

## I

(Resolutions, recommendations, guidelines and opinions)

## OPINIONS

## EUROPEAN CENTRAL BANK

## OPINION OF THE EUROPEAN CENTRAL BANK

of 18 December 2006

**on a proposal for a Directive amending certain Community directives as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of shareholdings in the financial sector**

(CON/2006/60)

(2007/C 27/01)

**Introduction and legal basis**

On 11 October 2006 the European Central Bank (ECB) received a request from the Council of the European Union for an opinion on a proposal for a Directive of the European Parliament and of the Council amending Council Directive 92/49/EEC<sup>(1)</sup> and Directives 2002/83/EC<sup>(2)</sup>, 2004/39/EC<sup>(3)</sup>, 2005/68/EC<sup>(4)</sup> and 2006/48/EC<sup>(5)</sup> as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of shareholdings in the financial sector<sup>(6)</sup> (hereinafter the 'proposed directive').

The ECB's competence to deliver an opinion is based on the first indent of Article 105(4) of the Treaty establishing the European Community, in conjunction with Article 105(5) of the Treaty. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

**General observations**

1.1 The ECB broadly 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.

<sup>(1)</sup> 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) (OJ L 228, 11.8.1992, p. 1). Directive as last amended by Directive 2005/68/EC (OJ L 323, 9.12.2005, p. 1).

<sup>(2)</sup> Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance (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).

<sup>(3)</sup> 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 (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).

<sup>(4)</sup> 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 (OJ L 323, 9.12.2005, p. 1).

<sup>(5)</sup> Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast) (OJ L 177, 30.6.2006, p. 1) (hereinafter the 'Banking Directive').

<sup>(6)</sup> COM(2006) 507 final.

- 1.2 In particular, the ECB supports the following elements of the proposed directive. *First*, the proposed specification of the prudential assessment criteria is expected to foster closer convergence of supervisory practices, provide increased clarity for proposed acquirers and enhance legal certainty for all stakeholders. *Second*, the new requirement for supervisory authorities to make publicly available a list of the necessary information to be submitted at the point of notification will also contribute to greater transparency for proposed acquirers. *Third*, the new requirement for supervisory authorities to inform the applicant in writing of the reasons for a negative decision will further reinforce supervisory transparency. *Fourth*, the strengthening of the requirements for 'home-host' (?) cooperation will contribute to a sound prudential assessment reflecting the knowledge of both home and host supervisory authorities.
- 1.3 The approval of acquisitions and increases of qualifying holdings by the competent authority of the financial institution concerned is closely related to the responsibilities of the same supervisor to authorise the respective institution to take up its business, to ensure its safety and soundness on an ongoing basis, and to take possible action in situations of financial distress. From a financial stability perspective, it is therefore important to ensure 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. Moreover, authorisation and approval requirements should be as consistent as possible to pre-empt any scope for regulatory arbitrage. This is of particular importance when the proposed acquirer has its head office in a third country or is not a regulated entity.
- 1.4 Furthermore, in view of the wide range of transactions in qualifying holdings that would be covered by the proposed directive (including minority and majority shareholdings, regulated and non-regulated acquirers, and acquirers from within and outside the EU), the criteria and procedures laid down in the proposed directive need to enable the supervisory authorities to perform a sound prudential assessment with regard to transactions of varying degrees of complexity.
- 1.5 Against this backdrop, certain aspects of the proposed directive raise concerns which are set out in more detail below. The specific observations contained in this opinion as well as the drafting proposals focus on the provisions of the proposed directive which amend the Banking Directive <sup>(8)</sup>. However, the underlying considerations apply equally to the other regulated entities in the financial sector within the scope of the proposed directive. Therefore, the specific observations and proposals should apply *mutatis mutandis* to the Community directives other than the Banking Directive which the proposed directive amends, also with a view to ensuring cross-sectoral consistency.

## Specific observations

### 2. *The proposed prudential assessment criteria*

- 2.1 The ECB considers that the proposed assessment criteria should be more closely aligned with the criteria considered during the authorisation process <sup>(9)</sup>. The proposed directive would introduce important differences in this respect. This gives rise to prudential concerns as it may permit legal or natural persons wishing to conduct banking business to circumvent stricter authorisation requirements by acquiring a credit institution. Moreover, it is important to ensure, not only in the authorisation process but also in the context of approving changes in qualifying holdings in a credit institution that key prerequisites for the safety and soundness of the target institution and its effective supervision are adequately taken into account, as it may not be possible to address them effectively at a later stage in the supervisory process.

(7) I.e. the cooperation between the competent authority which has authorised the target entity and the competent authority of the proposed acquirer.

(8) See Article 5 of the proposed directive.

(9) In its 'Core Principles Methodology', updated in October 2006 and available on the Bank for International Settlements website at [www.bis.org](http://www.bis.org), the Basel Committee on Banking Supervision (BCBS) emphasises that supervisory authorities have the power to reject any proposal for a change in significant ownership, if they do not meet criteria comparable to those used for approving new banks (see Principle 4, Essential criterion 3).

