COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12.9.2006
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2006/0166 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC , 2005/68/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of shareholdings in the financial sector

(presented by the Commission)

{SEC(2006) 1117}
{SEC(2006) 1118}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1. Grounds for and objectives of the proposal

This proposal aims to considerably 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.

1.2. General context

The EU single financial market goes hand in hand with prudential soundness and financial stability. Steady EU-led convergence in regulatory requirements, underpinned by common ground-rules and pragmatic means of implementing and applying the Community Directives for a single market for financial services has already contributed greatly to achieving this goal. Cross-border consolidation is the result of business decisions made by market participants. Although consolidation is not an end in itself, it remains a means to achieve greater efficiency. Market driven consolidation allows institutions to reach their potential and compete internationally. An important aspect of the single market is the removal of any unjustifiable obstacles to the smooth functioning of the internal market. Undue interference by regulators, national or supra-national authorities in the implementation of a business decision that would have resulted in consolidation could effectively prevent the proper functioning of the market. In the extreme, an abusive use of powers could frustrate and render impractical an otherwise economically justifiable initiative.

The current system of prudential supervision in the European Union 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.

1.3. Existing provisions in Community legislation

The existing legal framework[1] 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.

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[1] Article 19 of Directive 2006/48/EC, Article 15 of Directive 92/49/EEC, Article 15 of Directive 2002/83/EC, Articles 20-23 of Directive 2005/68/EC and Article 10 of Directive 2004/39/EC.

1.4. The proposal

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 amended Directives 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 up front 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 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 European Union. 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 on-going compliance with the relevant sectoral Directives and the risk of money laundering and terrorism financing.

2. RESULTS OF CONSULTATIONS WITH INTERESTED PARTIES

2.1. Consultations

- The EBC Working Group on Cross Border Consolidation met on 21 March and 5 October 2005. This working group was subsequently extended to include the insurance and the securities sector;

- A meeting of the Joint EBC-EIOPC-ESC Working Group on Cross Border Consolidation was held on 3 February 2006;

- A public consultation was conducted during March and April 2006 regarding the existing supervisory arrangements in the banking, insurance and securities sectors.

Improvements to the current provisions in terms of procedure and assessment criteria have been developed taking account of the discussions in the various working groups and the responses to the public consultation.

2.2. Collection and use of expertise

The Committee of European Banking Supervisors (CEBS) was mandated by the Commission at the end of January 2005 to provide technical advice on the review of Article 16 of Directive 2000/12/EC.

The advice received from CEBS while establishing some precision and constructive suggestions on procedure emphasised that 'Article 16 must leave a good deal of flexibility and discretion to the competent authorities if it is to work properly'. CEBS also indicates that the mandate of the Commission 'did not request CEBS to obtain evidence on whether Article 16 has been abused by Member States' competent authorities or was a direct cause of the (perceived) slower pace of M&A activities in the financial sector.'

The CEBS advice was used in conjunction with the consultations referred to above in the development of this proposal. As a consequence the Commission has taken 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.

As a part of the on-going Solvency II project in the insurance sector, the Commission in December 2004 asked the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) to provide technical advice with regard to the fit and proper requirements of the Insurance Directives, including the supervisory approval process in Article 15 of Directive 92/49/EEC and 2002/83/EC.

3. IMPACT ASSESSMENT

The options examined in the Impact Assessment[2] include a 'do nothing'-option as well as legally binding and non-binding regulatory options. After a careful examination of the different alternatives, the Impact Assessment concludes that a legally binding regulatory solution is necessary in order to achieve the objectives of legal certainty, clarity and transparency for competent authorities as well as market participants. To meet these objectives and to ensure consistency within sectors as well as between sectors, it is concluded in the Impact Assessment that it is appropriate to aim for a high level of harmonisation with regard to the procedure as well as the criteria for the prudential assessment. A lower level of harmonisation - leaving considerable flexibility to Member States and their competent authorities - would not fulfil the explicit aims of increased legal certainty, predictability and consistency in relation to the supervisory assessments of acquisitions and increased shareholdings in financial institutions and investment firms.

The proposal would not seem to lead to any additional administrative costs.

4. PROVISIONS FOR REGULATED MARKETS

One of the principles underlying the MiFID is that there should be, as far as possible, parallel provisions for investment firms and regulated markets. This parallelism exists between Article 10 (which applies to investment firms) and Article 38 (the corresponding provision relating to regulated markets). In view of this parallelism, and in view also of the potential for further consolidation in the area of stock exchanges, the Commission will consider urgently whether it is necessary and possible to extend the procedures and criteria established in this proposal to regulated

[2] In attachment.

markets. The aim of such a move would be to increase legal certainty for all interested parties when they are subjected to the scrutiny by competent authorities and to facilitate the smooth functioning of the Internal Market (by preventing protectionist reactions on the part of Member States). In determining whether or not to go ahead, the Commission will take into account the special nature of the business conducted by regulated markets as well as the views of stakeholders and regulators. The Commission will decide on the appropriateness of such an intervention as soon as possible.

5. LEGAL ELEMENTS OF THE PROPOSAL

The legal basis of the proposal, which is an amending Directive, remains the legal basis for the directives being amended i.e. Articles 47(2) and 55 EC.

