State, they ⌦ shall ⌫ ~~must~~ ask the competent authorities of that other Member State to have that verification carried out. The authorities which receive such a request must, within the framework of their competence, act upon it either by carrying out the verification themselves, by allowing the authorities who made the request to carry it out, or by allowing an auditor or expert to carry it out.→1 The competent authority which made the request may, if it so wishes, participate in the verification when it does not carry out the verification itself. ←

↓ 2000/12/EC Art 56(8) (adapted)

Article 142

~~8.~~Without prejudice to their provisions of criminal law, Member States shall ensure that penalties or measures aimed at ending observed breaches or the causes of such breaches may be imposed on financial holding companies and mixed-activity holding companies, or their effective managers, that infringe laws, regulation or administrative provisions enacted to implement Articles ~~52 to 55~~ ⌦ 124 to 141 ⌫ and this Article. ~~In certain cases, such measures may require the intervention of the courts.~~

The competent authorities shall cooperate closely to ensure that ⌦ those ⌫ ~~the abovementioned~~ penalties or measures produce the desired results, especially when the central administration or main establishment of a financial holding company or of a mixed-activity holding company is not located at its head office.

↓ 2002/87/EC Art. 29(11) (adapted) →1 2004/xx/EC Art. 3.10

Article 143

~~Third-country parent undertakings~~

1. Where a credit institution, the parent undertaking of which is a credit institution or a financial holding company, the head office of which is ⌦ in a third country ⌫ ~~outside the Community~~, is not subject to consolidated supervision under ~~Article 52~~ ⌦ Articles 125 and 126 ⌫, the competent authorities shall verify whether the credit institution is subject to consolidated supervision by a third-country competent authority which is equivalent to that governed by the principles laid down in ~~Article 52~~ ⌦ this Directive ⌫.

The verification shall be carried out by the competent authority which would be responsible for consolidated supervision if ~~the fourth sub~~ paragraph ⌦ 3 ⌫ were to apply, at the request of the parent undertaking or of any of the regulated entities authorised in the Community or on its own initiative. That competent authority shall consult the other competent authorities involved.

2. →1 The Commission may request the European Banking Committee to ← give general guidance as to whether the consolidated supervision arrangements of competent authorities in third countries are likely to achieve the objectives of consolidated supervision as defined in this Chapter, in relation to credit institutions, the parent undertaking of which has its head office ⌦ in a third country ⌫ ~~outside the Community~~. The Committee shall keep any such guidance under review and take into account any changes to the consolidated supervision arrangements applied by such competent authorities.

The competent authority carrying out the verification specified in the ⌦ first ⌫ ~~second~~ subparagraph ⌦ of paragraph 1 ⌫ shall take into account any such guidance. For this purpose the competent authority shall consult the Committee before taking a decision.

3. In the absence of such equivalent supervision, Member States shall apply the provisions of Article 52 Ö this Directive Õ to the credit institution by analogy Ö or shall allow their competent authorities to apply other appropriate supervisory techniques which achieve the objectives of supervision on a consolidated basis of credit institutions ⌫.

~~As an alternative, Member States shall allow their competent authorities to apply other appropriate supervisory techniques which achieve the objectives of the supervision on a consolidated basis of credit institutions.~~

Those ⌦ supervisory techniques ⌫ ~~methods~~ must ⌦ , after consultation with the other competent authorities involved, ⌫ be agreed upon by the competent authority which would be responsible for consolidated supervision~~, after consultation with the other competent authorities involved.~~

Competent authorities may in particular require the establishment of a financial holding company which has its head office in the Community, and apply the

provisions on consolidated supervision to the consolidated position of that financial holding company.

The ⌦ supervisory techniques ⌫ ~~methods~~ must ⌦ be designed to ⌫ achieve the objectives of consolidated supervision as defined in this Chapter and must be notified to the other competent authorities involved and the Commission.

⇩ new

SECTION 2

DISCLOSURE BY COMPETENT AUTHORITIES

Article 144

1. Competent authorities shall disclose the following information:

(a) the texts of laws, regulations, administrative rules and general guidance adopted in their Member State in the field of prudential regulation;

(b) the manner of exercise of the options and discretions available in Community legislation;

(c) the general criteria and methodologies they use in the review and evaluation referred to in Article 124;

(d) without prejudice to the provisions laid down in Title V, Chapter 1, Section 2, aggregate statistical data on key aspects of the implementation of the prudential framework in each Member State.

The disclosures provided for in the first subparagraph shall be sufficient to enable a meaningful comparison of the approaches adopted by the competent authorities of the different Member States.

CHAPTER 5

DISCLOSURE BY CREDIT INSTITUTIONS

Article 145

1. For the purposes of this Directive, credit institutions shall publicly disclose the information laid down in Annex XII, Part 2, subject to the provisions laid down in Article 146.

2. Recognition by the competent authorities under Chapter 2, Section 3, Subsections 2 and 3 and Article 105 of the instruments and methodologies referred to in Annex XII, Part 3

shall be subject to the public disclosure by credit institutions of the information laid down therein.

3. Credit institutions shall adopt a formal policy to comply with the disclosure requirements laid down in paragraphs 1 and 2, and have policies for assessing the appropriateness of their disclosures, including their verification and frequency.

Article 146

1. Notwithstanding Article 145, competent authorities shall permit credit institutions not to make one or more disclosures listed in Annex XII, Part 2 if the credit institution concerned considers that the information provided by such disclosures is not, in the light of the criterion specified in Annex XII, Part 1, paragraph 1, to be regarded as material.

2. Notwithstanding Article 145, competent authorities shall permit credit institutions not to publish one or more items of information included in the disclosures listed in Annex XII, Parts 2 and 3 if the credit institution concerned considers that those items would include information which, in the light of the criteria specified in Annex XII, Part 1, paragraphs 2 and 3, is to be regarded as proprietary or confidential.