- 2.2 One substantial difference relates to the general scope of the assessment. In the authorisation process under the current Banking Directive, supervisory authorities consider the suitability of the prospective shareholders or members by taking into account the need to ensure the sound and prudent management of a credit institution <sup>(10)</sup>. Similarly, as regards acquisitions or increases of qualifying holdings, the Banking Directive provides that the competent authorities may oppose the plan of a proposed acquirer, if, in view of the need to ensure sound and prudent management of the credit institution, they are not satisfied as to the suitability of the person concerned <sup>(11)</sup>. Under the proposed directive, however, supervisory authorities would only assess the suitability of the proposed acquirer and the financial soundness of the proposed acquisition having regard to the likely influence of the proposed acquirer on the institution. The ECB suggests that the proposed directive should be amended to require supervisory authorities to ensure, also in the context of acquisitions or increases of qualifying holdings, that the sound and prudent management of the target institution will not be endangered.
- 2.3 Another concern relates to the provision of the proposed directive pursuant to which supervisory authorities may oppose a proposed acquisition 'only if they find that the [prudential assessment] criteria ... are not met ...' <sup>(12)</sup>. By contrast, in the case of the authorisation process, the competent authorities may refuse to grant an authorisation if 'they are not satisfied' as to the suitability of the shareholders or members <sup>(13)</sup>. Especially in more complex cases, this new burden of proof placed on supervisory authorities as regards the assessment of acquisitions or increases of qualifying holdings might lead to undesired results, for example where supervisory authorities could be required to approve a transaction despite being unconvinced that the prudential assessment criteria are met. As a consequence, the ECB suggests amending the proposed directive to remedy this concern.
- 2.4 Furthermore, it should be ensured that the effective supervision of a target institution cannot be hampered by the group of which the target institution would form part as a result of the proposed acquisition having an insufficiently transparent structure. The requirements for obtaining authorisation for the taking up of the business of credit institutions provide that the competent authorities may only grant authorisation if close links existing between the credit institution and other natural or legal persons do not prevent the effective exercise of their supervisory functions <sup>(14)</sup>. The ECB considers that a similar requirement regarding the transparency of the group structure should also be included as regards the supervisory approval of acquisitions or increases of qualifying holdings in a credit institution, and proposes to include an additional criterion to this effect in the proposed directive's list of prudential assessment criteria <sup>(15)</sup>.
- 2.5 In situations where the target credit institution, as a result of the proposed acquisition, would become part of a group having its head office outside the EU, the ECB would like to stress the need for: (i) an appropriate supervision of the parent company in the third country concerned; and (ii) sufficient comfort from the competent authority of the third country regarding its ability and willingness to cooperate satisfactorily with the supervisory authority of the target institution. Given the importance of effective consolidated supervision of banking groups and adequate home-host cooperation for effective banking supervision <sup>(16)</sup> it is indispensable to ascertain at the point an acquisition or increase of a qualifying holding in an EU credit institution is approved that there are no impediments in this respect in the third country concerned. Consequently, the ECB considers that a corresponding specific requirement should be included within the list of proposed assessment criteria.
- 2.6 The proposed directive provides that 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.' <sup>(17)</sup>. This prohibition reflects consistent case-law of the Court of

<sup>(10)</sup> Article 12(2) of the Banking Directive.

<sup>(11)</sup> The second paragraph of Article 19(1) of the Banking Directive.

<sup>(12)</sup> The proposed new Article 19a(2) of the Banking Directive.

<sup>(13)</sup> Article 12(2) of the Banking Directive.

<sup>(14)</sup> Article 12(3) of the Banking Directive.

<sup>(15)</sup> In its 'Core Principles for Effective Banking Supervision', updated in October 2006 and also available at [www.bis.org](http://www.bis.org), the BCBS highlights the importance of assessing the ownership structure and governance of the bank and its wider group during the licensing process (Principle 3) and of confirming during the review of major acquisitions that corporate affiliations or structures do not expose the bank to undue risks or hinder effective supervision (Principle 5).

<sup>(16)</sup> See in this respect the BCBS's 'Core Principles for Effective Banking Supervision' and in particular Principles 24 and 25.

<sup>(17)</sup> The proposed new Article 19a(3) of the Banking Directive.