In accordance with the principles of subsidiarity and proportionality as set out in Article 5 EC, the objectives of the proposed action, namely the establishment of harmonised procedural rules and assessment criteria throughout the Community, cannot be sufficiently achieved by the Member States and can therefore be better achieved by the Community. This Directive stipulates the requirements in order to achieve those objectives and does not go beyond what is necessary for that purpose.

In view of the requirement of consistent rules right across the Community, an amending Directive laying out the procedure and the criteria was considered the most appropriate instrument.

6. BUDGETARY IMPLICATION

There are no budgetary implications of the initiative nor are additional human and administrative resources required.

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(Texte with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 47(2) and 55 thereof,

Having regard to the proposal from the Commission[3],

Having regard to the opinion of the European Economic and Social Committee[4],

Acting in accordance with the procedure laid down in Article 251 of the Treaty,

Whereas:

(1) Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive)[5], Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance[6], Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC[7], Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council Directives 73/239/EEC, 92/49/EEC as well as Directives 98/78/EC and 2002/83/EC[8] and Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to

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3 OJ C , , p. .

4 OJ C , , p. .

5 OJ L 228, 11.8.1992, p. 1. Directive as last amended by Directive 2005/1/EC (OJ L 79, 24.3.2005, p. 9).

6 OJ L 345, 19.12.2002, p. 1. Directive as last amended by Directive 2005/68/EC (OJ L 323, 9.12.2005, p. 1).

7 OJ L 145, 30.4.2004, p. 1. Directive as last amended by Directive 2006/31/EC (OJ L 114, 27.4.2006, p. 60).

8 OJ L 323, 9.12.2005, p. 1.

the taking up and pursuit of the business of credit institutions (recast)[9] regulate the situation when an acquirer proposes to acquire or increase a qualifying holding in a credit institution, assurance, insurance or re-insurance undertaking or an investment firm.

(2) That legal framework does not, however, provide detailed criteria for a prudential assessment of the proposed acquisition or increase in holding nor a procedure for their application. This has resulted in a lack of legal certainty, clarity and predictability with regard to the assessment process as well as to the result thereof.

(3) The role of the competent authorities in both domestic and cross-border cases should be to carry out a prudential assessment within a framework of clear assessment criteria and procedures. It is therefore necessary to specify criteria for the supervisory assessment of shareholders and management in relation to a proposed acquisition or increase of a qualifying holding and a clear procedure for their application. To ensure coherence those criteria should be consistent with the criteria applied in relation to shareholders and management in the initial authorisation procedure.

(4) For markets that are increasingly integrated and where group structures may extend to various Member States, the acquisition of a qualifying holding is subject to scrutiny in a number of Member States and harmonisation throughout the Community of the procedure and the prudential assessments, without the Member States laying down stricter rules, is critical.

(5) With regard to the prudential assessment, the criterion concerning the 'reputation of the proposed acquirer' implies the determination of whether any doubts exist about the integrity and professional competence of the proposed acquirer and whether these doubts are founded; such doubts may arise, for instance, from past business conduct. The assessment of the reputation is of particular relevance if the proposed acquirer is an unregulated entity.

(6) In order to fulfil its role under the Treaty and to be able to assess whether the criteria for the suitability assessment need further clarification, the Commission should be entitled to request copies of the documents on which the competent authorities have based their prudential assessment.

(7) The assessment criteria may, in the future, need adaptations to take into account market developments and the need for a uniform application throughout the Community. It is therefore appropriate to adopt the necessary measures in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission[10].

(8) Since the objectives of the action to be taken, namely the establishment of harmonised procedural rules and assessment criteria throughout the Community, cannot be sufficiently achieved by the Member States and can therefore, by reason of their scale and effects, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article,

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[9] OJ L 177, 30.6.2006, p.1.
[10] OJ L 184, 17.7.1999, p.23.

this Directive does not go beyond what is necessary in order to achieve those objectives.

(9) Directives 92/49/EEC, 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 92/49/EEC

Directive 92/49/EEC is amended as follows:

1. In Article 1the second subparagraph of point (g) is replaced by the following::

For the purposes of this definition, in the context of Articles 8 and 15 and of the other levels of holding referred to in Article 15, the voting rights referred to in Articles 9 and 10 of Directive 2004/109/EC of the European Parliament and of the Council* [], shall be taken into consideration;

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* OJ L 390, 31.12.2004, p. 38.

2. Article 15 is amended as follows:

(a) Paragraph 1 is replaced by the following:

"1. Member States shall require any natural or legal person or such persons acting in concert who have taken a decision to either acquire, directly or indirectly a qualifying holding in an insurance undertaking or to, directly or indirectly further increase such qualifying holding as a result of which the proportion of the voting rights or of the capital held would reach or exceed 20%, 30% or 50% or so that the insurance undertaking would become its subsidiary, hereinafter "proposed acquirer" to notify in writing to the competent authorities of the insurance undertaking in which they are either seeking to acquire a qualifying holding or to increase such a qualifying holding the size of the intended holding and relevant information as referred to in Article 15b(4).

(b) Paragraph 1a is deleted;

(c) In paragraph 2 the figure "33%" is replaced by the figure "30%";

3. The following Articles 15a to 15d are inserted:

"Article 15a

1. The competent authorities shall, promptly and in any case within two working days upon receipt of the notification required under Article 15(1) acknowledge receipt thereof in writing to the proposed acquirer.

