

# Procedure file

Basic information	
<p>COD - Ordinary legislative procedure (ex-codecision procedure) Directive</p> <p>2006/0166(COD)</p>	Procedure completed
<p>Prudential assessment of acquisitions and increase of holdings in the financial sector</p> <p>Amending Directive 2002/83/EC <a href="#">2000/0162(COD)</a> Amending Directive 2004/39/EC <a href="#">2002/0269(COD)</a> Amending Directive 2005/68/EC <a href="#">2004/0097(COD)</a> Amending Directive 2006/48/EC <a href="#">2004/0155(COD)</a></p> <p>Subject</p> <p>2.50.03 Securities and financial markets, stock exchange, CIUTS, investments 2.50.04 Banks and credit 2.50.05 Insurance, pension funds 2.50.10 Financial supervision</p>	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>ECON</b> Economic and Monetary Affairs		15/05/2006
		ALDE <a href="#">KLINZ Wolf</a>	
	Committee for opinion	Rapporteur for opinion	Appointed
	<b>IMCO</b> Internal Market and Consumer Protection	The committee decided not to give an opinion.	
	<b>JURI</b> Legal Affairs	The committee decided not to give an opinion.	
Council of the European Union	Council configuration	Meeting	Date
	<a href="#">Environment</a>	<a href="#">2812</a>	28/06/2007
	<a href="#">Economic and Financial Affairs ECOFIN</a>	<a href="#">2792</a>	27/03/2007
European Commission	Commission DG	Commissioner	
	<a href="#">Financial Stability, Financial Services and Capital Markets Union</a>	MCCREEVY Charlie	

Key events			
12/09/2006	Legislative proposal published	<a href="#">COM(2006)0507</a>	Summary
12/10/2006	Committee referral announced in Parliament, 1st reading		
24/01/2007	Vote in committee, 1st reading		Summary
05/02/2007	Committee report tabled for plenary, 1st reading	<a href="#">A6-0027/2007</a>	

12/03/2007	Debate in Parliament		
13/03/2007	Decision by Parliament, 1st reading	<a href="#">T6-0061/2007</a>	Summary
28/06/2007	Act adopted by Council after Parliament's 1st reading		
04/09/2007	End of procedure in Parliament		
05/09/2007	Final act signed		
21/09/2007	Final act published in Official Journal		

### Technical information

Procedure reference	2006/0166(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
	Amending Directive 2002/83/EC <a href="#">2000/0162(COD)</a> Amending Directive 2004/39/EC <a href="#">2002/0269(COD)</a> Amending Directive 2005/68/EC <a href="#">2004/0097(COD)</a> Amending Directive 2006/48/EC <a href="#">2004/0155(COD)</a>
Legal basis	EC Treaty (after Amsterdam) EC 055; EC Treaty (after Amsterdam) EC 047-p2
Stage reached in procedure	Procedure completed
Committee dossier	ECON/6/40395

### Documentation gateway

Legislative proposal	<a href="#">COM(2006)0507</a>	12/09/2006	EC	Summary
Document attached to the procedure	<a href="#">SEC(2006)1117</a>	12/09/2006	EC	
Document attached to the procedure	<a href="#">SEC(2006)1118</a>	12/09/2006	EC	
Committee draft report	<a href="#">PE380.776</a>	09/11/2006	EP	
Amendments tabled in committee	<a href="#">PE382.342</a>	07/12/2006	EP	
European Central Bank: opinion, guideline, report	<a href="#">CON/2006/0060</a> <a href="#">OJ C 027 07.02.2007, p. 0001</a>	18/12/2006	ECB	Summary
Economic and Social Committee: opinion, report	<a href="#">CES0088/2007</a>	17/01/2007	ESC	
Committee report tabled for plenary, 1st reading/single reading	<a href="#">A6-0027/2007</a>	05/02/2007	EP	
Text adopted by Parliament, 1st reading/single reading	<a href="#">T6-0061/2007</a>	13/03/2007	EP	Summary
Commission response to text adopted in plenary	SP(2007)1901/2	03/05/2007	EC	
Draft final act	<a href="#">03610/2007/LEX</a>	05/09/2007	CSL	
Follow-up document	COM(2013)0064	11/02/2013	EC	Summary

### Additional information

National parliaments	<a href="#">IPEX</a>
European Commission	<a href="#">EUR-Lex</a>

<b>Final act</b>
<a href="#">Directive 2007/44</a> <a href="#">OJ L 247 21.09.2007, p. 0001</a> Summary

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

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**PURPOSE** : to 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, and to amend Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC.