Justice<sup>(18)</sup> under which national measures must be considered as restrictions on the free movement of capital if they are likely to prevent or limit the acquisition of shares in the undertakings concerned or to deter investors of other Member States from investing in their capital<sup>(19)</sup>, unless they can be justified on the grounds set out in Article 58 of the Treaty or under certain conditions by overriding reasons in the general interest<sup>(20)</sup>. In this respect, however, the Treaty contains a specific carve-out referring to prudential measures<sup>(21)</sup>, provided that these exceptions do not constitute a means of arbitrary discrimination or a disguised restriction on the free movement of capital<sup>(22)</sup>. Indeed, under exceptional circumstances, the proper functioning of the target institution could be impeded by a conflict of large shareholders, each of whose shareholdings is large enough to block decisions but insufficient to give control of the institution. Such an ownership structure could impair the management of the institution, with possible negative implications for its effective supervision. From a prudential perspective it would therefore be important to retain adequate safeguards against the emergence of such precarious ownership structures already at the point when changes in qualifying holdings in the credit institution are approved. Against this background, the proposed directive should be amended to enable supervisory authorities to oppose a proposed acquisition if they are not satisfied that, having regard to the likely influence of the acquirer on the credit institution, the target institution's corporate governance arrangements are sufficiently robust to prevent a potential deadlock in its decision-making processes following the proposed acquisition. The introduction of this additional criterion would also make it necessary to delete from the proposed directive the abovementioned provision prohibiting imposition of any prior conditions in respect of the level of shareholding that must be acquired<sup>(23)</sup>.

- 2.7 Some of the assessment criteria in the proposed directive deserve further clarification. In particular the ECB would see benefits in stating explicitly that the target institution, following an acquisition or increase of qualifying holdings, is expected to comply and continue to comply with all applicable prudential requirements. The ECB therefore proposes that the respective assessment criterion<sup>(24)</sup> should be amended accordingly. Furthermore, the competent authorities' assessment should not be confined to determining whether there are reasonable grounds to suspect money laundering or terrorist financing, but should also cover any other serious criminal offence<sup>(25)</sup>.
- 2.8 Lastly, the ECB sees merit in clarifying that supervisory authorities, when deciding to approve a proposed acquisition or increase of a qualifying holding, may take into account commitments made by the proposed acquirer to ensure that the target institution is able to comply with the prudential assessment criteria. The commitments should be based on legally binding obligations. In all cases, minimum capital requirements should be met at the time of acquisition of the qualifying holding. The purpose of specifying this practice in the proposed directive would be to enable supervisory authorities to approve transactions that they would otherwise be obliged to reject in the absence of such commitments. It is noted in this respect that the practice of conditional approval, which is expressly provided for in the Banking Directive in the context of authorisation procedures<sup>(26)</sup>, would also contribute to further aligning the procedures for granting authorisation to the taking up of the business of credit institutions and the procedures applicable to acquisitions or increases of holdings.

### 3. Proposed time limits for supervisory assessment

- 3.1 In principle, the ECB considers that procedural measures to enhance the supervisory approval process should not endanger underlying prudential objectives. The time limits for the assessment period for

<sup>(18)</sup> See Commission Communication COM(2005) 4080 of 21 October 2005 on intra-EU investment in the financial services' sector (OJ C 293, 25.11.2005, p. 2).

<sup>(19)</sup> Joined Cases C-282/04 and C-283/04 *Commission v Kingdom of the Netherlands* [2006] ECR I-0000, paragraph 20. See also Case C-98-01 *Commission v United Kingdom* [2003] ECR I-4641, paragraph 44, Case C-463/00 *Commission v Kingdom of Spain* [2003] ECR I-4581, paragraph 57 and Case C-174/04 *Commission v Italian Republic* [2005] ECR I-4933, paragraph 31.

<sup>(20)</sup> Joined cases C-282/04 and C-283/04 *Commission v Kingdom of the Netherlands*, paragraph 32.

<sup>(21)</sup> Article 58(1)(b) of the Treaty.

<sup>(22)</sup> Article 58(3) of the Treaty.

<sup>(23)</sup> The proposed new Article 19a(3) of the Banking Directive.

<sup>(24)</sup> The proposed new Article 19a(1)(d) of the Banking Directive.

<sup>(25)</sup> The proposed new Article 19a(1)(e) of the Banking Directive.

<sup>(26)</sup> Article 17(1) of the Banking Directive provides that 'The competent authorities may withdraw the authorisation granted to a credit institution only where such an institution: ... (c) no longer fulfils the conditions under which authorisation was granted'.

acquisitions and increases of shareholdings <sup>(27)</sup> should therefore first and foremost ensure that the supervisory authorities can take a proper and reasoned decision. In particular, if time limits were unduly restrictive there is a risk that supervisory authorities would be obliged to approve applications even if they had not had the time to conduct a proper analysis, especially in more complex cases. This would adversely affect the credibility and quality of the assessment decisions, which could also have negative effects for financial stability.

