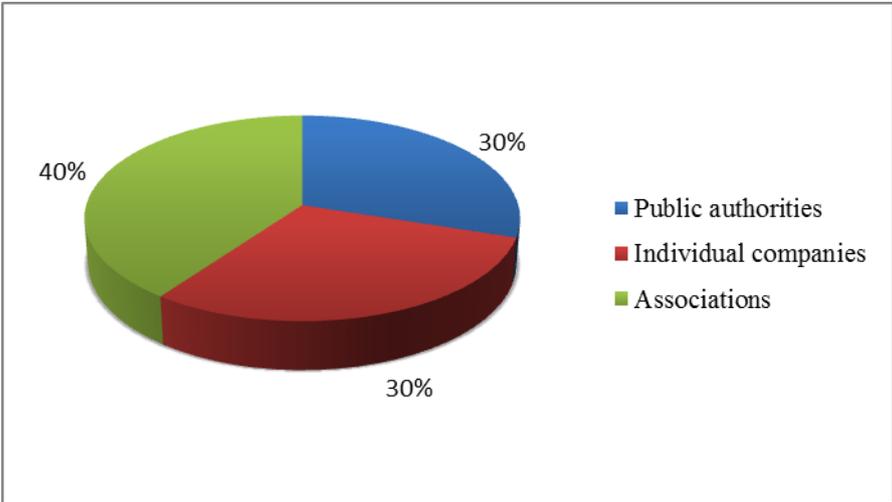


FEEDBACK STATEMENT ON THE PUBLIC CONSULTATION ON THE APPLICATION OF DIRECTIVE 2007/44 EC AS REGARDS ACQUISITIONS AND INCREASE OF HOLDINGS IN THE FINANCIAL SECTOR

1. INTRODUCTION

On 8 December 2011, the European Commission published a consultation document on the application of Directive 2007/44 EC as regards acquisitions and increase of holdings in the financial sector ('the Directive') and invited stakeholders to respond by 10 February 2012. The Commission received 10 replies. This document summarises the contributions received.

The public consultation raised interest among a range of different stakeholders. Responses can be categorised as shown in Figure 1.



Of the responses received, 60% were sent by interest representatives registered in the Transparency Register.

2. RESPONSES TO THE PUBLIC CONSULTATION

General comments on the application of the Directive

The majority of respondents indicated that, in general, the Directive has met its objectives and has resulted in a more equal treatment of domestic and cross-border acquisitions of qualifying holdings throughout the EU. Some respondents (two associations and one individual company) expressed the view that the procedure for the prudential assessment laid down in the Directive is too cumbersome. Other respondents (two associations and two individual companies) pointed out that the rules laid down in the Directive are not always consistently applied by competent authorities. Furthermore, some respondents

(two associations and one individual company) were of the opinion that particular aspects of the notification procedure require further clarification.

Comments on the procedure laid down in the Directive

(1) Notification requirement

The majority of respondents shared the view that preliminary contacts between the competent authority and the (potential) acquirer usually take place and that there are no particular problems in this regard.

There was no consensus regarding any need to amend the definition of the notification requirement. While public authorities, in general, were satisfied with the definition, other respondents (three associations) expressed the need for further clarification and harmonization of the definition of a "qualifying holding". Individual respondents also pointed out the following shortcomings of the notification procedure: the procedure is too onerous for intra-group transactions; it should be possible to refer to information already available to the competent authority of the acquirer; and, it is not always clear in which cases notification is required.

Some respondents (three associations and one individual company) suggested further to clarify the definition of "acting in concert", to add a legal definition in the Directive and/or to bring it into line with the definitions used in other EU financial services legislation.

(2) Exemption from the notification requirement

All public authorities considered that the current exemptions are appropriate. Some respondents (two associations) suggested exempting intra-group transactions. Other respondents (two associations) advocated an exemption for securities lending.

(3) Competent authorities

There was no consensus regarding cooperation between competent authorities. The majority of respondents (one public authority and three associations) which provided an answer to this question indicated that there are no specific issues in this field, while the remaining respondents (two public authorities and one individual company) considered that cooperation could be improved.

All public authorities pointed out that the competent authority of the target institution should remain responsible for the prudential assessment of cross-border transactions. An equal number of private sector representatives was in favour of granting more powers to

the competent authority of the acquirer and of a more centralized approach via the group supervisor.

Respondents expressed diverging views regarding the possible involvement of the European Supervisory Authorities ('ESAs') in the prudential assessment of cross-border transactions. The majority of respondents (all public authorities and two associations) were not in favour of increasing the involvement of the ESAs in the assessment procedure. An increase in the involvement by the ESAs was favoured by some private sector representatives.

(4) Time limits and relation to other regulatory procedures

The respondents from public authorities were in favour of extending the time limits, at least for complex cross-border transactions, whereas private sector representatives suggested shortening the time limits, at least when the acquirer is an EU regulated entity and for cases of intra-group transactions.

As regards the interaction between the procedure defined in the Directive and other regulatory procedures, some respondents (one association, one public authority and one individual company) indicated that better links between regulatory procedures could be developed.

Comments on substantial aspects of the prudential assessment

(1) Assessment criteria

Overall, respondents agreed that the assessment criteria are clear and that they are applied in a transparent and consistent manner by the competent authorities. However, one respondent stated that there is a lack of consistency in applying the assessment criteria.

The majority of respondents agreed that – in light of the financial crisis – there might be the need for additional assessment criteria. In particular, most of these respondents supported the introduction of a macroeconomic criterion allowing the assessment of the potential impact of a proposed acquisition on the stability of the financial system. Another respondent recommended including in the Directive a reference to prudential requirements contained in the forthcoming legislation for an EU crisis management framework. Some private sector representatives suggested addressing financial stability concerns through other legislative initiatives. One association indicated that there is no need for an additional assessment criterion.

(2) Required information

The respondents had mixed views as regards the clarification provided in the level 3 guidelines on information requirements. While public authorities and one association indicated that overall the level 3 guidelines provide sufficient clarification of the information required, all private sector representatives expressed the need to further clarify and standardize the information requirements, to reduce the scope of interpretation and/or to make the requirements less burdensome for the acquirer.

A number of respondents (two associations and one individual company) expressed the view that the principle of proportionality is not sufficiently applied by competent authorities. Other respondents (one public authority and one association) indicated that in their view there are no problems with the application of the proportionality principle.

Comments on other issues

(1) Sanctions

The majority of respondents concluded that, in general, there is no need for further harmonization of the sanctioning powers at the disposal of the competent authorities. One association was of the view that the sanctions for non-compliance should be relaxed.

(2) Harmonization

All public authorities stated that the Directive provides sufficient level of harmonization and convergence and is applied uniformly in the EU. One public authority suggested transforming the level 3 guidelines into level 2 legislation. The majority of private sector representatives stressed the need for harmonization of the notification forms to be submitted to the competent authorities. One association supported the replacement of the Directive with a regulation.

(3) Need of similar framework in other legislation in financial sector

There was no clear consensus among the respondents on this question. However, several respondents were in favour of introducing a similar framework into other financial services legislation (e.g. legislation on central counterparties and regulated market operators).