

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

2006/0166(COD) - 11/02/2013 - Follow-up document

In accordance with the requirements of the Qualifying Holdings Directive (Directive 2007/44/EC amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006 /48/EC on prudential assessment of acquisitions and increase of holdings in the financial sector) the Commission presents a report describing the impact of and compliance with the Directive, and identifies the main issues emerging from the application of the Directive.

Impact and compliance: following a public consultation held by the Commission, responses indicate that the Directive **contributed to the reduction of barriers for acquisitions in the financial sector** and that domestic and cross-border transactions are treated equally across the EU. Most responses confirm that the Directive has been conducive in reaching a common understanding on the prudential assessment of acquisitions in the financial sector across Europe and to a level playing field. **No substantial compliance issue has emerged** in relation to the application of the legal framework in Member States. However, the report closely examines emerging minor issues.

Emerging issues: these include the following:

- there are concerns as regards the legal certainty of the definition of the notification requirement and its application by national supervisors which can potentially cause inconsistent application among the Member States;
- further action is needed to ensure coherent application of the proportionality principle;
- some assessment criteria laid down in the Directive need to be further clarified, particularly with regard to documents required by national supervisory authorities and whether the solvency of the proposed acquirer should be assessed;
- there are inconsistencies with regard to application of the provisions on time limits;
- diverging practices among Member States as regards conditional approvals of the acquisitions have been observed;
- cooperation between different (sectoral and/or national) supervisory authorities is perceived in some cases as formalistic and time-consuming;
- the Directive does not contain an explicit assessment criterion allowing competent authorities to assess the impact of the proposed acquisition on the stability of the financial system.

The Commission discusses ways of rectifying shortcomings, suggesting, amongst other things:

- asking the ESAs to update the 3L3 guidelines, and working with national authorities and ESMA with a view to developing guidance to clarify certain rules;
- carrying out an analysis in the course of 2013 assessing the different options regarding **incorporating financial stability aspects more explicitly in the assessment process**, perhaps through the introduction of a resolvability assessment before transactions take place. A similar legal framework for the assessment of acquisitions and increase of holdings could also be introduced for regulated markets, as defined in [MiFID](#) (Markets in Financial Instruments Directive).

All interested parties are invited to submit their views on the review by 31 March 2013.