3. In the exceptional cases referred to in paragraph 2, the credit institution concerned shall state in its disclosures the fact that the specific items of information are not disclosed, the reason for non-disclosure, and publish more general information about the subject matter of the disclosure requirement.

Article 147

1. Credit institutions shall publish the disclosures required under Article 145 on an annual basis at a minimum. Disclosures shall be published as soon as practicable.

2. Credit institutions shall also determine whether more frequent publication than is provided for in paragraph 1 is necessary in the light of the criteria set out in Annex XII, Part 1, paragraph 4.

Article 148

1. Competent authorities shall permit credit institutions to determine the appropriate medium, location and means of verification to comply effectively with the disclosure requirements laid down in Article 145. To the degree feasible, all disclosures shall be provided in one medium or location.

2. Equivalent disclosures made by credit institutions under accounting, listing or other requirements may be deemed to constitute compliance with Article 145. If disclosures are not included in the financial statements, credit institutions shall indicate where they can be found.

Article 149

Notwithstanding Articles 146 to 148, Member States shall empower the competent authorities to require credit institutions:

(a) to make one or more of the disclosures referred to in Annex XII, Parts 2 and 3;

(b) to publish one or more disclosures more frequently than annually, and to set deadlines for publication;

(c) to use specific media and locations for disclosures other than the financial statements;

(d) to use specific means of verification for the disclosures not covered by statutory audit.

↓ 2004/xx/EC Art. 3.11

↓ 2000/12/EC

TITLE VI

POWERS OF EXECUTION

↓ 2000/12/EC Art. 60 (adapted)
⇨ new

Article 150

~~Technical adaptations~~

1. Without prejudice, regarding own funds, to the ~~report referred to in the second subparagraph of Article 34(3)~~ ⇨ proposal that the Commission is to submit pursuant to Article 62 ⇦, the ~~technical adaptations~~ ⇨ amendments ⇦ in the following areas shall be adopted in accordance with the procedure ⌦ referred to ⌫ ~~laid down~~ in ⌦ Article 151 ⌫ ~~paragraph 2~~:

   (a) clarification of the definitions in order to take account, in the application of this Directive, of developments on financial markets;

   (b) clarification of the definitions to ensure uniform application of this Directive ~~in the Community~~;

   (c) the alignment of terminology on, and the framing of definitions in accordance with, subsequent acts on credit institutions and related matters;

~~the definition of «Zone A» in Article 1(14),~~

~~the definition of «multilateral development banks» in Article 1(19),~~

(d) amendments to the list in Article 2

(e) alteration of the amount of initial capital prescribed in Article ⊠ 9 ◁⊠ ~~5~~ to take account of developments in the economic and monetary field;

(f) expansion of the content of the list referred to in Articles ⊠ 23 and 24 ◁⊠ ~~18 and 19~~ and set out in Annex I or adaptation of the terminology used in that list to take account of developments on financial markets;

(g) the areas in which the competent authorities must exchange information as listed in Article ⊠ 42 ◁⊠ ~~28~~;

(h) ⇨ amendments to Article 56 to 67 in order to take into account developments in accounting standards or requirements set out in Community legislation set out Community legislation; ⇦

(i) amendment of the ⊠ list ◁⊠ ~~definitions~~ of ~~the~~ ~~assets~~ ⊠ exposure classes ◁⊠ ~~listed~~ in ~~Article 43~~ ⊠ Articles 79 and 86 ◁⊠ in order to take account of developments on financial markets;

(j) ⇨ the amount specified in Article 79(2)(c) and in Article 86(4)(a) to take into account the effects of inflation; ⇦

(k) the list and classification of off-balance-sheet items in Annexes II and IV and their treatment ~~in the calculation of the ratio as described in Articles 42, 43 and 44 and Annex III~~ ⇨ in the determination of exposure values for the purposes of Title V, Chapter 2, Section 3 ⇦;

(l) ⇨ adjustment of the provisions in Annexes V to XII in order to take account of developments on financial markets in particular new financial products, or in accounting standards or requirements set out in Community legislation; ⇦

⊠ 2. The Commission may adopt the following implementing measures in accordance with the procedure in Article 151. ◁⊠

(a) ⇨specification of the size of sudden and unexpected changes in the interest rates referred to in Article 124(5); ⇦

(b) a temporary reduction in the minimum ~~ratio~~ ⊠ level of own funds laid down ◁⊠ ~~prescribed~~ in Article ~~47~~ ⊠ 75 ◁⊠ the ~~weighting~~ ⊠ risk weights laid down ◁⊠ ~~prescribed~~ in ~~Article~~ ~~43~~ ⊠ Title V, Chapter 2, Section 3 ◁⊠ in order to take account of specific circumstances;

(c) ⇨ without prejudice to the report referred to in Article 119 ⇦, clarification of exemptions provided for in Article ~~49(5) to (10)~~ ⊠ 111(4), 113, 115 and 116 ◁⊠;

(d) ⇨ specification of the key aspects on which aggregate statistical data are to be disclosed under Article 144 (1) (d) ⇦;

(e) ⇨ specification of the format, structure, contents list and annual publication date of the disclosures provided for in Article 114; ⇦

↓ 2004/xx/EC Art. 3.12 (adapted)

Article 151

1. The Commission shall be assisted by the European Banking Committee instituted by Commission Decision 2004/10/EC (hereinafter referred to as "the Committee"), ~~composed of representatives of the Member States and chaired by the representative of the Commission~~.

2. Where reference is made to this ~~paragraph~~ ⌦ Article ⌫, the "comitology" procedure laid down in Article 5 of Decision 1999/468/EC shall apply, in compliance with Article 7 (3) and Article 8 thereof.

   The period provided for in Article 5(6) of Decision 1999/468/EC shall be three months.

