

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

2006/0166(COD) - 12/09/2006 - Legislative proposal

PURPOSE : to improve the legal certainty, clarity and transparency of the supervisory approval process with regard to acquisitions and increase of shareholdings in the banking, insurance and securities sectors, and to amend Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC.

PROPOSED ACT : Directive of the European Parliament and of the Council.

CONTEXT: 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.

The existing legal framework regulates the situation when an acquirer wishes to acquire a holding or increase a holding in a financial institution or investment firm in the domestic as well as in the cross-border context. The competent national authorities are able to oppose an acquisition if, in view of the need to ensure sound and prudent management of the institution, they are not satisfied as to the suitability of the acquirer. The current legal framework 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 : this amending proposal 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 proposal involves an approach that significantly curtails the discretion for competent authorities in making a prudential assessment. This was deemed crucial in order to achieve legal certainty, clarity and predictability for market participants.

The main points are as follows:

- the amended Directives will set out the entire procedure to be applied by the competent authorities when assessing acquisitions on prudential grounds. A clear and transparent notification and decision-making process for competent authorities and firms has been introduced. The deadlines have been reduced and any 'stopping of the clock' by competent authorities has been limited to one occasion and subject to clear conditions;
- the prudential criteria for the supervisory assessment have also been clearly laid out and will be known in advance to market participants. This will ensure more certainty and predictability with regard to the criteria to be applied by the competent authorities when assessing the suitability of an acquisition;
- the amended Directives will provide for a closed list of criteria to assess the suitability of the acquirer. This implies full harmonisation for the purposes of a suitability assessment throughout the EU. These criteria will be the reputation of the proposed acquirer, the reputation and experience of any person that may run the resulting institution or firm, the financial soundness of the proposed acquirer, the ongoing

compliance with the relevant sectoral Directives and the risk of money laundering and terrorism financing;

- the proposal reduces the assessment period from three months to 30 days;

- the following existing Directives are amended: the Banking Directive (2006/48/EC), the Third Non-life Insurance Directive (92/49/EEC), the Recast Life Assurance Directive (2002/83/EC), the Reinsurance Directive (2005/68/EC), and Directive 2006/48/EC on markets in financial instruments.

Lastly, the Commission states that it will consider urgently whether it is necessary and possible to extend the procedures and criteria established in this proposal to regulated markets.