- 3.2 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 with a view to fully taking into account the professional experience of the competent authorities. The ECB notes in this respect that the supervisory authorities in all financial sectors have expressed serious concerns <sup>(28)</sup> regarding: (i) the proposed substantial shortening of the overall timelines for assessment from the current period of approximately sixty-five working days to thirty working days; and (ii) the proposal that the assessment period would begin to run before all necessary information has been received <sup>(29)</sup>. Against this background, the ECB would recommend reconsidering the proposed timelines for the overall assessment.
- 3.3 Furthermore, the proposed maximum timelines for supervisory authorities to request additional information from proposed acquirers and for the proposed acquirers to provide such information should be extended. Especially in cases involving large and complex institutions, requiring substantial supervisory information-sharing (possibly involving authorities from third countries) or relating to proposed acquirers who are not subject to prudential supervision, it is typically not feasible to assess properly the need for additional information within a period of five working days <sup>(30)</sup>. The acquirer may also find it difficult to provide such information in all cases within only ten working days <sup>(31)</sup>. It would not be desirable if requests for acquisitions or increases of shareholdings had to be rejected by supervisory authorities for lack of information <sup>(32)</sup> only because supervisory authorities were unable to fully assess the need for further information or proposed acquirers were unable to deliver this information within an extremely strict time limit. While the proposed acquirers would have the opportunity to re-notify their requests, such a procedure should remain an exception as it would otherwise make the approval process unnecessarily burdensome and inefficient for both sides. Moreover, in some Member States, negative decisions on applications are made public and may therefore substantially harm the proposed acquirers, especially those who are listed on national or international stock exchanges.
- 3.4 The ECB is of the view that where a proposed acquirer notifies the competent authority of the target but provides an incomplete set of documents or information <sup>(33)</sup> this should not automatically trigger an acknowledgment of receipt from the competent authority <sup>(34)</sup> and the immediate start of the assessment period <sup>(35)</sup>. Indeed, this is the approach adopted by the Commission in the context of European merger control rules <sup>(36)</sup> for the notification of concentrations. The rules implementing the ECMR <sup>(37)</sup>

<sup>(27)</sup> The second subparagraph of the proposed new Article 19(2) of the Banking Directive.

<sup>(28)</sup> See pages 2 and 4 of the Letter of 29 September 2006 on the subject of cross-border consolidation to Commissioner McCreevy from Arthur Docters van Leeuwen, Chairman of the Committee of European Securities Regulators (CESR), Danièle Nouy, Chair of the Committee of European Banking Supervisors (CEBS), and Henrik Bjerre Nielsen, Chairman of the Committee of European Insurance and Occupational Pensions Supervisor (CEIOPS). Available on the websites of CESR at [www.cesr-eu.org](http://www.cesr-eu.org), CEBS at [www.c-ebs.org](http://www.c-ebs.org) and CEIOPS at [www.ceiops.org](http://www.ceiops.org).

<sup>(29)</sup> The proposed new Article 19(2) and (3) of the Banking Directive.

<sup>(30)</sup> The first subparagraph of the proposed new Article 19(3) of the Banking Directive.

<sup>(31)</sup> The first sentence of the third subparagraph of the proposed new Article 19(3) of the Banking Directive.

<sup>(32)</sup> The proposed new Article 19a(2) of the Banking Directive.

<sup>(33)</sup> The proposed new Article 19(1) of the Banking Directive.

<sup>(34)</sup> The first subparagraph of the proposed new Article 19(2) of the Banking Directive.

<sup>(35)</sup> The second subparagraph of the proposed new Article 19(2) of the Banking Directive.

<sup>(36)</sup> Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ L 24, 29.1.2004, p. 1) (hereinafter the 'ECMR').

<sup>(37)</sup> Commission Regulation (EC) No 802/2004 of 7 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (OJ L 133, 30.4.2004, p. 1) (hereinafter the 'ECMR implementing rules').

provide that the notification becomes effective 'on the date on which they are received by the Commission' <sup>(38)</sup>. However, where the information is incomplete in any material respect, the Commission has to inform the notifying parties in writing without delay. In such cases, notification becomes effective 'on the date on which the complete information is received by the Commission' <sup>(39)</sup>. The Commission must without delay acknowledge in writing receipt of: (a) notification; and (b) any reply from notifying parties to the Commission where the information provided was incomplete <sup>(40)</sup>. Against this background, the ECB would propose that the assessment period should only formally begin once the required information is complete, and that incorrect or misleading information should be considered as incomplete information <sup>(41)</sup>.

3.5 As a related but more general issue, an assessment of the proposed directive confirms that a number of technical issues cannot be adequately addressed in the framework of the Banking Directive, and that implementing measures might be warranted to cover specific procedural rules that would need to be further refined to ensure sufficient legal certainty and an appropriate level playing field throughout the EU. As consistently emphasised in previous opinions, the ECB is of the view that Level 2 legal acts should emerge as the main body of technical rules applicable to EU financial institutions <sup>(42)</sup>. This view is shared by supervisory authorities, which have also expressed their support for increased use of implementing measures <sup>(43)</sup>. Against this background, it is therefore proposed to extend the scope of the comitology provisions provided for in the proposed directive <sup>(44)</sup> and to make it possible to adopt Level 2 measures which should be implemented consistently throughout the EU before expiry of the transposition period <sup>(45)</sup>. In particular, in addition to specifying and clarifying the prudential assessment criteria, detailed implementing measures should also cover the following aspects: (i) rules applicable to notifications submitted by proposed acquirers (the persons entitled to submit notifications, clarification as to what is meant by the notion of 'persons acting in concert', the effective date of notification, time-limits, etc); (ii) a list specifying the information necessary to supervisory assessment; and possibly also (iii) the type of commitments that proposed acquirers may enter into in relation to competent authorities. On these aspects, the ECB would like also to stress that lessons could be learned from the detailed procedural rules applying in the context of the ECMR.

