

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.

- (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.

⁽¹⁾ OJ C 356, 31.12.1985, p. 55 and OJ C 36, 8.2.1988, p. 1.

⁽²⁾ OJ C 263, 20.10.1986, p. 13.

⁽³⁾ OJ C 332, 30.10.1998, p. 13.

⁽⁴⁾ Opinion of the European Parliament of 13 March 1987 (OJ C 99, 13.4.1987, p. 211), confirmed on 2 December 1993 (OJ C 342, 20.12.1993, p. 30), Council Common Position of 17 July 2000 (OJ C 300, 20.10.2000, p. 13) and Decision of the European Parliament of 16 January 2001 (not yet published in the Official Journal). Council Decision of 12 March 2001.

⁽⁵⁾ OJ L 126, 26.5.2000, p. 1. Directive as amended by Directive 2000/28/EC (OJ L 275, 27.10.2000, p. 37).

- (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.

⁽⁶⁾ OJ L 135, 31.5.1994, p. 5.

- (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.
- (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 ⁽¹⁾.
- (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.
- (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.

Article 2

Definitions

For the purposes of this Directive:

- 'home Member State' shall mean the Member State of origin within the meaning of Article 1, point (6) of Directive 2000/12/EC;
- 'host Member State' shall mean the host Member State within the meaning of Article 1, point (7) of Directive 2000/12/EC;
- 'branch' shall mean a branch within the meaning of Article 1, point (3) of Directive 2000/12/EC;
- 'competent authorities' shall mean the competent authorities within the meaning of Article 1, point (4) of Directive 2000/12/EC;
- 'administrator' shall mean any person or body appointed by the administrative or judicial authorities whose task is to administer reorganisation measures;
- 'administrative or judicial authorities' shall mean such administrative or judicial authorities of the Member States as are competent for the purposes of reorganisation measures or winding-up proceedings;
- 'reorganisation measures' shall mean measures which are intended to preserve or restore the financial situation of a credit institution and which could affect third parties' pre-existing rights, including measures involving the possibility of a suspension of payments, suspension of enforcement measures or reduction of claims;

⁽¹⁾ OJ L 166, 11.6.1998, p. 45.

- ‘liquidator’ shall mean any person or body appointed by the administrative or judicial authorities whose task is to administer winding-up proceedings;
- ‘winding-up proceedings’ shall mean collective proceedings opened and monitored by the administrative or judicial authorities of a Member State with the aim of realising assets under the supervision of those authorities, including where the proceedings are terminated by a composition or other, similar measure;
- ‘regulated market’ shall mean a regulated market within the meaning of Article 1, point (13) of Directive 93/22/EEC;
- ‘instruments’ shall mean all the instruments referred to in Section B of the Annex to Directive 93/22/EEC.

TITLE II

REORGANISATION MEASURES

A. *Credit institutions having their head offices within the Community*

Article 3

Adoption of reorganisation measures — applicable law

1. The administrative or judicial authorities of the home Member State shall alone be empowered to decide on the implementation of one or more reorganisation measures in a credit institution, including branches established in other Member States.

2. The reorganisation measures shall be applied in accordance with the laws, regulations and procedures applicable in the home Member State, unless otherwise provided in this Directive.

They shall be fully effective in accordance with the legislation of that Member State throughout the Community without any further formalities, including as against third parties in other Member States, even where the rules of the host Member State applicable to them do not provide for such measures or make their implementation subject to conditions which are not fulfilled.

The reorganisation measures shall be effective throughout the Community once they become effective in the Member State where they have been taken.

Article 4

Information for the competent authorities of the host Member State

The administrative or judicial authorities of the home Member State shall without delay inform, by any available means, the competent authorities of the host Member State of their decision to adopt any reorganisation measure, including the practical effects which such a measure may have, if possible before it is adopted or otherwise immediately thereafter. Informa-

tion shall be communicated by the competent authorities of the home Member State.

Article 5

Information for the supervisory authorities of the home Member State

Where the administrative or judicial authorities of the host Member State deem it necessary to implement within their territory one or more reorganisation measures, they shall inform the competent authorities of the home Member State accordingly. Information shall be communicated by the host Member State's competent authorities.

Article 6

Publication

1. Where implementation of the reorganisation measures decided on pursuant to Article 3(1) and (2) is likely to affect the rights of third parties in a host Member State and where an appeal may be brought in the home Member State against the decision ordering the measure, the administrative or judicial authorities of the home Member State, the administrator or any person empowered to do so in the home Member State shall publish an extract from the decision in the *Official Journal of the European Communities* and in two national newspapers in each host Member State, in order in particular to facilitate the exercise of the right of appeal in good time.