↓ 2000/12/EC

TITLE VII

TRANSITIONAL AND FINAL PROVISIONS

CHAPTER 1

TRANSITIONAL PROVISIONS

↓ 2000/12/EC Art 60(2) (adapted)

~~*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 35 (2)(1) and (2), minus those referred to in Article 35(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 35(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.

↓ 2000/12/EC

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.

↓ 2000/12/EC, Art. 62 (2) and (3) (adapted)

~~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.~~

↓ 2000/12/EC (adapted)
→1 2004/xx/EC Art. 3.13

~~*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 and the~~ →1 ~~European Banking 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.~~

↓ 2000/12/EC Art. 64 (5) to (7) (new)
→1 2004/xx/EC Art. 3.13

~~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 and the~~ ➔1 ~~European Banking 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.~~

↓ 2000/12/EC Art. 64 (8) (adapted)

~~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).~~

↓ 2000/12/EC Art. 64 (9)

~~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.~~

↓ 2000/12/EC Art. 65 (adapted)

~~*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.~~

⇩ new

Article 152

1. Credit institutions calculating risk-weighted exposure amounts in accordance with Articles 84 to 89 or using the Advanced Measurement Approaches as specified in Article 105 for the calculation of their capital requirements for operational risk shall during the first, second and third twelve-month periods after the date specified in Article 157 provide own funds which are at all times more than or equal to the amounts indicated in paragraphs 2, 3 and 4.

2. For the first twelve-month period referred to in paragraph 1, the amount of own funds shall be 95% of the total minimum amount of own funds that would be required to be held during that period by the credit institution under Article 4 of Directive 93/6/EEC as that Directive and Directive 2000/12/EC stood prior to the date specified in Article 157 of this Directive.

3. For the second twelve-month period referred to in paragraph 1, the amount of own funds shall be 90% of the total minimum amount of own funds that would be required to be held during that period by the credit institution under Article 4 of Directive 93/6/EEC as that Directive and Directive 2000/12/EC stood prior to the date specified in Article 157 this Directive.

4. For the third twelve-month period referred to in paragraph 1, the amount of own funds shall be 80% of the total minimum amount of own funds that would be required to be held during that period by the credit institution under Article 4 of Directive 93/6/EEC as that Directive and Directive 2000/12/EC stood prior to the date specified in Article 157 of this Directive.

5. Compliance with the requirements of paragraphs 1 to 4 shall be on the basis of amounts of own funds fully adjusted to reflect differences in the calculation of own funds under Directive 2000/12/EC and Directive 93/6/EEC as those Directives stood prior to the date specified in Article 157 of this Directive and the calculation of own funds under this Directive deriving from the separate treatments of expected loss and unexpected loss under Articles 84 to 89 of this Directive.-

6. For the purposes of paragraphs 1 to 5 of this Article, Articles 68 to 73 shall apply.

7. Until 31 December 2007 credit institutions may treat the articles constituting the Standardised Approach set out in Title V, Chapter 2, Section 3, Subsection 1 as being replaced by Articles 42 to 46 of Directive 2000/12/EC as those articles stood prior to the date referred to in Article 157.

8. Where the discretion referred to in paragraph 7 is exercised the following shall apply concerning the provisions of Directive 2000/12/EC:

(a) the provisions of that Directive referred to in Articles 42 to 46 shall apply as they stood prior to the date referred to in Article 157;

(b) ‘risk-adjusted value’ as referred to in Article 42(1) of that Directive shall mean ‘risk-weighted exposure amount’;

(c) the figures produced by Article 42(2) of that Directive shall be considered risk-weighted exposure amounts;

(d) ‘credit derivatives’ shall be included in the list of ‘Full risk’ items in Annex II of that Directive;

(e) the treatment set out in Article 43(3) of that Directive shall apply to derivative instruments listed in Annex IV of that Directive whether on- or off-balance sheet and the figures produced by the treatment set out in that Annex shall be considered risk-weighted exposure amounts;

9. Where the discretion referred to in paragraph 7 is exercised the following shall apply in relation to the treatment of exposures for which the Standardised Approach is used:

(a) Title V, Chapter 2, Section 3, Subsection 3 relating to the recognition of credit risk mitigation shall not apply;

(b) Title V, Chapter 2, Section 3, Subsection 4 concerning the treatment of securitisation may be disapplied by competent authorities;

(b) The following provisions of Annex XII setting out disclosure requirements for credit institutions shall not apply:

(i) Part 2, paragraph 4(b),

(ii) Part 2, paragraph 6,

(iii) Part 2, paragraph 10.

10. Where the discretion referred to in paragraph 7 is exercised the capital requirement for operational risk under Article 75(e) shall be reduced by the percentage representing the ratio of the value of the credit institution's exposures for which risk-weighted exposure amounts are calculated in accordance with the discretion referred to in paragraph 7 to the total value of its exposures.

11. Where a credit institution calculates risk-weighted exposure amounts for all of its exposures in accordance with the discretion referred to in paragraph 7, Articles 48 to 50 of Directive 2000/12/EC relating to large exposures may apply as they stood prior to the date referred to in Article 157;

12. Where the discretion referred to in paragraph 7 is exercised, references to Articles 46 to 52 of this Directive shall be read as references to Articles 42 to 46 of Directive 2000/12/EC as those articles stood prior to the date referred to in Article 157.

Article 153

In the calculation of risk-weighted exposure amounts for exposures arising from property leasing transactions concerning offices or other commercial premises situated in their territory and meeting the criteria set out in Annex VI, Part 1, paragraph 51, the competent authorities may, until 31 December 2012 allow a 50% risk weighting to be applied without the application of Annex VI, Part 1, paragraphs 55 and 56.

Until 31 December 2010, competent authorities may, for the purpose of defining the secured portion of a past due loan for the purposes of Annex VI, recognise collateral other than eligible collateral as set out under Articles 90 to 93.

Article 154

1. The requirements in Article 84(3) and (4) shall apply from the 31 December 2009.

2. Until 31 December 2010 the exposure weighted average LGD for all retail exposures secured by residential properties and not benefiting from guarantees from central governments shall not be lower than 10%.