3.6 Lastly, consideration could be given to introducing more differentiated time limits in the proposed directive, which would be proportionate to the complexity of the acquisition or increase of qualifying holdings under consideration. This would be in line with the principle of proportionality, which is already laid down in other provisions of the proposed directive <sup>(46)</sup>. A distinction between simple and complex cases on the basis of common, objective and transparent classification criteria, which could also be adopted in the form of implementing measures, would have the benefit of ensuring a more expeditious treatment of simple cases while equally safeguarding a sound assessment of more complex cases, which would typically require more time. The ECB considers that the time limits presently provided for in the Banking Directive <sup>(47)</sup> could continue to be applied for such complex cases <sup>(48)</sup>, as well as for those situations already triggering an extended assessment period under the proposed directive <sup>(49)</sup>.

<sup>(38)</sup> Article 5(1) of the ECMR implementing rules.

<sup>(39)</sup> Article 5(2) of the ECMR implementing rules.

<sup>(40)</sup> Article 4(3) of the ECMR implementing rules.

<sup>(41)</sup> See in this respect also Article 5(4) of the ECMR implementing rules.

<sup>(42)</sup> See paragraph 6 of ECB Opinion CON/2005/4 of 17 February 2005 at the request of the Council of the European Union on a proposal for directives of the European Parliament and of the Council recasting Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions and Council Directive 93/6/EEC of 15 March 1993 on the capital adequacy of investment firms and credit institutions (OJ C 52, 2.3.2005, p. 37). In paragraph 10, the ECB stresses that: 'If it is considered that the proposed directives cannot at this stage be amended in line with this approach, the ECB considers that the envisaged legal structure should not be viewed as the final desirable outcome, but rather as one step in a long-term process towards establishing, whenever possible, a directly applicable set of Level 2 technical rules for financial institutions within the EU'.

<sup>(43)</sup> For instance, in its consultation paper entitled 'The role and tasks of CEBS' (CP08), July 2005, (see paragraphs 40 and 41), CEBS points out that it 'has received no requests from the Commission to develop technical detail (i.e. Lamfalussy Level 2 advice) for new legislation. It seems unlikely that the Commission will make such requests in the near future ... While CEBS is aware of, and appreciates the reasons why this approach has been taken, it believes that it is important to make proper use of the possibilities provided by the Lamfalussy approach in the future'.

<sup>(44)</sup> The proposed new subparagraph (f) in Article 150(2) of the Banking Directive.

<sup>(45)</sup> As laid down in Article 6 of the proposed directive.

<sup>(46)</sup> The second subparagraph of the proposed new Article 19a(4) of the Banking Directive.

<sup>(47)</sup> The second subparagraph of Article 19(1) of the Banking Directive.

<sup>(48)</sup> See page 2 of the abovementioned Letter to Commissioner McCreevy of 29 September 2006 on the subject of cross-border consolidation, in which supervisory authorities have highlighted that the existing time limits already pose challenges with regard to complex cases.

<sup>(49)</sup> The proposed new Article 19(6)(a) of the Banking Directive.

#### 4. Provisions on cooperation between competent authorities

The ECB supports the provisions of the proposed directive regarding cooperation between competent authorities <sup>(50)</sup>. However, the ECB is of the view that these provisions should not be combined with the provisions relating to cooperation between competent authorities in the context of the exercise of supervision on a consolidated basis <sup>(51)</sup>. Depending on the nature of the proposed acquirer, the scope of 'home-host' cooperation under the proposed directive could be much wider than in the context of consolidated supervision. It could also include cooperation with the competent authorities in other financial sectors. Moreover, close cross-sectoral consistency of the requirements for 'home-host' cooperation should be ensured. The ECB therefore proposes that the proposed directive should be amended in this respect.

#### 5. The Commission's right to request information from competent authorities

5.1 To enable the Commission to fulfil its role under the Treaty <sup>(52)</sup>, the proposed directive provides that the Commission may request national supervisory authorities to provide it with documents on which they have based their prudential assessment as well as the reasons given to a proposed acquirer <sup>(53)</sup>. Under the proposed directive, the information provided to the Commission would only be used for the purposes of determining whether a Member State has fulfilled its obligations under the Banking Directive <sup>(54)</sup>.

