

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

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The ECB largely welcomes the objective of the proposed Directive, which is to improve the existing regulatory framework for the prudential assessment of acquisitions or increases of qualifying holdings in financial institutions, thereby reinforcing the smooth conduct of prudential policies in this area.

The ECB's opinion is based on both general and specific observations:

Generally speaking, the ECB supports:

- the proposed specification of the prudential assessment criteria which is expected to foster closer convergence of supervisory practices;
- the new requirement for supervisory authorities to make publicly available a list of the necessary information to be submitted;
- the new requirement for supervisory authorities to inform the applicant in writing of the reasons for a negative decisions; and
- the strengthening of the requirement for "home-host" co-operation.

From a financial stability perspective, states the ECB, it is important that the revised regulatory framework does not compromise the effectiveness of supervisory tools used to ensure the safety and soundness of financial institutions on an ongoing basis. Further, the ECB suggests that authorisation and approval requirements should be as consistent as possible in order to pre-empt any scope for regulatory arbitrage. In view of the wide range of transactions in qualifying holdings that would be covered by the proposed Directive, the ECB proposes that the criteria and procedures laid down should enable the supervisory authorities to perform a sound prudential assessment with regard to transactions of varying degrees of complexity. Against this background, the ECB raises a number of more specific concerns regarding the proposed modifications.

In brief, the ECB's more specific observations relate to:

- **The proposed prudential assessment criteria:** The ECB considers that the proposed assessment criteria should be more closely aligned with the criteria considered during the authorisation process.
- **Proposed time limits for supervisory assessment:** In principle, the ECB considers that procedural measures to enhance the supervisory approval process should not endanger underlying prudential objectives. In view of the importance of this issue, the ECB considers that major revisions to the overall assessment period should be made in close consultation with EU supervisory authorities.
- **Provisions on co-operation between competent authorities:** The ECB support the proposed provisions regarding co-operation between competent authorities. However, the ECB is of the view that these provisions should not be combined with provisions relating to co-operation between competent authorities in the context of the exercise of supervision on a consolidated basis and therefore asks for the proposed Directive to be amended in this respect.

- **The Commission's right to request information from a competent authority:** The ECB has a number of general views regarding this provisions. On the one hand, it fully respects the Commission's power to act as Guardian of the Treaty. On the other hand, it notes that a careful balance needs to be struck in order to reconcile the Commission's need to have all the information necessary to decide on the merits of a particular case in good time, with the need to protect the rights of the proposed acquirers and the obligation of supervisory authorities to guarantee the confidentiality of information relating to financial institutions with a view to ensuring the stability of the financial system. A derogation from the obligations of supervisory authorities to observe professional secrecy and preserve the confidentiality of supervisory information should be clearly demarcated. Further, the ECB suggests that it should be made clear that the Commission should not interfere with actual supervisory decision-making and that competent authorities should disclose the relevant information only after completing their prudential assessment.

- **Additional legal and technical comments:** A number of technical matters are highlighted under this heading including, for example, the need to include a citation of the ECB in the proposed Directive.