Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions

DIRECTIVE 2001/24/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 4 April 2001

on the reorganisation and winding up of credit institutions

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission[(1)],

Having regard to the opinion of the Economic and Social Committee[(2)],

Having regard to the opinion of the European Monetary Institute[(3)],

Acting in accordance with the procedure laid down in Article 251 of the Treaty[(4)],

Whereas:

(1) In accordance with the objectives of the Treaty, the harmonious and balanced development of economic activities throughout the Community should be promoted through the elimination of any obstacles to the freedom of establishment and the freedom to provide services within the Community.

(2) At the same time as those obstacles are eliminated, consideration should be given to the situation which might arise if a credit institution runs into difficulties, particularly where that institution has branches in other Member States.

(3) This Directive forms part of the Community legislative framework set up by 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[(5)]. It follows therefrom that, while they are in operation, a credit institution and its branches form a single entity subject to the supervision of the competent authorities of the State where authorisation valid throughout the Community was granted.

(4) It would be particularly undesirable to relinquish such unity between an institution and its branches where it is necessary to adopt reorganisation measures or open winding-up proceedings.

(5) The adoption of Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes[(6)], which introduced the principle of compulsory membership by credit institutions of a guarantee scheme in their home Member State, brings out even more clearly the need for mutual recognition of reorganisation measures and winding-up proceedings.

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(6) The administrative or judicial authorities of the home Member State must have sole power to decide upon and to implement the reorganisation measures provided for in the law and practices in force in that Member State. Owing to the difficulty of harmonising Member States' laws and practices, it is necessary to establish mutual recognition by the Member States of the measures taken by each of them to restore to viability the credit institutions which it has authorised.

(7) It is essential to guarantee that the reorganisation measures adopted by the administrative or judicial authorities of the home Member State and the measures adopted by persons or bodies appointed by those authorities to administer those reorganisation measures, including measures involving the possibility of a suspension of payments, suspension of enforcement measures or reduction of claims and any other measure which could affect third parties' existing rights, are effective in all Member States.

(8) Certain measures, in particular those affecting the functioning of the internal structure of credit institutions or managers' or shareholders' rights, need not be covered by this Directive to be effective in Member States insofar as, pursuant to the rules of private international law, the applicable law is that of the home State.

(9) Certain measures, in particular those connected with the continued fulfilment of conditions of authorisation, are already the subject of mutual recognition pursuant to Directive 2000/12/EC insofar as they do not affect the rights of third parties existing before their adoption.

(10) Persons participating in the operation of the internal structures of credit institutions as well as managers and shareholders of such institutions, considered in those capacities, are not to be regarded as third parties for the purposes of this Directive.

(11) It is necessary to notify third parties of the implementation of reorganisation measures in Member States where branches are situated when such measures could hinder the exercise of some of their rights.

(12) The principle of equal treatment between creditors, as regards the opportunities open to them to take action, requires the administrative or judicial authorities of the home Member State to adopt such measures as are necessary for the creditors in the host Member State to be able to exercise their rights to take action within the time limit laid down.

(13) There must be some coordination of the role of the administrative or judicial authorities in reorganisation measures and winding-up proceedings for branches of credit institutions having head offices outside the Community and situated in different Member States.

(14) In the absence of reorganisation measures, or in the event of such measures failing, the credit institutions in difficulty must be wound up. Provision should be made in such cases for mutual recognition of winding-up proceedings and of their effects in the Community.

(15) The important role played by the competent authorities of the home Member State before winding-up proceedings are opened may continue during the process of winding up so that these proceedings can be properly carried out.

(16) Equal treatment of creditors requires that the credit institution is wound up according to the principles of unity and universality, which require the administrative or judicial authorities of the home Member State to have sole jurisdiction and their decisions to be recognised and to be capable of producing in all the other Member States, without any formality, the effects ascribed to them by the law of the home Member State, except where this Directive provides otherwise.

(17) The exemption concerning the effects of reorganisation measures and winding-up proceedings on certain contracts and rights is limited to those effects and does not cover other questions concerning reorganisation measures and winding-up proceedings such as the lodging, verification, admission and ranking of claims concerning those contracts and rights and the rules governing the distribution of the proceeds of the realisation of the assets, which are governed by the law of the home Member State.

(18) Voluntary winding up is possible when a credit institution is solvent. The administrative or judicial authorities of the home Member State may nevertheless, where appropriate, decide on a reorganisation measure or winding-up proceedings, even after voluntary winding up has commenced.

(19) Withdrawal of authorisation to pursue the business of banking is one of the consequences which winding up a credit institution necessarily entails. Withdrawal should not, however, prevent certain activities of the institution from continuing insofar as is necessary or appropriate for the purposes of winding up. Such a continuation of activity may nonetheless be made subject by the home Member State to the consent of, and supervision by, its competent authorities.