5.2 The ECB has a number of general views regarding this proposed provision. As guardian of the Treaty and in order to ensure the proper functioning and development of the common market <sup>(55)</sup>, the Commission must ensure that the Treaty and the measures taken by the institutions pursuant thereto are applied. The Commission also has the power, where appropriate, to institute proceedings before the Court of Justice if it considers that a Member State has failed to fulfil its obligations under the Treaty <sup>(56)</sup>. While the Commission has the burden of proving the allegation that an obligation has not been fulfilled <sup>(57)</sup>, the Court has clearly established that Member States are required, under Article 10 of the Treaty, to facilitate the achievement of the Commission's tasks, which means in particular that they are required to cooperate in good faith with the Commission's enquiries and to provide it with all the information requested for that purpose <sup>(58)</sup>.

5.3 The ECB considers it essential that the Commission has adequate access to information to pursue its tasks under the Treaty. Moreover, the ECB notes that under the proposed directive, and in line with Article 287 of the Treaty, the information provided to the Commission would be covered by the obligation of professional secrecy, which would be imposed on all persons who work or have worked for the Commission, meaning that any confidential information that the Commission received could not be divulged to any person or authority whatsoever <sup>(59)</sup>.

5.4 Where European merger control rules apply <sup>(60)</sup>, the governments and competent authorities of the Member States must provide the Commission with all necessary information to carry out the duties

<sup>(50)</sup> The proposed new Article 19(b) and Article 129(3) of the Banking Directive. In relation to the approval of acquisitions and increases of shareholdings, the 'competent authorities' are: (i) the authority which has authorised the credit institution in which the proposed acquisition is sought; and (ii) the authority of the proposed acquirer.

<sup>(51)</sup> Article 129 of the Banking Directive.

<sup>(52)</sup> Recital 6 to the proposed directive.

<sup>(53)</sup> The proposed new Article 19c(1) of the Banking Directive.

<sup>(54)</sup> The proposed new Article 19c(2) of the Banking Directive.

<sup>(55)</sup> The first indent of Article 211 of the Treaty.

<sup>(56)</sup> Article 226 of the Treaty.

<sup>(57)</sup> Case C-508/03 *Commission v United Kingdom* [2006] ECR I-0000, paragraph 77.

<sup>(58)</sup> Case C-82/03 *Commission v Italian Republic* [2004] ECR I-6635, paragraph 15.

<sup>(59)</sup> The proposed new Article 19c(2) and (3) of the Banking Directive.

<sup>(60)</sup> Under the ECMR, the Commission has sole jurisdiction to take decisions (Article 21(2) and (3) of the ECMR). The ECMR covers all types of undertakings, including credit institutions, other financial institutions and insurance companies (see, for example, Article 5 of the ECMR).

assigned to it by the ECMR <sup>(61)</sup> in compliance with applicable rules on professional secrecy <sup>(62)</sup>. Moreover, Member States may take appropriate measures to protect 'legitimate interests' <sup>(63)</sup> such as 'prudential rules' <sup>(64)</sup>. If there are strong doubts as to whether a measure is in fact based on prudential rules, this measure must be notified by the Member State concerned <sup>(65)</sup> to the Commission, which scrutinises in particular whether the measure adopted is justified by one of the interests considered as legitimate <sup>(66)</sup>.

5.5 Under the proposed directive, the ECB understands that the Commission's tasks as guardian of the Treaty would be greatly facilitated by having the power to request information directly from national supervisory authorities (without the intermediation of governments). In the context of prudential supervision, however, the Court of Justice has pointed out that: 'if the monitoring of banks through supervision within a Member State and the exchanging of information by the competent authorities is to function properly, it is necessary to protect professional secrecy. The disclosure of confidential information for whatever purpose might have damaging consequences not only for the credit institution directly concerned but also for the banking system in general <sup>(67)</sup>.'

5.6 The Court has not had the opportunity to evaluate in more detail, on the one hand, the need for national supervisory authorities to protect professional secrecy and the confidentiality of supervisory information concerning individual financial institutions against, on the other hand, the rights and duties of the Commission as guardian of the Treaty. The ECB considers, however, that a careful balance would certainly need to be struck to reconcile the Commission's need to have all the information necessary to decide on the merits of a particular case in good time <sup>(68)</sup> with the need to protect the rights of 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 <sup>(69)</sup>. Against this background, a derogation from the obligations on supervisory authorities to observe professional secrecy and preserve the confidentiality of supervisory information should be clearly limited to cases of notifications of proposed acquisitions of qualifying holdings where either: (i) the competent authority on completion of its assessment, has decided to oppose the proposed acquisition and the Commission has received a formal complaint from the proposed acquirer; or (ii) there are reasonable grounds to suspect that the competent authority has manifestly misapplied the prudential assessment criteria or procedures. Taking into account the principle of independence of supervisory authorities <sup>(70)</sup>, 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. In the meantime, the ECB is confident that the proposed specification of the legal framework in terms both of assessment criteria and procedures will considerably increase legal clarity and certainty with respect to the prudential assessment of acquisitions or increases of shareholdings, thereby reducing the need for the Commission to institute proceedings for possible breaches of Community law.