2. The extract from the decision provided for in paragraph 1 shall be forwarded at the earliest opportunity, by the most appropriate route, to the Office for Official Publications of the European Communities and to the two national newspapers in each host Member State.

3. The Office for Official Publications of the European Communities shall publish the extract at the latest within twelve days of its dispatch.

4. The extract from the decision to be published shall specify, in the official language or languages of the Member States concerned, in particular the purpose and legal basis of the decision taken, the time limits for lodging appeals, specifically a clearly understandable indication of the date of expiry of the time limits, and the full address of the authorities or court competent to hear an appeal.

5. The reorganisation measures shall apply irrespective of the measures prescribed in paragraphs 1 to 3 and shall be fully effective as against creditors, unless the administrative or judicial authorities of the home Member State or the law of that State governing such measures provide otherwise.

Article 7

Duty to inform known creditors and right to lodge claims

1. Where the legislation of the home Member State requires lodgement of a claim with a view to its recognition or provides for compulsory notification of the measure to creditors who have their domiciles, normal places of residence or head offices in that State, the administrative or judicial authorities of the

home Member State or the administrator shall also inform known creditors who have their domiciles, normal places of residence or head offices in other Member States, in accordance with the procedures laid down in Articles 14 and 17(1).

2. Where the legislation of the home Member State provides for the right of creditors who have their domiciles, normal places of residence or head offices in that State to lodge claims or to submit observations concerning their claims, creditors who have their domiciles, normal places of residence or head offices in other Member States shall also have that right in accordance with the procedures laid down in Article 16 and Article 17(2).

B. Credit institutions having their head offices outside the Community

Article 8

Branches of third-country credit institutions

1. The administrative or judicial authorities of the host Member State of a branch of a credit institution having its head office outside the Community shall without delay inform, by any available means, the competent authorities of the other host Member States in which the institution has set up branches which are included on the list referred to in Article 11 of Directive 2000/12/EC and published each year in the *Official Journal of the European Communities*, of their decision to adopt any reorganisation measure, including the practical effects which that measure may have, if possible before it is adopted or otherwise immediately thereafter. Information shall be communicated by the competent authorities of the host Member State whose administrative or judicial authorities decide to apply the measure.

2. The administrative or judicial authorities referred to in paragraph 1 shall endeavour to coordinate their actions.

TITLE III

WINDING-UP PROCEEDINGS

A. Credit institutions having their head offices within the Community

Article 9

Opening of winding-up proceedings — Information to be communicated to other competent authorities

1. The administrative or judicial authorities of the home Member State which are responsible for winding up shall alone be empowered to decide on the opening of winding-up proceedings concerning a credit institution, including branches established in other Member States.

A decision to open winding-up proceedings taken by the administrative or judicial authority of the home Member State shall be recognised, without further formality, within the territory of all other Member States and shall be effective there when the decision is effective in the Member State in which the proceedings are opened.

2. The administrative or judicial authorities of the home Member State shall without delay inform, by any available means, the competent authorities of the host Member State of their decision to open winding-up proceedings, including the practical effects which such proceedings may have, if possible before they open or otherwise immediately thereafter. Information shall be communicated by the competent authorities of the home Member State.

Article 10

Law applicable

1. A credit institution shall be wound up in accordance with the laws, regulations and procedures applicable in its home Member State insofar as this Directive does not provide otherwise.

2. The law of the home Member State shall determine in particular:

- (a) the goods subject to administration and the treatment of goods acquired by the credit institution after the opening of winding-up proceedings;
- (b) the respective powers of the credit institution and the liquidator;
- (c) the conditions under which set-offs may be invoked;
- (d) the effects of winding-up proceedings on current contracts to which the credit institution is party;
- (e) the effects of winding-up proceedings on proceedings brought by individual creditors, with the exception of lawsuits pending, as provided for in Article 32;
- (f) the claims which are to be lodged against the credit institution and the treatment of claims arising after the opening of winding-up proceedings;
- (g) the rules governing the lodging, verification and admission of claims;
- (h) the rules governing the distribution of the proceeds of the realisation of assets, the ranking of claims and the rights of creditors who have obtained partial satisfaction after the opening of insolvency proceedings by virtue of a right *in re* or through a set-off;
- (i) the conditions for, and the effects of, the closure of insolvency proceedings, in particular by composition;
- (j) creditors' rights after the closure of winding-up proceedings;
- (k) who is to bear the costs and expenses incurred in the winding-up proceedings;
- (l) the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to all the creditors.