3. Until 31 December 2017, the competent authorities of the Member States may exempt from the IRB treatment certain equity exposures held at 31 December 2007.

The exempted position shall be measured as the number of shares as of that date and any additional arising directly as a result of owning those holdings, as long as they do not increase the proportional share of ownership in a portfolio company.

If an acquisition increases the proportional share of ownership in a specific holding the exceeding part of the holding shall not be subject to the exemption. Nor shall the exemption apply to holdings that were originally subject to the exemption, but have been sold and then bought back.

Equity exposures covered by this transitional provision shall be subject to the capital requirements calculated in accordance with Title V, Chapter 2, Section 3, Subsection 1.

4. Until 31 December 2011, for corporate exposures the competent authorities of each Member State may set the number of days past due that all credit institutions in its jurisdiction shall abide by under the definition of default set out in Annex VII, Part 4, paragraph 44 for exposures to such counterparts situated within this Member State. The specific number shall fall within 90- up to a figure of 180 days if local conditions make it appropriate. For exposures to such counterparts situated in the territories of other Member States, the competent authorities shall set a number of days past due which is not higher than the number set by the competent authority of the respective Member State.

5. In respect of the observation period referred to in Annex VII, Part 4, paragraph 66, Member States may allow credit institutions which are not permitted to use own estimates of LGDs or conversion factors to have, when they implement the IRB Approach, but at the latest at the 31 December 2007, relevant data covering a period of two years. Until 31 December 2010 the period to be covered shall increase by one year each year.

6. In respect of the observation period referred to in Annex VII, Part 4, paragraphs 71, 85 and 94 Member States may allow credit institutions to have, when they implement the IRB Approach, but at the latest at the 31 December 2007, relevant data covering a period of two years. Until 31 December 2010 the period to be covered shall increase by one year each year.

Article 155

Until 31 December 2012, for credit institutions the relevant indicator for the trading and sales business line of which represents at least 50% of the total of the relevant indicators for all of its business lines accordance with Annex X, Part 2, paragraphs 1 to 8, Member States may apply a percentage of 15% to the business line “trading and sales”.

↓ 2000/12/EC

CHAPTER 2

FINAL PROVISIONS

⇩ new

Article 156

The Commission, in cooperation with Member States, and taking into account the contribution of the European Central Bank, shall periodically monitor whether this Directive taken as a whole, together with Directive [93/6/EEC], has significant effects on the economic cycle and, in the light of that examination, shall consider whether any remedial measures are justified.

Based on that analysis and taking into account the contribution of the European Central Bank, the Commission shall draw up a biennial report and submit it to the European Parliament and to the Council, together with any appropriate proposals.

Article 157

1. Member States shall adopt and publish, by 31 December 2006 at the latest, the laws, regulations and administrative provisions necessary to comply with Articles 4, 22, 57, 61, 62, 63, 64, 66, 68 to 106, 108, 110 to 115, 117 to 119, 123 to 127, 129 to 132, 133, 136, 144 to 149, 152 to 155 and the Annexes II, III, V to XII. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

Notwithstanding paragraph 2, they shall apply those provisions from 31 December 2006.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the directive[s] repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

2. Member States shall apply, by 31 December 2007 at the latest, and not earlier, the laws regulations and administrative provisions necessary to comply with Articles 87(9) and 105.

↓ 2000/12/EC Art. 66 (adapted)

~~*Article 66*~~

~~Commission information~~

Member States shall communicate to the Commission the text of the main ~~laws, regulations and administrative~~ provisions ⌦ of national law ⌫ which they adopt in the field covered by this Directive.

↓ 2000/12/EC Art 67 (adapted)

Article 158

1. ~~Directives 73/183/EEC, 77/780/EEC, 89/299/EEC, 89/646/EEC, 89/647/EEC, 92/30/EEC and 92/121/EEC, Directive 2000/12/EC~~ as amended by the Directives set out in Annex ~~V~~ ⌦ XV ⌫ , Part A, ~~are~~ ⌦ is ⌫ hereby repealed without prejudice to the obligations of the Member States concerning the deadlines for transposition of the said Directives listed in Annex ~~V~~ ⌦ XV ⌫ , Part B.

2. References to the repealed Directives shall be construed as references to this Directive and should be read in accordance with the correlation table in Annex ~~VI~~ ⌦ XVI ⌫.

↓ 2000/12/EC Art 68 (adapted)

Article 159

~~Implementation~~

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the* ⌦ *Union* ⌫ ~~*European Communities*~~.

↓ 2000/12/EC Art. 69 (adapted)

Article 160

~~Addressees~~

This Directive is addressed to the Member States.

Done at Brussels, […].

For the European Parliament
The President

For the Council
The President

↓ 2000/12/EC

ANNEX I

LIST OF ACTIVITIES SUBJECT TO MUTUAL RECOGNITION

1. Acceptance of deposits and other repayable funds

2. Lending including, *inter alia:* consumer credit, mortgage credit, factoring, with or without recourse, financing of commercial transactions (including forfeiting).[33]

3. Financial leasing

4. Money transmission services

5. Issuing and administering means of payment (e.g. credit cards, travellers' cheques and bankers' drafts)

6. Guarantees and commitments

7. Trading for own account or for account of customers in:

(a) money market instruments (cheques, bills, certificates of deposit, etc.)

(b) foreign exchange;

(c) financial futures and options;

(d) exchange and interest-rate instruments;

(e) transferable securities

8. Participation in securities issues and the provision of services related to such issues

9. Advice to undertakings on capital structure, industrial strategy and related questions and advice as well as services relating to mergers and the purchase of undertakings

10. Money broking

11. Portfolio management and advice

12. Safekeeping and administration of securities

13. Credit reference services

14. Safe custody services

[33] ~~Including, *inter alia:* consumer credit, mortgage credit, factoring, with or without recourse, financing of commercial transactions (including forfeiting).~~

↓ 2004/39/EC Art. 68 (adapted)

The services and activities provided for in Section A and B of annex I of Directive 2004/39/EC ~~of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments~~[34] when referring to the financial instruments provided for in Section C of Annex I of that Directive are subject to mutual recognition according to this Directive.