The competent authorities shall have a maximum of thirty working days from the date of the written acknowledgement of receipt, hereinafter "assessment period", to oppose the proposal of the proposed acquirer.

2. The competent authorities may if necessary, request further information within five working days of the date of the acknowledgment of receipt referred to in the first subparagraph of paragraph 1, in order to carry out the assessment referred to in Article 15b(1).

This request for further information shall be made in writing and shall specify the additional pieces of information needed.

The information requested shall be provided to the competent authorities within ten working days. For the period between the date of request for information by the competent authorities and the receipt of a response thereto by the proposed acquirer, the assessment period shall be interrupted. The interruption shall not exceed ten working days. Any further requests for information by the competent authorities may not result in an interruption of the assessment period.

3. If the competent authorities, upon completion of their assessment, decide to oppose the proposed acquisition or the proposed increase of holding, they shall, within two working days, and not going beyond the period mentioned in Art. 15 a (1) second subparagraph, inform the proposed acquirer in writing and provide the reasons for the decision.

4. If the competent authorities do not oppose within the assessment period in writing the proposed acquisition or increase of holding referred to in Article 15(1), the proposed acquisition or increase of holding shall be deemed to be approved. The competent authorities shall inform the proposed acquirer about the date of the expiry of the assessment period at the time of acknowledgement referred to in paragraph 1 and, if applicable, at the time of the request for further information referred to in paragraph 2.

5. The competent authorities may extend the assessment period to a maximum of fifty working days if the proposed acquirer is regulated outside the Community and is situated in a third country where there are legal impediments to the transfer of the necessary information.

6. The competent authorities may fix a maximum period for the completion of the proposed acquisition or the increase of holding.

Article 15b

1. In assessing the notification provided for in Article 15(1) and the information referred to in Article 15a(2), the competent authorities shall, having regard to the likely influence of the proposed acquirer on the insurance undertaking, assess the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following criteria:

(a) the reputation of the proposed acquirer;

(b) the reputation and experience of any person who will direct the business of the insurance undertaking as a result of the proposed acquisition;

(c) the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the insurance undertaking in which the acquisition is sought;

(d) whether the insurance undertaking will be able to meet and continue to meet its obligations under this Directive and any applicable sectoral rules within the meaning of Article 2(7) of Directive 2002/87/EC of the European Parliament and of the Council* following the proposed acquisition;

(e) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of Directive 2005/60/EC of the European Parliament and of the Council** is being or has been committed or attempted, or that the proposed acquisition could increase the risk of such conduct.

2. The competent authorities may oppose the proposed acquisition only if they find that the criteria set out in paragraph 1 are not met or if the information provided by the proposed acquirer is incomplete.

3. Member States shall neither impose any prior conditions in respect of the level of shareholding that must be acquired nor examine the acquisition in terms of economic needs of the market.

4. Member States shall make publicly available a list specifying the information necessary to make the assessment under paragraph 1.

The level of information required shall be proportionate and adapted to the nature of the proposed acquisition or increase of holding.

Member States shall not require information that is not relevant for a prudential assessment.

5. Where two or more proposals to acquire or increase qualifying shareholdings in the same insurance undertaking have been notified to the competent authority, the latter shall ensure that all the proposed acquirers are treated in a non-discriminatory manner.

Article 15c

In addition to Article 15(1) and Articles 15a and 15b and unless specified otherwise, the relevant competent authorities shall consult each other when assessing the acquisition in accordance with Article 15b(1) if the proposed acquirer is one of the following:

(1) a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or management company within the meaning of Article 1a(2) of Council Directive 85/611/EEC***, hereinafter "UCITS management company", authorised in another Member State;

(2) the parent undertaking of a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State;

(3) a natural or legal person controlling a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State.

The competent authorities shall cooperate closely. They shall provide one another with any information which is essential or relevant for the exercise. In this regard, the competent authorities shall communicate to each other on request all relevant information and shall communicate on their own initiative all essential information.

Article 15d

1. The Commission may request the competent authorities to provide it promptly with copies of the documents on which they have based their assessment in relation to Articles 15(1), 15a, 15b and 15c as well as the reasons given to the proposed acquirer.

2. The information provided to the Commission shall be covered by the obligation of professional secrecy and shall be used by it only for the purposes of determining whether a Member State has fulfilled its obligations under this Directive.

All persons working for or who have worked for the Commission, as well as auditors or experts acting on behalf of the Commission shall be bound by the obligation of professional secrecy.

3. No confidential information which the Commission may receive by virtue of paragraph 1 may be divulged to any person or authority whatsoever, except in summary or collective form, such that individual proposed acquirers or the insurance undertakings concerned cannot be identified.

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* OJ L 35, 11.2.2003, p. 1.

** OJ L 309, 25.11.2005 p. 15.

*** OJ L 375, 31. 12. 1985, p.3."

4. In Article 51, the following indent is added:

"- specifications and clarifications of the criteria set out in Article15b(1) in order to take account of future developments and to ensure the uniform application of this Directive."