## 6. Additional legal and technical comments

6.1 Since the ECB is required to be consulted on the proposed directive under the Treaty, a citation to this effect should be inserted into the proposed directive in line with Article 253 of the Treaty.

<sup>(61)</sup> Article 11(6) of the ECMR ('Requests for information'). The ECMR also provides that the Commission acts in close liaison with the competent authorities of the Member States from which it obtains comments and information (recital 13 to the ECMR). Efficient arrangements for information-sharing between the Commission and the competent authorities of the Member States are in place (recital 14) and the Commission has the right to request all necessary information (recital 38).

<sup>(62)</sup> Article 17(1) and (2) of the ECMR.

<sup>(63)</sup> The first subparagraph of Article 21(4) of the ECMR.

<sup>(64)</sup> The second subparagraph of Article 21(4) of the ECMR.

<sup>(65)</sup> Case C-42/01 *Portuguese Republic v Commission* [2004] ECR I-6079, paragraphs 58 and 59.

<sup>(66)</sup> Commission Decision of 20 July 1999 relating to a proceeding pursuant to Article 21 of Council Regulation 4064/89 of 21 December 1989 on the control of concentrations between undertakings (Case n° IV/M.1616 — BSCH/A. Champalimaud), paragraph 67.

<sup>(67)</sup> Case 110/84 *Commune de Hillegom v Cornelis Hillenius* [1985] ECR 3947, paragraph 27.

<sup>(68)</sup> Case C-438/04 *Mobistar SA v IBPT* [2006] ECR I-0000, paragraphs 38 to 43.

<sup>(69)</sup> Case 110/84 *Commune de Hillegom v Cornelis Hillenius*, paragraph 20.

<sup>(70)</sup> See Principle 1 of the BCBS's 'Core Principles Methodology' (already referred to in footnote 9).



- 6.2 The proposed directive makes the Banking Directive <sup>(71)</sup> clearer by cross-referring to the definition of voting rights provided for in Directive 2004/109/EC <sup>(72)</sup>. Although this proposed amendment is welcome, the definition should be applied consistently throughout the Banking Directive, as further detailed in the Annex.
- 6.3 The term 'proposed acquirer' <sup>(73)</sup> could be added to the list of terms defined in the Banking Directive <sup>(74)</sup>. Furthermore, a 'proposed acquirer' under the proposed directive includes 'any natural or legal person' or 'such persons acting in concert'. Since it is proposed to introduce the latter concept for the first time into the Banking Directive, the situations covered, as well as the implications for the (legal or natural) persons concerned, for instance with respect to the obligation to notify, would need to be further considered. These aspects could be clarified in implementing measures.
- 6.4 As regards the extended assessment period provided for in the proposed directive <sup>(75)</sup>, the ECB considers that it should apply to any proposed acquirer from a third country (both legal and natural persons) regardless of whether they are regulated or not.
- 6.5 Since the proposed directive affects various parts of the financial sector and will involve changes to the law and adjustments to the practices of national supervisory authorities, a longer transposition period (of at least twelve months) for the proposed directive might be warranted, as well as a review clause. A transition period might also usefully be considered, especially if the proposed directive, once adopted, is not transposed equally quickly in all Member States, which could raise, for example, issues relating to its applicability in cross-border cases requiring the consultation of other competent authorities.

#### 7. *Drafting proposals*

Where the above advice would lead to changes in the proposed directive, drafting proposals are set out in the Annex, except with respect to the proposed time limits for the supervisory assessment, which in the ECB's view need major revision, to be completed in close consultation with EU supervisory authorities (see paragraphs 3.1 to 3.6 above).

Done at Frankfurt am Main, 18 December 2006.

*The President of the ECB*

Jean-Claude TRICHET

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<sup>(71)</sup> The proposed revised second subparagraph of Article 12(1) of the Banking Directive.

<sup>(72)</sup> Articles 9 and 10 of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 31.12.2004, p. 38). Article 32(5) of Directive 2004/109/EC provides that Article 92 of Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities (OJ L 184, 6.7.2001, p. 1) (Directive as last amended by Directive 2005/1/EC (OJ L 79, 24.3.2005, p. 9)), the transitional provision currently referred to in the second subparagraph of Article 12(1) of the Banking Directive, will be deleted with effect from 20 January 2007.

<sup>(73)</sup> The first subparagraph of the proposed new Article 19(1) of the Banking Directive.

<sup>(74)</sup> Article 4 of the Banking Directive.

<sup>(75)</sup> The proposed new Article 19(6)(a) of the Banking Directive.

## ANNEX

Drafting proposals <sup>(1)</sup>Text proposed by the Commission <sup>(2)</sup>Amendments proposed by the ECB <sup>(3)</sup>

## Amendment 1

Citations to the proposed directive  
Amendment to the proposed directive

Having regard to the proposal from the Commission [...],  
Having regard to the opinion of the European Economic  
and Social Committee [...],

Having regard to the proposal from the Commission [...],  
Having regard to the opinion of the European Economic  
and Social Committee [...],

**Having regard to the opinion of the European Central  
Bank [...],**

*Justification* — See paragraph 6.1 of the opinion

## Amendment 2

Recital 3 to the proposed directive  
Amendment to the proposed directive

(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.

