



MARKT/2526/05

NOTE TO THE MEMBERS OF THE EIOPC

Subject: Cross-border consolidation in financial services

Revision of Article 15 of the Life Recast Directive 2002/83/EC and the Third Non-life Directive 92/49/EEC and Articles 19-23 of the Reinsurance Directive – Update on the work in the banking field

The purpose of this note is:

to update EIOPC members on the current ongoing work in the banking sector related to Article 16 of Directive 2000/12/EC (Article 19 CRD). The most recent revised version of Article 19 is annexed to this note. The draft article will **not** be discussed in the meeting, but Member States will be invited to send in their insurance-related comments in writing.

to present to EIOPC' members the way forward for insurance

1. BACKGROUND

On 11 September 2004, the informal ECOFIN Council in Scheveningen discussed the issue of obstacles to cross-border consolidation in the European banking sector. The starting point of the discussion was figures showing a very low level of cross-border consolidation in the banking sector. On that basis, Finance Ministers mandated the Commission to:

- Study possible obstacles to cross-border mergers and acquisitions in the whole financial sector arising not only from different supervisory practices but also from other factors, including legal, fiscal, structural and economic elements;
- Review those parts of the EU Banking Directive (2000/12/EC) that allow Member States to block mergers and acquisitions on prudential grounds.

As a response to these mandates, the European Commission has initiated work along three main paths: supervisory issues, impediments to corporate reorganisation and integration of retail markets. On 8 November 2005, the ECOFIN Council was briefed by the Commission on the work underway and an exchange of views was held. The Presidency adopted the following conclusions:¹

“The Presidency, and all Members of the Council except one:

- *Note the Commission study into the obstacles to cross-border consolidation in the financial services sector and encourages further discussion on these issues in 2006.*
- *Support the Commission’s on-going review of the existing supervisory rules in Article 16 of the Codified Banking Directive (2000/12/EC) and in the corresponding articles of the insurance Directives.*
- *Emphasise the need for consistency across financial services sectors in the prudential rules that apply to mergers and acquisitions “*

Against this background, the Commission Services would like to consult EIOPC on the revision of Article 15 of the Insurance Directives and Articles 19-23 of the Reinsurance Directive.

2. THE BANKING SECTOR

As mentioned, Finance Ministers asked the Commission in September 2004 to review Article 16 of the Banking Directive in order to ensure that the supervisory approval process in place would not unduly block companies from making cross-border acquisitions.

¹ Press release 13678/05 of 8th November 2005, provisional version.

In the Commission's Study on "Cross-border consolidation in the EU financial sector",² the complexity and the laboriousness of the approval procedures of cross-border transactions were identified as a significant obstacle by market participants with experience in M&A. The issue appears to be particularly relevant for the banking sector.

Therefore, the ECOFIN mandate to review article 16 of the Banking Directive is reinforced by the call from market participants for streamlined supervisory rules for mergers and acquisitions in the financial sector, notably through enhanced supervisory convergence and co-operation.

The revision of Article 16 aims at enhancing supervisory convergence by clarifying the process and making it more transparent, encouraging greater co-operation between supervisors, in particular in cross-border situations, and giving the Commission a right to access to documents, in clearly defined circumstances.

The general proposal to review Article 16 was endorsed at the informal meeting of the European Banking Committee (EBC) on 22 March 2005. At this meeting, members also agreed that the Committee of European Banking Supervisors (CEBS) should be asked to provide technical advice on the review of Article 16. This advice was received by the Commission at the end of May 2005. At the EBC meeting on 5 July 2005, the Committee was consulted on the revision of Article 16, including an initial outline of the Commission's proposals for possible revisions to the text. Following this, an EBC Working Group on Cross Border Consolidation was convened and met in Brussels on 5 and 27 October 2005 to discuss in more detail the proposed revision. A revised text was discussed at the EBC meeting in Brussels on 8 November 2005. The EBC broadly supported the approach taken by the Commission while technical issues will be discussed in a further meeting in January 2006.

The Commission announced its intention to table a proposal for a revised Article 15 by mid 2006.

3. THE INSURANCE SECTOR

Provisions that are very similar to Article 16 of Directive 2000/12/EC exist in the Insurance Directives (Articles 15 of Directive 2002/83/EC and Directive 92/49/EEC and Articles 19 – 23 of the recently adopted Reinsurance Directive). In the Securities field, the corresponding provision is found in Article 10 of the Markets in Financial Instruments Directive. In the conclusions of the meeting of 8 November, the ECOFIN Council emphasised the need for consistency across financial services sectors in the prudential rules that apply to mergers and acquisitions.

² Commission Staff Working Document on "Cross-border consolidation in the EU financial sector", SEC(2005) 1398.

Therefore, even though the problems identified might be more relevant for the banking sector, there is a clear merit in ensuring that the cross-sectoral consistency, which exists in the current legislation, is maintained, should the provisions in the Banking Directive be amended.

The Commission Services have already addressed this issue within the Solvency II project. In call for advice no 14, the Commission asked CEIOPS to look further into the fit and proper criteria, including a possible need to revise Article 15 of Directives 2002/83/EC and 92/49/EEC. In CEIOPS' response received by end of October 2005, CEIOPS concluded that a further harmonisation of fit and proper criteria could contribute to a clarification of Article 15.

As far as the revision of Article 15 (and the corresponding rules in the Reinsurance Directive is concerned), the best way forward would seem to be to present one single proposal, amending the Banking Directive, the Recast Life Assurance Directive, the Third Non-life Directive, the Reinsurance Directive and the MiFID Directive. This would ensure full transparency, the largest possible cross-sectoral consistency and avoid any time gaps between the amendment of the provisions in the three different sectors.

It has to be ensured that EIOPC and Member States' insurance experts are properly involved in the drafting process. Issues potentially specific to insurance need to be taken into account in the drafting process. To this end, additional working group meetings may be necessary. The Commission Services encourage Member State to ensure close cooperation between their experts responsible for the different sectors. The level 3 Committees will also clearly have a role to play here.

Question to EIOPC Members

- *Do you have any general comments on the proposed way forward?*

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