**PROPOSED ACT** : Directive of the European Parliament and of the Council.

**CONTEXT**: the current system of prudential supervision in the EU 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.

The existing legal framework 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.

**CONTENT** : 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 proposal involves 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.

The main points are as follows:

- the amended Directives will 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 in advance 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 will 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 EU. 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 ongoing compliance with the relevant sectoral Directives and the risk of money laundering and terrorism financing;
- the proposal reduces the assessment period from three months to 30 days;
- the following existing Directives are amended: the Banking Directive (2006/48/EC), the Third Non-life Insurance Directive (92/49/EEC), the Recast Life Assurance Directive (2002/83/EC), the Reinsurance Directive (2005/68/EC), and Directive 2006/48/EC on markets in financial instruments.

Lastly, the Commission states that it will consider urgently whether it is necessary and possible to extend the procedures and criteria established in this proposal to regulated markets.

## 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.

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

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The committee adopted the report by Wolf KLINZ (ALDE, DE) amending - under the 1st reading of the codecision procedure - the proposed directive amending procedural rules and evaluation criteria for the prudential assessment of acquisitions or increased shareholdings in the financial sector. The modifications laid down in the directive will apply to five different directives governing insurance, assurance, investment firms, reinsurance and banking. In its report, the committee proposed amendments to a number of key areas:

- whereas the Commission proposed that supervisory authorities should take their decision within 30 working days of being notified of a proposed acquisition, the committee called for a time limit of 47 working days (or 77 as opposed to 50 for non-EU acquirers). MEPs argued that the authorities needed to have enough time to evaluate all documents in order to take a decision, particularly as the same time-frame would apply to cross-border and cross-sectoral cases;
- supervisory authorities should have 10 working days in which to request further information from the company concerned, rather than the 5 days proposed by the Commission. The committee said that, by setting a longer period for requesting additional information, the authorities would have more time to analyse the information needed for a proper assessment before stopping the clock;
- it should be clearly stated that national authorities may not impose requirements for notification to and approval by the competent authorities of direct or indirect acquisitions of voting rights or capital that are more stringent than those set out in the directives;
- assessment of the reputation of the acquirer should be facilitated by it being a business regulated within the EU;
- the committee specified that the authorities should publish their reasons for opposing or authorising an acquisition;
- whereas the Commission was proposing that it should be able to request the supervisory authorities to provide it with copies of the documents on which their decision is based, the committee amended this clause to ensure that the Commission would adopt the more usual route of requesting information from the Member State concerned in order to assess, if necessary, whether the directive is being correctly applied;
- lastly, the committee adopted a number of amendments aimed at clarifying the extent to which the obligation to refer a proposed acquisition applies to investment management companies, i.e. in cases where acquired shares are kept for a very short time or voting rights are not exercised.

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

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The European Parliament adopted a resolution drafted by Wolf KLINZ (ALDE, DE) amending the proposed directive amending procedural rules and evaluation criteria for the prudential assessment of acquisitions or increased shareholdings in the financial sector.

The main amendments are as follows:

- where the Commission proposed that supervisory authorities should take their decision within 30 working days of being notified of a proposed acquisition, the new text sets the limit at 60 working days;
- the relevant supervisory authority may interrupt this period to ask for necessary additional information from the proposed acquirer, as long as it does so NO more than 50 days into the period; the interruption can be for up to 20 working days (or 30 in the case of non-EU acquirers or those not already subject to financial supervision under EU directives);
- Member States may not impose requirements for notification to and approval by the competent authorities of direct or indirect acquisitions of voting rights or capital that are more stringent than those set out in the Directive;
- the competent authorities may extend the assessment period if the proposed acquirer is situated or regulated outside the Community; or if the proposed acquirer is a natural or legal person and is not subject to supervision under this or other Directives;
- if the competent authorities decide to oppose the proposed acquisition and an appropriate statement of the reasons for the decision may be made accessible to the public at the request of the proposed acquirer. This will not prevent a Member State from allowing the competent authority to make this disclosure without the request of the proposed acquirer;
- two years after implementing the Directive, the Commission will review and report on its application and submit the report to the European Parliament and the Council, together with any appropriate proposals;
- if several Member States are involved, there should be maximum transparency among them if views diverge;
- whereas the Commission was proposing that it should be able to request the supervisory authorities to provide it with copies of the documents on which their decision is based, Parliament amended this clause. Member States must cooperate with the Commission by providing it, once the assessment procedure has been completed, with information pertaining to prudential assessments carried out by their competent authorities where such information is requested for the sole purpose of determining whether Member States have infringed their obligations under the Directive.