Article 2

Amendments to Directive 2002/83/EC

Directive 2002/83/EC is amended as follows:

1. In Article 1 point (j) the second subparagraph is replaced by the following:

"For the purposes of this definition, in the context of Articles 8 and 15 and of the other levels of holding referred to in Article 15, the voting rights referred to in Articles 9 and 10 of Directive 2004/109/EC of the European Parliament and of the Council*, shall be taken into consideration;

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* OJ L 390, 31.12.2004, p. 38"

2. Article 15 is amended as follows:

(a) Paragraph 1 is replaced by the following:

"1. Member States shall require any natural or legal person or such persons acting in concert who have taken a decision to either acquire, directly or indirectly a qualifying holding in an assurance undertaking or to, directly or indirectly further increase such qualifying holding as a result of which the proportion of the voting rights or of the capital held would reach or exceed 20%, 30% or 50% or so that the assurance undertaking would become its subsidiary, hereinafter "proposed acquirer" to notify in writing to the competent authorities of the assurance undertaking in which they are either seeking to acquire a qualifying holding or to increase such a qualifying holding the size of the intended holding and relevant information as referred to in Article 15b (4)."

(b) In paragraph 2 the figure "33%" is replaced by the figure "30%".

3. The following Articles 15a to 15d are inserted:

"Article 15a

1. The competent authorities shall, promptly and in any case within two working days upon receipt of the notification required under Article 15(1) acknowledge receipt thereof in writing to the proposed acquirer.

The competent authorities shall have a maximum of thirty working days from the date of the written acknowledgement of receipt, hereinafter "assessment period" to oppose the proposal of the proposed acquirer.

2. The competent authorities may if necessary, request further information within five working days of the date of the acknowledgment of receipt referred to in the first subparagraph of paragraph 1, in order to carry out the assessment referred to in Article 15b(1).

This request for further information shall be made in writing and shall specify the additional pieces of information needed.

The information requested shall be provided to the competent authorities within ten working days. For the period between the date of request for information by the competent authorities and the receipt of a response thereto by the proposed acquirer, the assessment period shall be interrupted. The interruption shall not exceed ten working days. Any further requests for information by the competent authorities may not result in an interruption of the assessment period.

3. If the competent authorities, upon completion of their assessment, decide to oppose the proposed acquisition or the proposed increase of holding, they shall, within two working days, and not going beyond the period mentioned in Art. 15 a (1) second subparagraph, inform the proposed acquirer in writing and provide the reasons for the decision.

4. If the competent authorities do not oppose within the assessment period in writing the proposed acquisition or increase of holding referred to in Article 15(1), the proposed acquisition or increase of holding shall be deemed to be approved. The competent authorities shall inform the proposed acquirer about the date of the expiry of the assessment period at the time of acknowledgement referred to in paragraph 1 and, if applicable, at the time of the request for further information referred to in paragraph 2.

5. The competent authorities may extend the assessment period to a maximum of fifty working days if the proposed acquirer is regulated outside the Community**,** and is situated in a third-country where there are legal impediments to the transfer of the necessary information.

6. The competent authorities may fix a maximum period for the completion of the proposed acquisition or the increase of holding.

Article 15b

1. In assessing the notification provided for in Article 15(1) and the information referred to in Article 15a(2), the competent authorities shall, having regard to the likely influence of the proposed acquirer on the assurance undertaking; assess the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following criteria:

(a) the reputation of the proposed acquirer;

(b) the reputation and experience of any person who will direct the business of the assurance undertaking as a result of the proposed acquisition;

(c) the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the assurance undertaking in which the acquisition is sought;

(d) whether the assurance undertaking will be able to meet and continue to meet its obligations under this Directive and any applicable sectoral rules within the meaning of Article 2(7) of Directive 2002/87/EC of the European Parliament and of the Council* following the proposed acquisition;

(e) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of Directive 2005/60/EC of the European Parliament and of the Council** is being or has been committed or attempted, or that the proposed acquisition could increase the risk of such conduct.'

2. The competent authorities may oppose the proposed acquisition only if they find that the criteria set out in paragraph 1 are not met or if the information provided by the proposed acquirer is incomplete.

3. Member States shall neither impose any prior conditions in respect of the level of shareholding that must be acquired nor examine the acquisition in terms of economic needs of the market.

4. Member States shall make publicly available a list specifying the information necessary to make the assessment under paragraph 1.

The level of information required shall be proportionate and adapted to the nature of the proposed acquisition or increase of holding.

Member States shall not require information that is not relevant for a prudential assessment.'

5. Where two or more proposals to acquire or increase qualifying shareholdings in the same assurance undertaking have been notified to the competent authority, the latter shall ensure that all the proposed acquirers are treated in a non-discriminatory manner.

Article 15c

In addition to Article 15(1) and Articles 15a and 15b and unless specified otherwise the relevant competent authorities shall consult each other when assessing the acquisition in accordance with Article 15b(1) , if the proposed acquirer is one of the following:

(1) a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or management company within the meaning of Article 1a(2) of Council Directive 85/611/EEC***, hereinafter "UCITS management company", authorised in another Member State;

(2) the parent undertaking of a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State;

(3) a natural or legal person controlling a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State.

The competent authorities shall cooperate closely. They shall provide one another with any information which is essential or relevant for the exercise. In this regard, the competent authorities shall communicate to each other on request all relevant information and shall communicate on their own initiative all essential information.