↓ 2000/12/EC

ANNEX II

↓ 2000/12/EC
⇨ new

CLASSIFICATION OF OFF-BALANCE-SHEET ITEMS

Full risk:

– Guarantees having the character of credit substitutes,

– ⇨ Credit derivatives ⇦

– Acceptances,

– Endorsements on bills not bearing the name of another credit institution,

– Transactions with recourse,

– Irrevocable standby letters of credit having the character of credit substitutes,

– Assets purchased under outright forward purchase agreements,

– Forward forward deposits,

– The unpaid portion of partly-paid shares and securities,

– ⇨ Asset sale and repurchase agreements as defined in Article 12(3) and (5) of Directive 86/635/EEC, ⇦

– Other items also carrying full risk.

Medium risk:

– Documentary credits issued and confirmed (see also medium/low risk),

– Warranties and indemnities (including tender, performance, customs and tax bonds) and guarantees not having the character of credit substitutes,

34 ~~OJ n° L 145 of 30.04.2004, p. 1~~

– ~~Asset sale and repurchase agreements as defined in Article 12(3) and (5) of Directive 86/635/EEC,~~

– Irrevocable standby letters of credit not having the character of credit substitutes,

– Undrawn credit facilities (agreements to lend, purchase securities, provide guarantees or acceptance facilities) with an original maturity of more than one year,

– Note issuance facilities (NIFs) and revolving underwriting facilities (RUFs),

– Other items also carrying medium risk ⇨ and as communicated to the Commission ⇦ .

Medium/low risk:

– Documentary credits in which underlying shipment acts as collateral and other self-liquidating transactions,

– ⇨ Undrawn credit facilities (agreements to lend, purchase securities, provide guarantees or acceptance facilities) with an original maturity of up to and including one year which may not be cancelled unconditionally at any time without notice or that do not effectively provide for automatic cancellation due to deterioration in a borrower's creditworthiness, ⇦

– Other items also carrying medium/low risk ⇨ and as communicated to the Commission ⇦ .

Low risk:

– ~~Undrawn credit facilities (agreements to lend, purchase securities, provide guarantees or acceptance facilities) with an original maturity of up to and including one year or which may be cancelled unconditionally at any time without notice,~~⇨ Undrawn credit facilities (agreements to lend, purchase securities, provide guarantees or acceptance facilities) which may be cancelled unconditionally at any time without notice, or that do effectively provide for automatic cancellation due to deterioration in a borrower's creditworthiness. Retail credit lines may be considered as unconditionally cancellable if the terms permit the credit institution to cancel them to the full extent allowable under consumer protection and related legislation; ⇦

– Other items also carrying low risk ⇨ and as communicated to the Commission ⇦ .

~~The Member States undertake to inform the Commission as soon as they have agreed to include a new off-balance-sheet item in any of the last indents under each category of risk. Such items will be definitively classified at Community level once the procedure laid down in Article 59 has been completed.~~

🡻 2000/12/EC

ANNEX III

↓ 2000/12/EC (adapted)
⇨ new

THE TREATMENT OF ~~OFF-BALANCE-SHEET ITEMS~~ ⇨ DERIVATIVE INSTRUMENTS ⇦

1. CHOICE OF THE METHOD

To ~~measure the credit risks associated with~~ ⇨ determine the exposure value of ⇦ the contracts listed in points 1 and 2 of Annex IV, credit institutions may choose, subject to the consent of the competent authorities, one of the methods set out ⌦ in this Annex ⌫ ~~below~~. Credit institutions which have to comply with Article ~~6(1)~~ ⌦ 33(1) and (2) ⌫ of Directive 93/6/EEC[~~35~~] must use method 1 set out ⌦ in this Annex ⌫ ~~below~~. To ~~measure the credit risks associated with~~ ⇨ determine the exposure value for ⇦ the contracts listed in point 3 of Annex IV all credit institutions must use method 1 set out ⌦ in this Annex ⌫ ~~below~~.

⇩ new

Contracts traded on recognised exchanges, and foreign-exchange contracts (except contracts concerning gold) with an original maturity of 14 calendar days or less are exempt from the application of the methods set out in this Annex and shall be attributed an exposure value of zero.

Competent authorities may exempt from the application of the methods set out in this Annex and attribute an exposure value of zero to over-the-counter (OTC) contracts cleared by a clearing house where the latter acts as the legal counterparty and all participants fully collateralise on a daily basis the exposure they present to the clearing house, thereby providing a protection covering both the current exposure and the potential future exposure.

The posted collateral must:

(a) qualify for a 0% risk weight, or

(b) be cash deposits placed with the lending institution, or

(c) be certificates of deposit or similar instruments issued by and lodged with the latter.

The competent authorities must be satisfied that the risk of a build-up of the clearing house's exposures beyond the market value of posted collateral is eliminated.

[35] ~~Council Directive 93/6/EEC of 15 March 1993 on the capital adequacy of investment firms and credit institutions (OJ L 141, 11.6.1993, p. 1). Directive amended by Directive 98/33/EC (OJ L 204, 21.7.1998, p. 29).~~

↓ 2000/12/EC (adapted)

2. METHODS

Method 1: the «mark to market» approach

Step (a): by attaching current market values to contracts (mark to market), the current replacement cost of all contracts with positive values is obtained.