Article 11

Consultation of competent authorities before voluntary winding up

1. The competent authorities of the home Member State shall be consulted in the most appropriate form before any voluntary winding-up decision is taken by the governing bodies of a credit institution.

2. The voluntary winding up of a credit institution shall not preclude the adoption of a reorganisation measure or the opening of winding-up proceedings.

Article 12

Withdrawal of a credit institution's authorisation

1. Where the opening of winding-up proceedings is decided on in respect of a credit institution in the absence, or following the failure, of reorganisation measures, the authorisation of the institution shall be withdrawn in accordance with, in particular, the procedure laid down in Article 22(9) of Directive 2000/12/EC.

2. The withdrawal of authorisation provided for in paragraph 1 shall not prevent the person or persons entrusted with the winding up from carrying on some of the credit institution's activities insofar as that is necessary or appropriate for the purposes of winding up.

The home Member State may provide that such activities shall be carried on with the consent, and under the supervision, of the competent authorities of that Member State.

Article 13

Publication

The liquidators or any administrative or judicial authority shall announce the decision to open winding-up proceedings through publication of an extract from the winding-up decision in the *Official Journal of the European Communities* and at least two national newspapers in each of the host Member States.

Article 14

Provision of information to known creditors

1. When winding-up proceedings are opened, the administrative or judicial authority of the home Member State or the liquidator shall without delay individually inform known creditors who have their domiciles, normal places of residence or head offices in other Member States, except in cases where the legislation of the home State does not require lodgement of the claim with a view to its recognition.

2. That information, provided by the dispatch of a notice, shall in particular deal with time limits, the penalties laid down in regard to those time limits, the body or authority empowered to accept the lodgement of claims or observations relating to claims and the other measures laid down. Such a notice shall also indicate whether creditors whose claims are preferential or secured *in re* need lodge their claims.

Article 15

Honouring of obligations

Where an obligation has been honoured for the benefit of a credit institution which is not a legal person and which is the subject of winding-up proceedings opened in another Member State, when it should have been honoured for the benefit of the liquidator in those proceedings, the person honouring the obligation shall be deemed to have discharged it if he was unaware of the opening of proceedings. Where such an obligation is honoured before the publication provided for in Article 13 has been effected, the person honouring the obligation shall be

presumed, in the absence of proof to the contrary, to have been unaware of the opening of winding-up proceedings; where the obligation is honoured after the publication provided for in Article 13 has been effected, the person honouring the obligation shall be presumed, in the absence of proof to the contrary, to have been aware of the opening of proceedings.

Article 16

Right to lodge claims

1. Any creditor who has his domicile, normal place of residence or head office in a Member State other than the home Member State, including Member States' public authorities, shall have the right to lodge claims or to submit written observations relating to claims.

2. The claims of all creditors whose domiciles, normal places of residence or head offices are in Member States other than the home Member State shall be treated in the same way and accorded the same ranking as claims of an equivalent nature which may be lodged by creditors having their domiciles, normal places of residence, or head offices in the home Member State.

3. Except in cases where the law of the home Member State provides for the submission of observations relating to claims, a creditor shall send copies of supporting documents, if any, and shall indicate the nature of the claim, the date on which it arose and its amount, as well as whether he alleges preference, security *in re* or reservation of title in respect of the claim and what assets are covered by his security.

Article 17

Languages

1. The information provided for in Articles 13 and 14 shall be provided in the official language or one of the official languages of the home Member State. For that purpose a form shall be used bearing, in all the official languages of the European Union, the heading 'Invitation to lodge a claim. Time limits to be observed' or, where the law of the home Member State provides for the submission of observations relating to claims, the heading 'Invitation to submit observations relating to a claim. Time limits to be observed'.

2. Any creditor who has his domicile, normal place of residence or head office in a Member State other than the home Member State may lodge his claim or submit observations relating to his claim in the official language or one of the official languages of that other Member State. In that event, however, the lodgement of his claim or the submission of observations on his claim shall bear the heading 'Lodgement of claim' or 'Submission of observations relating to claims' in the official language or one of the official languages of the home Member State. In addition, he may be required to provide a translation into that language of the lodgement of claim or submission of observations relating to claims.