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

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**PURPOSE:** to improve the legal certainty, clarity and transparency of the supervisory approval process with regard to acquisitions and increases of shareholdings in the banking, insurance and securities sectors.

**LEGISLATIVE ACT:** Directive 2007/44/EC of the European Parliament and of the Council amending Council Directive 92/49/EEC and Directive 2002/83/EC, 2004/39/EC, 2005/39/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector.

**BACKGROUND:** the current system of prudential supervision in the EU 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.

In cases of acquisition, the existing legal framework has been designed to regulate cases where an acquirer wishes either to acquire a holding or increase a holding in a financial institution or investment firm. The competent national authorities are able to oppose an acquisition if, in view of the need to ensure sound and prudent management of the institutions, they are not satisfied as to the suitability of the acquirer. The current legal framework though 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.

**CONTENT:** the purpose of this Directive, therefore, is the establishment of harmonised procedural rules and assessment criteria throughout the Community with regard to acquisitions and increases of shareholdings in the banking, insurance and securities sectors.

This amending Directive 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 new approach curtails, significantly, authorities' discretion to make a prudential assessment. In addition deadlines have been reduced and any 'stopping of the clock' by the authorities is limited to one occasion and subject to clear conditions. The Member States are expected to apply a set of prudential criteria for supervisory assessments. For example: the reputation of the proposed acquirer; the reputation and experience of any person that may run the resulting institution or company; the financial soundness of the proposed acquirer; on-going compliance with relevant Directives; and the level of risk as regards money laundering and terrorist financing.

To this end, the Directive will amend the following five Directives that regulate situations in which a natural or legal person has taken a decision to acquire or increase a qualifying holding in a credit institution, assurance, insurance or re-insurance undertaking or an investment firm:

- 92/49/EEC, on direct insurance other than life assurance (3rd non-life insurance Directive);
- 2002/83/EC, on life assurance;
- 2004/39/EC on markets in financial instruments;
- 2005/68/EC on reinsurance;
- 2006/48/EC relating to the taking up and pursuit of the business of credit institutions.

By 21 March 2011, the Commission shall, in cooperation with the Member States, review the application of this Directive and submit a report to the European Parliament and the Council, together with any appropriate proposals.

**ENTRY INTO FORCE:** 21 September 2007.

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

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In accordance with the requirements of the Qualifying Holdings Directive (Directive 2007/44/EC amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC on prudential assessment of acquisitions and increase of holdings in the financial sector) the Commission presents a report describing the impact of and compliance with the Directive, and identifies the main issues emerging from the application of the Directive.

Impact and compliance: following a public consultation held by the Commission, responses indicate that the Directive contributed to the reduction of barriers for acquisitions in the financial sector and that domestic and cross-border transactions are treated equally across the EU. Most responses confirm that the Directive has been conducive in reaching a common understanding on the prudential assessment of acquisitions in the financial sector across Europe and to a level playing field. No substantial compliance issue has emerged in relation to the application of the legal framework in Member States. However, the report closely examines emerging minor issues.

Emerging issues: these include the following:

- there are concerns as regards the legal certainty of the definition of the notification requirement and its application by national supervisors which can potentially cause inconsistent application among the Member States;
- further action is needed to ensure coherent application of the proportionality principle;
- some assessment criteria laid down in the Directive need to be further clarified, particularly with regard to documents required by national supervisory authorities and whether the solvency of the proposed acquirer should be assessed;
- there are inconsistencies with regard to application of the provisions on time limits;
- diverging practices among Member States as regards conditional approvals of the acquisitions have been observed;
- cooperation between different (sectoral and/or national) supervisory authorities is perceived in some cases as formalistic and time-consuming;
- the Directive does not contain an explicit assessment criterion allowing competent authorities to assess the impact of the proposed acquisition on the stability of the financial system.

The Commission discusses ways of rectifying shortcomings, suggesting, amongst other things:

- asking the ESAs to update the 3L3 guidelines, and working with national authorities and ESMA with a view to developing guidance to clarify certain rules;
- carrying out an analysis in the course of 2013 assessing the different options regarding incorporating financial stability aspects more explicitly in the assessment process, perhaps through the introduction of a resolvability assessment before transactions take place. A similar legal framework for the assessment of acquisitions and increase of holdings could also be introduced for regulated markets, as defined in [MiFID](#) (Markets in Financial Instruments Directive).

All interested parties are invited to submit their views on the review by 31 March 2013.