



COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMISSION STAFF WORKING DOCUMENT

Accompanying document to the

**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**

**Summary of the
IMPACT ASSESSMENT**

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Summary of the Impact assessment
**PROPOSAL TO REVIEW THE SUPERVISORY ASSESSMENT OF THE ACQUISITION OF
QUALIFYING HOLDINGS IN THE BANKING, INSURANCE AND SECURITIES
SECTORS¹**

This Impact Assessment (“IA”) was part of a review of the supervisory approval process for major shareholdings in the banking, insurance and securities sectors. A number of market participants and Member States have identified that the current rules lack precise criteria and procedures for supervisors when assessing and approving such acquisitions and has thus afforded considerable latitude to the relevant authorities in accepting, discouraging or rejecting a proposed acquisition. These shortcomings have allowed for inconsistent practices by different supervisory authorities. The IA examined how this situation could be addressed and improved.

While providing the context and background on current trends on cross-border consolidation, the IA explains how the supervisory approval process has created, in practice, a potential barrier to cross-border consolidation; an abusive use of the existing provisions may even prevent otherwise economically desirable mergers or acquisitions.

If a financial institution decides to acquire a qualifying shareholding within an institution based in another Member State, then the proposed acquirer needs to notify the supervisor of the target institution. Under the current framework, when the target institution's supervisory authority assesses the "suitability" (used in banking and securities) or "qualifications" (insurance) of the proposed acquirer "to ensure the sound and prudent management" of the target institution in question, the criteria against which the acquisition should be reviewed are not elaborated upon. There is, therefore, excessive scope for different interpretations by the target supervisors, hence, lack of legal certainty for market participants.

The Commission's aim is to ensure that financial institutions that want to access markets within the EU are able to pursue their strategy without having to surmount unjustified obstacles. The IA describes the problems of the existing rules in detail and presents a list of several non-legislative and legislative tools that could be used to address these shortcomings.

It has been concluded that an amendment to the existing Directives by means of targeted changes within the current framework is the preferred policy option. The main elements of a Commission Draft Proposal for an amending directive are also presented therein, along with a section on monitoring and evaluating these changes.

¹ Article 19 of Directive 2006/48/EC relating to the taking up and pursuit of the business of credit institutions, Articles 15 of Directive 2002/83/EC of 5 November 2002 concerning life assurance and of Directive 92/49/EEC of 18 June 1992 (third non-life insurance Directive), Articles 19-23 of Directive 2005/68/EC of 16 November 2005 on reinsurance and Article 10 of Directive 2004/39/EC of 21 April 2004 on markets in financial instruments.