

Prudential assessment of acquisitions and increase of holdings in the financial sector

2006/0166(COD) - 05/09/2007 - Final act

PURPOSE: to improve the legal certainty, clarity and transparency of the supervisory approval process with regard to acquisitions and increases of shareholdings in the banking, insurance and securities sectors.

LEGISLATIVE ACT: Directive 2007/44/EC of the European Parliament and of the Council amending Council Directive 92/49/EEC and Directive 2002/83/EC, 2004/39/EC, 2005/39/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector.

BACKGROUND: the current system of prudential supervision in the EU is based on the principle of responsibility for the competent authorities of home Member States. There is also an underlying requirement for the competent authorities of home and host Member States to collaborate closely in order to supervise the activities of institutions operating in Member States other than that in which their head offices are located.

In cases of acquisition, the existing legal framework has been designed to regulate cases where an acquirer wishes either to acquire a holding or increase a holding in a financial institution or investment firm. The competent national authorities are able to oppose an acquisition if, in view of the need to ensure sound and prudent management of the institutions, they are not satisfied as to the suitability of the acquirer. The current legal framework though does not provide specific criteria for assessing the suitability of the acquirer and has thus afforded considerable latitude to the relevant authorities in accepting, discouraging or rejecting a proposed acquisition. Furthermore, the current Directives do not set out in detail the procedure by which acquisitions are assessed.

CONTENT: the purpose of this Directive, therefore, is the establishment of harmonised procedural rules and assessment criteria throughout the Community with regard to acquisitions and increases of shareholdings in the banking, insurance and securities sectors.

This amending Directive modifies the existing framework considerably with regard to the procedure as well as the criteria to be examined by the competent authorities when assessing the suitability of a proposed acquirer. The new approach curtails, significantly, authorities' discretion to make a prudential assessment. In addition deadlines have been reduced and any "stopping of the clock" by the authorities is limited to one occasion and subject to clear conditions. The Member States are expected to apply a set of prudential criteria for supervisory assessments. For example: the reputation of the proposed acquirer; the reputation and experience of any person that may run the resulting institution or company; the financial soundness of the proposed acquirer; on-going compliance with relevant Directives; and the level of risk as regards money laundering and terrorist financing.

To this end, the Directive will amend the following five Directives that regulate situations in which a natural or legal person has taken a decision to acquire or increase a qualifying holding in a credit institution, assurance, insurance or re-insurance undertaking or an investment firm:

- 92/49/EEC, on direct insurance other than life assurance (3rd non-life insurance Directive);
- 2002/83/EC, on life assurance;
- 2004/39/EC on markets in financial instruments;
- 2005/68/EC on reinsurance;

- 2006/48/EC relating to the taking up and pursuit of the business of credit institutions.

By 21 March 2011, the Commission shall, in cooperation with the Member States, review the application of this Directive and submit a report to the European Parliament and the Council, together with any appropriate proposals.

ENTRY INTO FORCE: 21 September 2007.