Article 15d

1. The Commission may request the competent authorities to provide it promptly with copies of the documents on which they have based their assessment in relation to Articles 15(1), 15a, 15b and 15c as well as the reasons given to the proposed acquirer.

2. The information provided to the Commission shall be covered by the obligation of professional secrecy and shall be used by it only for the purposes of determining whether a Member State has fulfilled its obligations under this Directive.

All persons working for or who have worked for the Commission, as well as auditors or experts acting on behalf of the Commission shall be bound by the obligation of professional secrecy.

3. No confidential information which the Commission may receive by virtue of paragraph 1 may be divulged to any person or authority whatsoever, except in summary or collective form, such that individual proposed acquirers or the assurance undertakings concerned cannot be identified.

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* OJ L 35, 11.2.2003, p. 1.

** OJ L 309, 25.11.2005 p. 15.

*** OJ L 375, 31.12.1985, p.3."

4. In Article 64, the following indent is added:

"- specifications and clarifications of the criteria set out in Article 15b(1), in order to take account of future developments and to ensure the uniform application of this Directive."

Article 3

Amendments to Directive 2004/39/EC

Directive 2004/39/EC is amended as follows:

1. In article 4(1) point (27) is replaced by the following:

"(27) "Qualifying holding' means any direct or indirect holding in an investment firm which represents 10% or more of the capital or of the voting rights, as set out in Articles 9 and 10 of Directive 2004/109/EC of the European Parliament and of the Council*, or which makes it possible to exercise a significant influence over the management of the investment firm in which that holding subsists;

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* OJ L 390, 31.12.2004, p.38."

2. In Article 10: paragraphs 3 and 4 are replaced by the following:

3. Member States shall require any natural or legal person or such persons acting in concert who have taken a decision to either acquire, directly or indirectly a qualifying holding in an investment firm or to, directly or indirectly, further increase such a qualifying holding as a result of which the proportion of the voting rights or of the capital held would reach or exceed 20%, 30% or 50% or so that the investment firm would become its subsidiary, hereinafter "proposed acquirer", to notify in writing to the competent authorities of the investment firm in which they are either seeking to acquire a qualifying holding or to increase such a qualifying holding the size of the intended holding and relevant information as referred to in Article 10b(4).

Member States shall require any natural or legal person who proposes to dispose, directly or indirectly, of a qualifying holding in investment firm to inform the competent authorities, of the size of the resulting holding. Such persons must likewise inform the competent authorities if they proposes to reduce their qualifying holding so that the proportion of the voting rights or of the capital held by him would fall below 20%, 30% or 50% or so that the investment firm would cease to be their subsidiary

4. The assessment of the acquisition in accordance with Article 10b(1) shall be subject to the prior consultation provided for in Article 60, if the proposed acquirer is one of the following:

(a) a credit institution, an assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or a management company within the meaning of Article 1a(2) of Council Directive 85/611/EEC*, hereinafter "UCITS management company", authorised in another Member State;

(b) the parent undertaking of a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or a UCITS management company authorised in another Member State;

(c) a natural or legal person controlling a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or a UCITS management company authorised in another Member State.

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* OJ L 375, 31.12.1985, p.3."

3. The following Articles 10a, 10b and 10c are inserted:

"Article 10a

1. For the purposes of the first subparagraph of Article 10(3) the competent authorities shall, promptly and in any case within two working days upon receipt of the notification required under that subparagraph acknowledge receipt thereof in writing to the proposed acquirer.

The competent authorities shall have a maximum of thirty working days from the date of the written acknowledgement of receipt, hereinafter "assessment period", to oppose the proposal of the proposed acquirer.

2. The competent authorities may if necessary, request further information within five working days of the date of the acknowledgment of receipt referred to in the first subparagraph of paragraph 1, in order to carry out the assessment referred to in Article 10b(1).

This request for further information shall be made in writing and shall specify the additional pieces of information needed to.

The information requested shall be provided to the competent authorities within ten working days. For the period between the date of request for information by the competent authorities and the receipt of a response thereto by the proposed acquirer, the assessment period shall be interrupted. The interruption shall not exceed ten working days. Any further requests for information by the competent authorities may not result in an interruption of the assessment period.

3. If the competent authorities, upon completion of their assessment, decide to oppose the proposed acquisition or the proposed increase of holding, they shall, within two working days, and not going beyond the period mentioned in Art. 10 a (1) second subparagraph, inform the proposed acquirer in writing and provide the reasons for the decision.

4. If the competent authorities do not oppose within the assessment period in writing the proposed acquisition or increase of holding referred to in Article 10(3), the proposed acquisition or increase of holding shall be deemed to be approved. The competent authorities shall inform the proposed acquirer about the date of the expiry of the assessment period at the time of acknowledgement referred to in paragraph 1 and, if applicable, at the time of the request for further information referred to in paragraph 2.

5. The competent authorities may extend the assessment period to a maximum of fifty working days if the proposed acquirer is regulated outside the Community, and is situated in a third country where there are legal impediments to the transfer of the necessary information.

6. The competent authorities may fix a maximum period for the completion of the proposed acquisition or the increase of holding.

