Control of concentrations between undertakings (amend. regul. 4064/89/EEC)

1996/0224(CNS) - 12/09/1996 - Legislative proposal

OBJECTIVE: extending the scope of merger control applying to undertakings having a Community dimension. SUBSTANCE: the Commission decided to make two separate proposals: - the first proposal relates to the threshold reduction, including the mechanism for multiple national filings, and is based exclusively on Article 1(3) of the Merger Regulation (Council Regulation (EEC) No 4064/89); - the second proposal relates to other aspects of the Merger Regulation and is based on Articles 235 and 87 of the Treaty. 1). First, the Commission proposes a reduction of the current world-wide and Community thresholds to ECU 3 billion and ECU 150 million, while the two-thirds rule remains unchanged. Between these thresholds and lower thresholds of ECU 2 billion and ECU 100 million, only concentrations that qualify for examination in at least three Member States of the Community would also come within the exclusive competence of the Commission. The proposed mechanism for dealing with multiple national filings would apply to all concentrations that (a) fall between the above-mentioned intermediate and lower thresholds and do not meet the two-thirds rule, and (b) qualify for examination, whether on an obligatory or voluntary basis, in at least three Member States of the European Community. The concentration would be deemed to qualify for examination under the national systems mentioned by the parties in the notification, unless the Member States concerned inform the Commission that this is not the case within two weeks from receipt of all relevant facts. The Commission would only verify whether and how the Member States concerned have reacted within the two weeks, and would not itself check whether the national thresholds have actually been met. Phase I would be extended by two weeks. 2). The proposed amendments contained in the second Commission proposal mainly deal with the following aspects: - review of the thresholds: in order to ensure that concentrations with significant cross-border effects continue to be covered by the Community merger control, it is provided that the thresholds establishing the Community dimension of concentrations can be adjusted by the Council acting by a qualified majority on a proposal from the Commission; - referral provisions: where a distinct market within the territory of a Member State does not constitute a substantial part of the common market, the request for referral by this Member State must only demonstrate that the concentration affects such a market. However, no proof of a threat to create or strengthen dominance is required; - joint ventures: the concept of concentration under Article 3 of the Merger Regulation is enlarged so as to include all full-function joint ventures; - banking income: banking income as defined in Directive 86/635/EEC will be used as a basis for calculating the turnover of credit and financial institutions.