Step (b): to obtain a figure for potential future credit exposure[~~36~~], ⌦ except in the case of single-currency «floating/floating» interest rate swaps in which only the current replacement cost will be calculated, ⌫ the notional principal amounts or underlying values are multiplied by the ~~following~~ percentages ⌦ in Table 1 ⌫ :

TABLE 1[3738]

Residual maturity[39]	Interest-rate contracts	Contracts concerning foreign-exchange rates and gold	Contracts concerning equities	Contracts concerning precious metals except gold	Contracts concerning commodities other than precious metals
One year or less	0%	1%	6%	7%	10%
Over one year, less than five years	0,5%	5%	8%	7%	12%
Over five years	1,5%	7,5%	10%	8%	15%

For the purpose of calculating the potential future exposure in accordance with step (b) the competent authorities may allow credit institutions until 31 December 2006 to apply the following percentages instead of those prescribed in Table 1 provided that

36 ~~Except in the case of single-currency «floating/floating» interest rate swaps in which only the current replacement cost will be calculated.~~

37 Contracts which do not fall within one of the five categories indicated in this table shall be treated as contracts concerning commodities other than precious metals.

38 For contracts with multiple exchanges of principal, the percentages have to be multiplied by the number of remaining payments still to be made according to the contract.

39 For contracts that are structured to settle outstanding exposure following specified payment dates and where the terms are reset such that the market value of the contract is zero on these specified dates, the residual maturity would be equal to the time until the next reset date. In the case of interest-rate contracts that meet these criteria and have a remaining maturity of over one year, the percentage shall be no lower than 0,5%.

the institutions make use of the option set out in Article 11a of Directive 93/6/EEC for contracts within the meaning of paragraph 3(b) and (c) of Annex IV:

TABLE 1a				
Residual maturity	Precious metals (except gold)	Base metals	Agricultural products (softs)	Other, including energy products
One year or less	2%	2,5%	3%	4%
Over one year, less than five years	5%	4%	5%	6%
Over five years	7,5%	8%	9%	10%

↓ 2000/12/EC (adapted)

Step (c): the sum of current replacement cost and potential future credit exposure ~~is multiplied by the risk weightings allocated to the relevant counterparties in Article 43~~ ⌦ is the exposure value. ⌫

↓ 2000/12/EC (adapted)

Method 2: the «original exposure» approach

Step (a): the notional principal amount of each instrument is multiplied by the percentages given ⌦ in Table 2 ⌫ ~~below~~:

TABLE 2		
Original maturity[40]	Interest-rate contracts	Contracts concerning foreign-exchange rates and gold
One year or less	0,5%	2%
More than one year but not exceeding two years	1%	5%
Additional allowance for each additional year	1%	3%

↓ 2000/12/EC
⇨ new

Step (b): the original exposure thus obtained ~~is multiplied by the risk weightings allocated to the relevant counterparties in Article 43~~⇨shall be the exposure value⇦

[40] In the case of interest-rate contracts, credit institutions may, subject to the consent of their competent authorities, choose either original or residual maturity.

For methods 1 and 2 the competent authorities must ensure that the notional amount to be taken into account is an appropriate yardstick for the risk inherent in the contract. Where, for instance, the contract provides for a multiplication of cash flows, the notional amount must be adjusted in order to take into account the effects of the multiplication on the risk structure of that contract.

↓ 2000/12/EC (adapted)

3. CONTRACTUAL NETTING (CONTRACTS FOR NOVATION AND OTHER NETTING AGREEMENTS)

(a) Types of netting that competent authorities may recognise

For the purpose of this ⌦ section ⌫ ~~point 3~~ «counterparty» means any entity (including natural persons) that has the power to conclude a contractual netting agreement.

The competent authorities may recognise as risk-reducing the following types of contractual netting:

(i) bilateral contracts for novation between a credit institution and its counterparty under which mutual claims and obligations are automatically amalgamated in such a way that this novation fixes one single net amount each time novation applies and thus creates a legally binding, single new contract extinguishing former contracts;

(ii) other bilateral agreements between a credit institution and its counterparty.

(b) Conditions for recognition

The competent authorities may recognise contractual netting as risk-reducing only under the following conditions:

(i) a credit institution must have a contractual netting agreement with its counterparty which creates a single legal obligation, covering all included transactions, such that, in the event of a counterparty's failure to perform owing to default, bankruptcy, liquidation or any other similar circumstance, the credit institution would have a claim to receive or an obligation to pay only the net sum of the positive and negative mark-to-market values of included individual transactions;

(ii) a credit institution must have made available to the competent authorities written and reasoned legal opinions to the effect that, in the event of a legal challenge, the relevant courts and administrative authorities would, in the cases described under (i), find that the credit institution's claims and obligations would be limited to the net sum, as described in (i), under:

– the law of the jurisdiction in which the counterparty is incorporated and, if a foreign branch of an undertaking is involved, also under the law of the jurisdiction in which the branch is located;

– the law that governs the individual transactions included; ~~and~~

– the law that governs any contract or agreement necessary to effect the contractual netting;

(iii) a credit institution must have procedures in place to ensure that the legal validity of its contractual netting is kept under review in the light of possible changes in the relevant laws.

The competent authorities must be satisfied, if necessary after consulting the other competent authorities concerned, that the contractual netting is legally valid under the law of each of the relevant jurisdictions. If any of the competent authorities are not satisfied in that respect, the contractual netting agreement will not be recognised as risk-reducing for either of the counterparties.

The competent authorities may accept reasoned legal opinions drawn up by types of contractual netting.

No contract containing a provision which permits a non-defaulting counterparty to make limited payments only, or no payments at all, to the estate of the defaulter, even if the defaulter is a net creditor (a «walkaway» clause), may be recognised as risk-reducing.

The competent authorities may recognise as risk-reducing contractual-netting agreements covering foreign-exchange contracts with an original maturity of 14 calendar days or less written options or similar off-balance-sheet items to which this Annex does not apply because they bear only a negligible or no credit risk. If, depending on the positive or negative market value of these contracts, their inclusion in another netting agreement can result in an increase or decrease of the capital requirements, competent authorities must oblige their credit institution to use a consistent treatment.