Article 10b

1. In assessing the notification provided for in Article 10(3) and the information referred to in Article 10a(2), the competent authorities shall, having regard to the likely influence of the proposed acquirer on the investment firm, assess the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following criteria:

(a) the reputation of the proposed acquirer;

(b) the reputation and experience of any person who will direct the business of the investment firm as a result of the proposed acquisition;

(c) the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the investment firm in which the acquisition is sought;

(d) whether the investment firm will be able to meet and continue to meet its obligations under this Directive and any applicable sectoral rules within the meaning of Article 2(7) of Directive 2002/87/EC following the proposed acquisition;

(e) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of Directive 2005/60/EC of the European Parliament and of the Council* is being or has been committed or attempted, or that the proposed acquisition could increase the risk of such conduct.

In order to take account of future developments and to ensure the uniform application of this Directive, the Commission acting in accordance with the procedure referred to in Article 64(2), may adopt implementing measures which specify and clarify the criteria established in the first subparagraph of this paragraph.

2. The competent authorities may oppose the proposed acquisition only if they find that the criteria set out in paragraph 1 are not met or if the information provided by the proposed acquirer is incomplete..

3. Member States shall neither impose any prior conditions in respect of the level of shareholding that must be acquired nor examine the acquisition in terms of economic needs of the market.

4. Member States shall make publicly available a list specifying the information necessary to make the assessment under paragraph 1.

The level of information required shall be proportionate and adapted to the nature of the proposed acquisition or increase of holding.

Member States shall not require information that is not relevant for a prudential assessment.

5. Where two or more proposals to acquire or increase qualifying shareholdings in the same investment firm have been notified to the competent authority, the latter shall ensure that the all proposed acquirers are treated in a non-discriminatory manner.

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* OJ L 309, 25.11.2005, p. 15."

Article 10c

1. The Commission may request the competent authorities to provide it promptly with copies of the documents on which they have based their prudential assessment in relation to Articles 10(3), 10(4) and 10b as well as the reasons given to the proposed acquirer.

2. The information provided to the Commission shall be covered by the obligation of professional secrecy and shall be used by it only for the purposes of determining whether a Member State has fulfilled its obligations under this Directive.

   All persons working for or who have worked for the Commission, as well as auditors or experts acting on behalf of the Commission shall be bound by the obligation of professional secrecy.

3. No confidential information which the Commission may receive by virtue of paragraph 1 may be divulged to any person or authority whatsoever, except in summary or collective form, such that individual proposed acquirers or the investment firms concerned cannot be identified."

Article 4

Amendments to Directive 2005/68/EC

Directive 2005/68/EC is amended as follows:

1. In Article 2(2) the third subparagraph is replaced by the following:

   "For the purposes of paragraph 1(j), in the context of Articles 12 and 19 and of the other levels of holding referred to in Article 19, the voting rights referred to in Articles 9 and 10 of Directive 2004/109/EC of the European Parliament and of the Council* shall be taken into consideration;

   _____

* OJ L 390, 31.12.2004, p. 38."

2. Article 19 is replaced by the following:

"Article 19

1. Member States shall require any natural or legal person or such persons acting in concert who have taken a decision to either acquire, directly or indirectly a qualifying holding in an reinsurance undertaking or to, directly or indirectly further increase such qualifying holding as a result of which the proportion of the voting rights or of the capital held would reach or exceed 20%, 30% or 50% or so that the reinsurance undertaking would become its subsidiary, hereinafter "proposed acquirer", to notify in writing to the competent authorities of the reinsurance undertaking in which it is either seeking to acquire a qualifying holding or to increase such a qualifying holding the size of the intended holding and relevant information as referred to in Article 19a(4) .

2. The competent authorities shall, promptly and in any case within two working days upon receipt of the notification required under paragraph 1 acknowledge receipt thereof in writing to the proposed acquirer.

The competent authorities shall have a maximum of thirty working days from the date of the written acknowledgement of receipt, hereinafter "assessment period" to oppose the proposal of the proposed acquirer.

3. The competent authorities may if necessary, request further information within five working days of the date of the acknowledgment of receipt referred to in the first subparagraph of paragraph 2, in order to carry out the assessment referred to in Article 19a(1).

This request for further information shall be made in writing and shall specify the additional pieces of information needed.

The information requested shall be provided to the competent authorities within ten working days. For the period between the date of request for information by the competent authorities and the receipt of a response thereto by the proposed acquirer, the assessment period shall be interrupted. The interruption shall not exceed ten working days. Any further requests for information by the competent authorities shall not result in an interruption of the assessment period.

4. If the competent authorities, upon completion of their assessment, decide to oppose the proposed acquisition or the proposed increase of holding, they shall, within two working days, and not going beyond the period mentioned in Art. 19 (2) second subparagraph, inform the proposed acquirer in writing and provide the reasons for the decision.

5. If the competent authorities do not oppose within the assessment period in writing the proposed acquisition or increase of holding referred to in paragraph 1, the proposed acquisition or increase of holding shall be deemed to be approved. The competent authorities shall inform the proposed acquirer about the date of the expiry of the assessment period at the time of acknowledgement referred to in paragraph 2

and, if applicable, at the time of the request for further information referred to in paragraph 3.