Article 18

Regular provision of information to creditors

Liquidators shall keep creditors regularly informed, in an appropriate manner, particularly with regard to progress in the winding up.

B. Credit institutions the head offices of which are outside the Community

Article 21

Article 19

Branches of third-country credit institutions

1. The administrative or judicial authorities of the host Member State of the branch of a credit institution the head office of which is outside the Community shall without delay inform, by any available means, the competent authorities of the other host Member States in which the credit institution has set up branches on the list referred to in Article 11 of Directive 2000/12/EC and published each year in the *Official Journal of the European Communities*, of their decision to open winding-up proceedings, including the practical effects which these proceedings may have, if possible before they open or otherwise immediately thereafter. Information shall be communicated by the competent authorities of the first abovementioned host Member State.

2. Administrative or judicial authorities which decide to open proceedings to wind up a branch of a credit institution the head office of which is outside the Community shall inform the competent authorities of the other host Member States that winding-up proceedings have been opened and authorisation withdrawn.

Information shall be communicated by the competent authorities in the host Member State which has decided to open the proceedings.

3. The administrative or judicial authorities referred to in paragraph 1 shall endeavour to coordinate their actions.

Any liquidators shall likewise endeavour to coordinate their actions.

TITLE IV

PROVISIONS COMMON TO REORGANISATION MEASURES AND WINDING-UP PROCEEDINGS

Article 20

Effects on certain contracts and rights

The effects of a reorganisation measure or the opening of winding-up proceedings on:

- (a) employment contracts and relationships shall be governed solely by the law of the Member State applicable to the employment contract;
- (b) a contract conferring the right to make use of or acquire immovable property shall be governed solely by the law of the Member State within the territory of which the immovable property is situated. That law shall determine whether property is movable or immovable;
- (c) rights in respect of immovable property, a ship or an aircraft subject to registration in a public register shall be governed solely by the law of the Member State under the authority of which the register is kept.

Third parties' rights in re

1. The adoption of reorganisation measures or the opening of winding-up proceedings shall not affect the rights *in re* of creditors or third parties in respect of tangible or intangible, movable or immovable assets — both specific assets and collections of indefinite assets as a whole which change from time to time — belonging to the credit institution which are situated within the territory of another Member State at the time of the adoption of such measures or the opening of such proceedings.

2. The rights referred to in paragraph 1 shall in particular mean:

- (a) the right to dispose of assets or have them disposed of and to obtain satisfaction from the proceeds of or income from those assets, in particular by virtue of a lien or a mortgage;
- (b) the exclusive right to have a claim met, in particular a right guaranteed by a lien in respect of the claim or by assignment of the claim by way of a guarantee;
- (c) the right to demand the assets from, and/or to require restitution by, anyone having possession or use of them contrary to the wishes of the party so entitled;
- (d) a right *in re* to the beneficial use of assets.

3. The right, recorded in a public register and enforceable against third parties, under which a right *in re* within the meaning of paragraph 1 may be obtained, shall be considered a right *in re*.

4. Paragraph 1 shall not preclude the actions for voidness, voidability or unenforceability laid down in Article 10(2)(l).

Article 22

Reservation of title

1. The adoption of reorganisation measures or the opening of winding-up proceedings concerning a credit institution purchasing an asset shall not affect the seller's rights based on a reservation of title where at the time of the adoption of such measures or opening of such proceedings the asset is situated within the territory of a Member State other than the State in which the said measures were adopted or the said proceedings were opened.

2. The adoption of reorganisation measures or the opening of winding-up proceedings concerning a credit institution selling an asset, after delivery of the asset, shall not constitute grounds for rescinding or terminating the sale and shall not prevent the purchaser from acquiring title where at the time of the adoption of such measures or the opening of such proceedings the asset sold is situated within the territory of a Member State other than the State in which such measures were adopted or such proceedings were opened.

3. Paragraphs 1 and 2 shall not preclude the actions for voidness, voidability or unenforceability laid down in Article 10(2)(l).

*Article 23***Set-off**

1. The adoption of reorganisation measures or the opening of winding-up proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the credit institution, where such a set-off is permitted by the law applicable to the credit institution's claim.

2. Paragraph 1 shall not preclude the actions for voidness, voidability or unenforceability laid down in Article 10(2)(l).