(c) Effects of recognition

(i) Contracts for novation

The single net amounts fixed by contracts for novation, rather than the gross amounts involved, may be weighted. Thus, in the application of method 1, in

– step (a): the current replacement cost, and in

– step (b): the notional principal amounts or underlying values

may be obtained taking account of the contract for novation. In the application of method 2, in step (a) the notional principal amount may be calculated taking account of the contract for novation; the percentages of Table 2 must apply.

(ii) Other netting agreements

In application of method 1:

– in step (a) the current replacement cost for the contracts included in a netting agreement may be obtained by taking account of the actual hypothetical net replacement cost which results from the agreement; in the case where netting leads to a net obligation for the credit institution calculating the net replacement cost, the current replacement cost is calculated as «0»,

– in step (b) the figure for potential future credit exposure for all contracts included in a netting agreement may be reduced according to the following equation: $PCE_{red} = 0.4 * PCE_{gross} + 0.6 * NGR * PCE_{gross}$

where:			
—	PCE_{red}	=	the reduced figure for potential future credit exposure for all contracts with a given counterparty included in a legally valid bilateral netting agreement
—	PCE_{gross}	=	the sum of the figures for potential future credit exposure for all contracts with a given counterparty which are included in a legally valid bilateral netting agreement and are calculated by multiplying their notional principal amounts by the percentages set out in Table 1
—	NGR	=	«net-to-gross ratio»: at the discretion of the competent authorities either: (i) separate calculation: the quotient of the net replacement cost for all contracts included in a legally valid bilateral netting agreement with a given counterparty (numerator) and the gross replacement cost for all contracts included in a legally valid bilateral netting agreement with that counterparty (denominator), or (ii) aggregate calculation: the quotient of the sum of the net replacement cost calculated on a bilateral basis for all counterparties taking into account the contracts included in legally valid netting agreements (numerator) and the gross replacement cost for all contracts included in legally valid netting agreements (denominator). If Member States permit credit institutions a choice of methods, the method chosen is to be used consistently.

For the calculation of the potential future credit exposure according to the above formula perfectly matching contracts included in the netting agreement may be taken into account as a single contract with a notional principal equivalent to the net receipts. Perfectly matching contracts are forward foreign-exchange contracts or similar contracts in which a notional principal is equivalent to cash flows if the cash flows fall due on the same value date and fully or partly in the same currency.

In the application of method 2, in step (a)

– perfectly matching contracts included in the netting agreement may be taken into account as a single contract with a notional principal equivalent to the net receipts, the notional principal amounts are multiplied by the percentages given in Table 2,

– for all other contracts included in a netting agreement, the percentages applicable may be reduced as indicated in Table 3:

TABLE 3		
Original maturity[41]	Interest-rate contracts	Foreign-exchange contracts
One year or less	0.35%	1.50%
More than one year but not more than two years	0.75%	3.75%
Additional allowance for each additional year	0.75%	2.25%

↓ 2000/12/EC

ANNEX IV

↓ 2000/12/EC
⇨ new

TYPES OF ~~OFF-BALANCE-SHEET ITEMS~~ ⇨ DERIVATIVES ⇦

↓ 2000/12/EC (adapted)

1. Interest-rate contracts:

(a) single-currency interest rate swaps;

(b) basis-swaps;

(c) forward rate agreements;

(d) interest-rate futures;

(e) interest-rate options purchased;

(f) other contracts of similar nature.

2. Foreign-exchange contracts and contracts concerning gold:

(a) cross-currency interest-rate swaps;

(b) forward foreign-exchange contracts;

(c) currency futures;

(d) currency options purchased;

[41] In the case of interest-rate contracts, credit institutions may, subject to the consent of their competent authorities, choose either original or residual maturity.

(e) other contracts of a similar nature;

(f) contracts concerning gold of a nature similar to (a) to (e).

3. Contracts of a nature similar to those in points 1(a) to (e) and 2(a) to (d) concerning other reference items or indices concerning:

(a) equities;

(b) precious metals except gold;

(c) commodities other than precious metals;

(d) other contracts of a similar nature. ~~Step (b): to obtain a figure for potential future credit exposure[42], the notional principal amounts or underlying values are multiplied by the following percentages:~~

↑

[42] ~~Except in the case of single-currency «floating/floating» interest rate swaps in which only the current replacement cost will be calculated.~~

⇩ new

ANNEX V TO XII

[OMISSIS]

⇩ new

ANNEX XIII

PART A

REPEALED DIRECTIVES TOGETHER WITH THEIR SUCCESSIVE AMENDMENTS

(referred to in Article 158)

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

Directive 2000/28/EC of the European Parliament and of the Council of 18 September 2000 amending Directive 2000/12/EC relating to the taking up and pursuit of the business of credit institutions

Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council,

Only Art. 29.1(a)(b), Art. 29.2,, Art. 29.4(a)(b), Art. 29.5, Art. 29.6, Art. 29.7 (a) (b), Art. 29.8, Art. 29.9, Art. 29.10, Art. 29.11

Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC

Only Art. 68

Commission Directive 2004/69/EC of 27 April 2004 amending Directive 2000/12/EC of the European Parliament and of the Council as regards the definition of "multilateral development banks" (Text with EEA relevance)

Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on amending Council Directives 73/239/EEC, 85/611/EEC, 91/675/EEC, 92/49/EEC, 93/6/EEC and 94/19/EC and Directives 98/78/EC, 2000/12/EC, 2001/34/EC, 2002/83/EC and 2002/87/EC, in order to establish a new financial services committee organisational structure.