6. The competent authorities may extend the assessment period to a maximum of fifty working days if the proposed acquirer is regulated outside the Community and is situated in a third-country where there are legal impediments to the transfer of the necessary information. ”

7. The competent authorities may fix a maximum period for the completion of the proposed acquisition or the increase of holding.”

3. The following Article 19a is inserted:

"Article 19a"

1. In assessing the notification provided for in Article 19(1) and the information referred to in Article 19(3), the competent authorities shall, having regard to the likely influence of the proposed acquirer on the reinsurance undertaking; assess the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following criteria:

(a) the reputation of the proposed acquirer ;

(b) the reputation and experience of any person who will direct the business of the reinsurance undertaking as a result of the proposed acquisition;

(c) the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the reinsurance undertaking in which the acquisition is sought;

(d) whether the reinsurance undertaking will be able to meet and continue to meet its obligations under this Directive and any applicable sectoral rules within the meaning of Article 2(7) of Directive 2002/87/EC following the proposed acquisition;

(e) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of directive 2005/60/EC of the European Parliament and of the Council* is being or has been committed or attempted, or that the proposed acquisition could increase the risk of such conduct.

2. The competent authorities may oppose the proposed acquisition only if they find that the criteria set out in paragraph 1 are not met or if the information provided by the proposed acquirer is incomplete.

3. Member States shall neither impose any prior conditions in respect of the level of shareholding that must be acquired nor examine the acquisition in terms of economic needs of the market. .

4. Member States shall make publicly available a list specifying the information necessary to make the assessment under paragraph 1.

The level of information required shall be proportionate and adapted to the nature of the proposed acquisition or increase of holding.

Member States shall not require information that is not relevant for a prudential assessment.

5. Where two or more proposals to acquire or increase qualifying shareholdings in the same reinsurance undertaking have been notified to the competent authority, the latter shall ensure that all the proposed acquirers are treated in a non-discriminatory manner.

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* OJ L 309 25.11.2005, p. 15."

4. Article 20 is replaced by the following:

"Article 20

In addition to Articles 19 and 19a and unless specified otherwise, the relevant competent authorities shall consult each other when assessing the acquisition in accordance with Article 19a(1), if the proposed acquirer is one of the following:

(1) a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or management company within the meaning of article 1a(2) of Council Directive 85/611/EEC*, hereinafter "UCITS management company" authorised in another Member State;

(2) or the parent undertaking of a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State;

(3) or a natural or legal person controlling a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State.

. The competent authorities shall cooperate closely. They shall provide one another with any information which is essential or relevant for the exercise. In this regard, the competent authorities shall communicate to each other on request all relevant information and shall communicate on their own initiative all essential information.

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* OJ L 375, 31.12.1985, p.3."

5. The following Article 20a is inserted

"Article 20a

1. The Commission may request the competent authorities to provide it promptly with copies of the documents on which they have based their assessment in relation to Articles 19, 19a and 20 as well as the reasons given to the proposed acquirer.

2. The information provided to the Commission shall be covered by the obligation of professional secrecy and shall be used by it only for the purposes of determining whether a Member State has fulfilled its obligations under this Directive.

All persons working for or who have worked for the Commission, as well as auditors or experts acting on behalf of the Commission shall be bound by the obligation of professional secrecy.

3. No confidential information which the Commission may receive by virtue of paragraph 1 may be divulged to any person or authority whatsoever, except in summary or collective form, such that individual proposed acquirers or the reinsurance undertakings concerned cannot be identified."

6. In Article 21 the figure '33%' is replaced by the figure '30%'.

7. In Article 56 the following point (f) is added:

"(f) specifications and clarifications of the criteria set out in Article 19a(1), in order to take account of future developments and to ensure the uniform application of this Directive."

Article 5

Amendment to Directive 2006/48/EC

Directive 2006/48/EC is amended as follows:

1. In Article 12(1) the second subparagraph is replaced by the following:

In determining whether the criteria for a qualifying holding in the context of this Article are fulfilled , the voting rights referred to in Articles 9 and 10 of Directive 2004/109/EC of the European Parliament and of the Council*shall be taken into consideration

_____

* OJ L 390, 31.12.2004, p. 38."

2. Article 19 is amended as follows:

(a) Paragraphs 1 and 2 are replaced by the following

"1. Member States shall require any natural or legal person or such persons acting in concert who have taken a decision to either acquire, directly or indirectly, a qualifying holding in a credit institution or to, directly or indirectly, further increase such a qualifying holding as a result of which the proportion of the voting rights or of the capital held would reach or exceed 20%, 30% or 50% or so that the credit institution would become its subsidiary, hereinafter “proposed acquirer”, to notify in writing to the competent authorities of the credit institution in which they are seeking to acquire a qualifying holding or to increase such a qualifying holding the size of the intended holding and relevant information as referred to in Article 19a(1).

2. The competent authorities shall, promptly and in any case within two working days upon receipt of the notification required under paragraph 1, acknowledge receipt thereof in writing to the proposed acquirer.

The competent authorities shall have a maximum of thirty working days from the date of the written acknowledgement of receipt, hereinafter "assessment period", to oppose the proposal of the proposed acquirer.