(20) Provision of information to known creditors on an individual basis is as essential as publication to enable them, where necessary, to lodge their claims or submit observations relating to their claims within the prescribed time limits. This should take place without discrimination against creditors domiciled in a Member State other than the home Member State, based on their place of residence or the nature of their claims. Creditors must be kept regularly informed in an appropriate manner throughout winding-up proceedings.

(21) For the sole purpose of applying the provisions of this Directive to reorganisation measures and winding-up proceedings involving branches located in the Community of a credit institution of which the head office is situated in a third country, the definitions of ‘home Member State’, ‘competent authorities’ and ‘administrative or judicial authorities’ should be those of the Member State in which the branch is located.

(22) Where a credit institution which has its head office outside the Community possesses branches in more than one Member State, each branch should receive individual treatment in regard to the application of this Directive. In such a case, the administrative or judicial authorities and the competent authorities as well as the administrators and liquidators should endeavour to coordinate their activities.

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(23) Although it is important to follow the principle that the law of the home Member State determines all the effects of reorganisation measures or winding-up proceedings, both procedural and substantive, it is also necessary to bear in mind that those effects may conflict with the rules normally applicable in the context of the economic and financial activity of the credit institution in question and its branches in other Member States. In some cases reference to the law of another Member State represents an unavoidable qualification of the principle that the law of the home Member State is to apply.

(24) That qualification is especially necessary to protect employees having a contract of employment with a credit institution, ensure the security of transactions in respect of certain types of property and protect the integrity of regulated markets functioning in accordance with the law of a Member State on which financial instruments are traded.

(25) Transactions carried out in the framework of a payment and settlement system are covered by Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems[(7)].

(26) The adoption of this Directive does not call into question the provisions of Directive 98/26/EC according to which insolvency proceedings must not have any effect on the enforceability of orders validly entered into a system, or on collateral provided for a system.

(27) Some reorganisation measures or winding-up proceedings involve the appointment of a person to administer them. The recognition of his appointment and his powers in all other Member States is therefore an essential factor in the implementation of decisions taken in the home Member State. However, the limits within which he may exercise his powers when he acts outside the home Member State should be specified.

(28) Creditors who have entered into contracts with a credit institution before a reorganisation measure is adopted or winding-up proceedings are opened should be protected against provisions relating to voidness, voidability or unenforceability laid down in the law of the home Member State, where the beneficiary of the transaction produces evidence that in the law applicable to that transaction there is no available means of contesting the act concerned in the case in point.

(29) The confidence of third-party purchasers in the content of the registers or accounts regarding certain assets entered in those registers or accounts and by extension of the purchasers of immovable property should be safeguarded, even after winding-up proceedings have been opened or a reorganisation measure adopted. The only means of safeguarding that confidence is to make the validity of the purchase subject to the law of the place where the immovable asset is situated or of the State under whose authority the register or account is kept.

(30) The effects of reorganisation measures or winding-up proceedings on a lawsuit pending are governed by the law of the Member State in which the lawsuit is pending, by way of exception to the application of the *lex concursus*. The effects of those measures and procedures on individual enforcement actions arising from such lawsuits are governed by the legislation of the home Member State, in accordance with the general rule established by this Directive.

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(31) Provision should be made for the administrative or judicial authorities in the home Member State to notify immediately the competent authorities of the host Member State of the adoption of any reorganisation measure or the opening of any winding-up proceedings, if possible before the adoption of the measure or the opening of the proceedings, or, if not, immediately afterwards.

(32) Professional secrecy as defined in Article 30 of Directive 2000/12/EC is an essential factor in all information or consultation procedures. For that reason it should be respected by all the administrative authorities taking part in such procedures, whereas the judicial authorities remain, in this respect, subject to the national provisions relating to them,

HAVE ADOPTED THIS DIRECTIVE:

TITLE I

SCOPE AND DEFINITIONS

Article 1

Scope

1 This Directive shall apply to credit institutions and their branches set up in Member States other than those in which they have their head offices, as defined in points (1) and (3) of Article 1 of Directive 2000/12/EC, subject to the conditions and exemptions laid down in Article 2(3) of that Directive.

2 The provisions of this Directive concerning the branches of a credit institution having a head office outside the Community shall apply only where that institution has branches in at least two Member States of the Community.

[[F1]3 This Directive shall also apply to investment firms as defined in point (2) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council[(8)] and their branches located in Member States other than those in which they have their head offices.

4 In the event of application of the resolution tools and exercise of the resolution powers provided for in Directive 2014/59/EU of the European Parliament and of the Council[(9)], this Directive shall also apply to the financial institutions, firms and parent undertakings falling within the scope of Directive 2014/59/EU.

5 Articles 4 and 7 of this Directive shall not apply where Article 83 of Directive 2014/59/EU applies.

6 Article 33 of this Directive shall not apply where Article 84 of Directive 2014/59/EU applies.**]**

Textual Amendments

F1 Inserted by Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/