Only Article 3

NON-REPEALED MODIFICATIONS

Act of accession 2003

PART B

DEADLINES FOR IMPLEMENTATION

(referred to in Article 158)

Directive		Deadline for implementation
Directive 2000/12/EC		-----
Directive 2000/28/EC		27.4.2002
Directive 2002/87/EC,		11.8.2004
Directive 2004/39/EC		Not yet available
Directive 2004/69/EC		30.6.2004
Directive 2004/xx/EC		Not yet available

ANNEX XIV

CORRELATION TABLE

This Directive	Directive 2000/12/EC	Directive 2000/28/EC	Directive 2001/87/EC	Directive 2004/69/EC	Directive 2004/xx/EC
Article 1	Article 2(1) and (2)				
Article 2(1)	Article 2(3)				
	Act of Accession				
Article 2(2)	Article 2(4)				
Article 3	Article 2(5) and (6)				
Article 3 (1) final sentence					Article 3.2
Article 4.1 (1)	Article 1(1)				
Article 4.1 (2) to (5)		Article 1(2) to (5)			
Article 4.1 (7) to (9)		Article 1(6) to (8)			
Article 4 .1 (10)			Article 29.1 (a)		
Article 4.1 (11) to (14)	Article 1 (10), (12) and (13)				
Article 4.1 (21) and (22)			Article 29.1 (b)		
Article 4.1 (23)	Article 1 (23)				
Article 4.1 (45 to (47)	Article 1 (25 to (27)				
Article 4 .2	Article 1(1) second sub-paragraph				
Article 5	Article 3				
Article 6	Article 4				
Article 7	Article 8				
Article 8	Article 9				
Article 9 (1)	Article 5(1) and 1(11)				
Article 9 (2)	Article 5(2)				

Article 10	Article 5 (3) to (7)	
Article 11	Article 6	
Article 12	Article 7	
Article 13	Article 10	
Article 14	Article 11	
Article 15 (1)	Article 12	
Article 15 (2) and (3)		Article 29.2
Article 16	Article 13	
Article 17	Article 14	
Article 18	Article 15	
Article 19 (1)	Article 16 (1)	
Article 19 (2)		Article 29.3
Article 20	Article 16(3)	
Article 21	Article 16 (4) to (6)	
Article 22	Article 17	
Article 23	Article 18	
Article 24 (1)	Article 19 paragraphs (1) to (3)	
Article 24 (2)	Article 19 paragraph (6)	
Article 24 (3)	Article 19 paragraph (4)	
Article 25 (1) to (3)	Article 20 (1) to (3) 1 and 2 sub-paragraph	
Article 25 (3)	Article 19 paragraph (5)	
Article 25 (4)	Article 20 (3) 3 sub-paragraph	
Article 26	Article 20 (4) to (7)	
Article 27	Article 1 (3) final clause	
Article 28	Article 21	

Article 29	Article 22	
Article 30	Article 22 (2) to (4)	
Article 31	Article 22 (5)	
Article 32	Article 22 (6)	
Article 33	Article 22 (7)	
Article 34	Article 22 (8)	
Article 35	Article 22 (9)	
Article 36	Article 22 (10)	
Article 37	Article 22 (11)	
Article 38	Article 24	
Article 39 (1) and (2)	Article 25	
Article 39 (2)		Article 3.8
Article 40	Article 26	
Article 41	Article 27	
Article 42	Article 28	
Article 43	Article 29	
Article 44	Article 30(1) to (3)	
Article 45	Article 30(4)	
Article 46	Article 30(3)	
Article 47	Article 30(5)	
Article 48	Article 30(6) and (7)	
Article 49	Article 30(8)	
Article 50	Article 30(9) 1 and 2 paragraphs	
Article 51	Article 30(9) 3 paragraph	
Article 52	Article 30(10)	
Article 53	Article 31	
Article 54	Article 32	
Article 55	Article 33	

Article 56	Article 34(1)	
Article 57	Article 34(2) 1 paragraph	Article 29.4(a)
	Article 34(1) point 2 final sentence	
Article 58		Article 29.4 (b)
Article 59		Article 29.4 (b)
Article 60		Article 29.4 (b)
Article 61	Article 34(3) and (4)	
Article 63	Article 35	
Article 64	Article 36	
Article 65	Article 37	
Article 66 (1) and (2)	Article 38 (1) and (2)	
Article 67	Article 39	
Article 73	Article 52(3)	
Article 106	Article 1(24)	
Article 107	Article 1(1) 3 sub-paragraph	
Article 108	Article 48(1)	
Article 109	Article 48 (4) 1 paragraph	
Article 110	Article 48(2) to (4)2 sub-paragraph	
Article 111	Article 49 (1) to (5)	
Article 113 (1) to (3)	Article 49 (4) (6) and (7)	
Article 115 (1) and (2)	Article 49(8) and (9)	
Article 116	Article 49(10)	
Article 117	Article 49(11)	
Article 118	Article 50	
Article 120	Article 51(1)(2)(5)	

Article 121	Article 51(4)			
Article 122 (1) and (2)	Art. 51 (6)	Article 29(5)		
Article 125	Article 53(1) and (2)			
Article 126	Article 53 (3)			
Article 128	Article 53(5)			
Article 133 (1)	Article 54(1)	Article 29(7)(a)		
Article 133 (2) and (3)	Article 54 (2) and (3)			
Article 134(1)	Article 54(4) first paragraph			
Article 134 (2)	Article 54(4) second paragraph			
Article 135		Article 29(8)		
Article 137	Article 55(1) and (2)			
Article 138		Article 29(9)		
Article 139	Article 56(1) to (3)			
Article 140	Article 56(4) to (6)			
Article 141	Article 56 (7)	Article 29(10)		
Article 142	Article 56(8)			
Article 143		Article 29(11)		Art. 3.10
Article 150	Article 60(1)			
Article 151	Article 60(2)			Art. 3.10
Article 158	Art. 67			
Article 159	Art. 68			
Article 160	Article 69			
Annex I	Annex I			
Annex I final clause			Article 68	
Annex II	Annex II			
Annex III	Annex III			

Annex IV	Annex IV