*Article 24***Lex rei sitae**

The enforcement of proprietary rights in instruments or other rights in such instruments the existence or transfer of which presupposes their recording in a register, an account or a centralised deposit system held or located in a Member State shall be governed by the law of the Member State where the register, account, or centralised deposit system in which those rights are recorded is held or located.

*Article 25***Netting agreements**

Netting agreements shall be governed solely by the law of the contract which governs such agreements.

*Article 26***Repurchase agreements**

Without prejudice to Article 24, repurchase agreements shall be governed solely by the law of the contract which governs such agreements.

*Article 27***Regulated markets**

Without prejudice to Article 24, transactions carried out in the context of a regulated market shall be governed solely by the law of the contract which governs such transactions.

*Article 28***Proof of liquidators' appointment**

1. The administrator or liquidator's appointment shall be evidenced by a certified copy of the original decision appointing him or by any other certificate issued by the administrative or judicial authority of the home Member State.

A translation into the official language or one of the official languages of the Member State within the territory of which the administrator or liquidator wishes to act may be required. No legalisation or other similar formality shall be required.

2. Administrators and liquidators shall be entitled to exercise within the territory of all the Member States all the powers which they are entitled to exercise within the territory of the home Member State. They may also appoint persons to assist or, where appropriate, represent them in the course of the reorganisation measure or winding-up proceedings, in particular in host Member States and, specifically, in order to help overcome any difficulties encountered by creditors in the host Member State.

3. In exercising his powers, an administrator or liquidator shall comply with the law of the Member States within the territory of which he wishes to take action, in particular with regard to procedures for the realisation of assets and the provision of information to employees. Those powers may not include the use of force or the right to rule on legal proceedings or disputes.

*Article 29***Registration in a public register**

1. The administrator, liquidator or any administrative or judicial authority of the home Member State may request that a reorganisation measure or the decision to open winding-up proceedings be registered in the land register, the trade register and any other public register kept in the other Member States.

A Member State may, however, prescribe mandatory registration. In that event, the person or authority referred to in the preceding subparagraph shall take all the measures necessary to ensure such registration.

2. The costs of registration shall be regarded as costs and expenses incurred in the proceedings.

*Article 30***Detrimental acts**

1. Article 10 shall not apply as regards the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to the creditors as a whole, where the beneficiary of these acts provides proof that:

- the act detrimental to the creditors as a whole is subject to the law of a Member State other than the home Member State, and
- that law does not allow any means of challenging that act in the case in point.

2. Where a reorganisation measure decided on by a judicial authority provides for rules relating to the voidness, voidability or unenforceability of legal acts detrimental to the creditors as a whole performed before adoption of the measure, Article 3(2) shall not apply in the cases provided for in paragraph 1 of this Article.

*Article 31***Protection of third parties**

Where, by an act concluded after the adoption of a reorganisation measure or the opening of winding-up proceedings, a credit institution disposes, for consideration, of:

- an immovable asset,
- a ship or an aircraft subject to registration in a public register, or
- instruments or rights in such instruments the existence or transfer of which presupposes their being recorded in a register, an account or a centralised deposit system held or located in a Member State,

the validity of that act shall be governed by the law of the Member State within the territory of which the immovable asset is situated or under the authority of which that register, account or deposit system is kept.

*Article 32***Lawsuits pending**

The effects of reorganisation measures or winding-up proceedings on a pending lawsuit concerning an asset or a right of which the credit institution has been divested shall be governed solely by the law of the Member State in which the lawsuit is pending.

*Article 33***Professional secrecy**

All persons required to receive or divulge information in connection with the information or consultation procedures laid down in Articles 4, 5, 8, 9, 11 and 19 shall be bound by professional secrecy, in accordance with the rules and conditions laid down in Article 30 of Directive 2000/12/EC, with the exception of any judicial authorities to which existing national provisions apply.

TITLE V

FINAL PROVISIONS*Article 34***Implementation**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive on 5 May 2004. They shall forthwith inform the Commission thereof.

National provisions adopted in application of this Directive shall apply only to reorganisation measures or winding-up proceedings adopted or opened after the date referred to in the first subparagraph. Measures adopted or proceedings opened before that date shall continue to be governed by the law that was applicable to them at the time of adoption or opening.

2. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

3. Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field governed by this Directive.

*Article 35***Entry into force**

This Directive shall enter into force on the date of its publication.

*Article 36***Addressees**

This Directive is addressed to the Member States.

Done at Luxembourg, 4 April 2001.

For the European Parliament

The President

N. FONTAINE

For the Council

The President

B. ROSENGREN