(b) The following paragraphs 3 to 7 are added:

3. The competent authorities may, if necessary, request further information within five working days of the date of the acknowledgement of receipt referred to in the first subparagraph of paragraph 2, in order to carry out the assessment referred to in Article 19a(1).

This request for further information shall be made in writing and shall specify the additional pieces of information needed.

The information requested shall be provided to the competent authorities within ten working days. For the period between the date of request for information by the competent authorities and the receipt of a response thereto by the proposed acquirer, the assessment period shall be interrupted. The interruption shall not exceed ten working days. Any further requests for information by the competent authorities may not result in an interruption of the assessment period .

4. If the competent authorities, upon completion of their assessment, decide to oppose the proposed acquisition or the proposed increase of holding, they shall, within two working days, and not going beyond the period mentioned in Art. 19 (2) second subparagraph, inform the proposed acquirer in writing and provide the reasons for the decision.

5. If the competent authorities do not oppose within the assessment period in writing the proposed acquisition or increase of holding referred to in Article 19(1), the proposed acquisition or increase of holding shall be deemed to be approved. The competent authorities shall inform the proposed acquirer about the date of the expiry of the assessment period at the time of acknowledgement referred to in paragraph 2 and, if applicable, at the time of the request for further information referred to in paragraph 3.

6. The competent authorities may, in the following cases, extend the assessment period to fifty working days:

(a) if the proposed acquirer is regulated outside the Community and there are, in the third country concerned, legal impediments to the transfer of the necessary information;

(b) in the case of an assessment under Article 143.

7. The competent authorities may fix a maximum period for the completion of the proposed acquisition or the increase of holding.

"

3. The following Articles 19a 19b and 19c are inserted:

"Article 19a

1. In assessing the notification provided for in Article 19(1) and the information referred to in Article 19(3), the competent authorities shall, having regard to the likely influence of the proposed acquirer on the credit institution, assess the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following criteria:

(a) the reputation of the proposed acquirer;

(b) the reputation and experience of any person who will direct the business of the credit institution as a result of the proposed acquisition;

(c) the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the credit institution in which the acquisition is sought;

(d) whether the credit institution will be able to meet and continue to meet its obligations under this Directive and any applicable sectoral rules within the meaning of Article 2(7) of Directive 2002/87/EC following the proposed acquisition including, in particular, the requirements of Article 12(3) and 22 of this Directive;

(e) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of Directive 2005/60/EC of the European Parliament and of the Council* is being or has been committed or attempted, or that the proposed acquisition could increase the risk of such conduct.

2. The competent authorities may oppose the proposed acquisition only if they find that the criteria set out in paragraph 1 are not met or if the information provided by the proposed acquirer is incomplete.

3. Member States shall neither impose any prior conditions in respect of the level of shareholding that must be acquired nor examine the acquisition in terms of the economic needs of the market.

4. Member States shall make publicly available a list specifying the information necessary to make the assessment under paragraph 1.

The information required shall be proportionate and adapted to the nature of the proposed acquisition or increase of holding.

Member States shall not require information that is not relevant for a prudential assessment.

5. Where two or more proposals to acquire or increase qualifying shareholdings in the same credit institution have been notified to the competent authority, the latter shall treat the proposed acquirers in a non-discriminatory manner.

Article 19b

In addition to Articles 19 and 19a and unless specified otherwise, the assessment of the acquisition in accordance with Article 19a(1) shall be subject to Article 129(3) if the proposed acquirer is one of the following:

(1) a credit institution, an assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or management company within the meaning of Article 1a(2) of Council Directive 85/611/EEC**, hereinafter "UCITS management company", authorised in another Member State;

(2) the parent undertaking of a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State;

(3) a natural or legal person controlling a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State.

Article 19c

1. The Commission may request the competent authorities to provide it promptly with copies of the documents on which they have based their assessment in relation to Articles 19, 19a and 19b as well as the reasons given to the proposed acquirer.

2. The information provided to the Commission shall be covered by the obligation of professional secrecy and shall be used only for the purposes of determining whether a Member State has fulfilled its obligations under this Directive.

All persons working for or who have worked for the Commission, as well as auditors or experts acting on behalf of the Commission shall be bound by the obligation of professional secrecy.

3. Confidential information which the Commission may receive by virtue of paragraph 1 shall not be divulged to any person or authority whatsoever, except in summary or collective form, such that individual proposed acquirers or the credit institutions concerned cannot be identified. "

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* OJ L 309, 25.11.2005, p.15.

** OJ L 375, 31.12.1985, p.3."

4. In Article 20 the figure "33%" is replaced by the figure "30%".

5. In Article 129, the following paragraph 3 is added:

"3. In the case of an assessment in accordance with Article 19a(1), the competent authority, which has authorised the credit institution in which the proposed acquisition is sought shall consult the competent authority of the proposed acquirer..

A decision by the competent authority which has authorised the credit institution in which the proposed acquisition is sought shall indicate any views or reservations on the part expressed by of the competent authority of the acquirer."

6. In Article 150(2), the following point (f) is added :

"(f) specification and clarification of the criteria set out in Article 19a(1), in order to take account of future developments and to ensure the uniform application of this Directive."

Article 6

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by […][11] at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 7

Entry into force

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Union*.

[11] Six months after the entry into force of this Directive.

Article 8

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*