(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. **As regards the procedures, the time limits should be proportionate to the complexity of the proposed acquisition or increase of the qualifying holding under consideration.**

*Justification* — See paragraph 3.6 of the opinion

## Amendment 3

Article 5 of the proposed directive  
Amendment to Directive 2006/48/EC, Article 4

[Insertion]

Directive 2006/48/EC is amended as follows:

[...] The following definition is inserted in Article 4:

**‘proposed acquirer’ means 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;**

*Justification* — See paragraph 6.3 of the opinion

<sup>(1)</sup> The drafting proposals in the Annex are based on the text of the proposed directive and limited to amendments made to reflect the ECB's proposals in this opinion. The drafting proposals amend certain provisions of the proposed directive and in particular Article 5 which introduces amendments to the Banking Directive. The proposals should apply *mutatis mutandis* to the other Community directives amended by the proposed directive.

<sup>(2)</sup> Strikethrough in the body of the text indicates where the ECB proposes deleting text.

<sup>(3)</sup> Bold in the body of the text indicates where the ECB proposes inserting new text.

## Amendment 4

Article 5 of the proposed directive

Amendment to Directive 2006/48/EC, Article 4(11)

[Insertion]

Directive 2006/48/EC is amended as follows:

[...]. The following second subparagraph is added to Article 4(11):

**For the purposes of Articles 12(1), 19, 20 and 21, 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.**

*Justification* — See paragraph 6.2 of the opinion

## Amendment 5

Article 5 of the proposed directive

Amendment to Directive 2006/48/EC, Article 19(6)

6. The competent authorities may, in the following cases, extend the assessment period to ~~five~~ 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.

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

- (a) if the proposed acquirer **has its head office or, in the case of a natural person, its habitual residence**, outside the Community, and there are, in the third country concerned, impediments to the transfer of the necessary information;
- (b) in the case of an assessment under Article 143; **or**

*Justification* — See paragraph 6.4 of the opinion

## Amendment 6

Article 5 of the proposed directive

Amendment to Directive 2006/48/EC, new Article 19(6)(c)

[Insertion]

**(c) if the competent authorities consider the assessment to be of a complex nature.**

*Justification* — See paragraph 3.6 of the opinion

## Amendment 7

Article 5 of the proposed directive

Amendment to Directive 2006/48/EC, Article 19a(1)

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: [...]

1. In assessing the notification provided for in Article 19(1) and the information referred to in Article 19(3), the competent authorities shall, **in order to ensure the sound and prudent management of the credit institution in which the acquisition is sought, and** 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: [...]

*Justification* — See paragraph 2.2 of the opinion

## Amendment 8

Article 5 of the proposed directive

Amendment to Directive 2006/48/EC, Article 19a(1)(a)

- (a) the reputation of the proposed acquirer; (a) the reputation **and experience** of the proposed acquirer;

*Justification* — See paragraph 2.7 of the opinion — Clarification of the prudential assessment criteria

## Amendment 9

Article 5 of the proposed directive

Amendment to Directive 2006/48/EC, Article 19a(1)(b)

- (b) the reputation and experience of any person who will direct the business of the credit institution as a result of the proposed acquisition; (b) the reputation and experience of any person who will **effectively direct or exercise a significant influence over** the business of the credit institution as a result of the proposed acquisition;

*Justification* — See paragraph 2.7 of the opinion — Clarification of the prudential assessment criteria

## Amendment 10

Article 5 of the proposed directive

Amendment to Directive 2006/48/EC, Article 19a(1)(d)

- (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;~~ (d) whether the credit institution **in which the acquisition is sought** will be able to **comply and to continue to comply with the applicable prudential requirements of this Directive, and where applicable, of other Directives, in particular, Directives 2000/46/EC, 2002/87/EC and 2006/49/EC**, following the proposed acquisition;

*Justification* — See paragraph 2.7 of the opinion — Clarification of the prudential assessment criteria

## Amendment 11

Article 5 of the proposed directive

Amendment to Directive 2006/48/EC, Article 19a(1)(e)

- (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; (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 **or any other serious criminal offence** is being or has been committed or attempted, or that the proposed acquisition could increase the risk of such conduct;

*Justification* — See paragraph 2.7 of the opinion — Clarification of the prudential assessment criteria

## Amendment 12

Article 5 of the proposed directive

Amendment to Directive 2006/48/EC, new Article 19a(1)(f)

[Insertion]

- (f) **whether, as a result of the proposed acquisition, the credit institution in which the acquisition is sought would become part of a group, the structure of which would be sufficiently transparent to allow effective supervision.**

*Justification* — See paragraph 2.4 of the opinion

## Amendment 13

Article 5 of the proposed directive

Amendment to Directive 2006/48/EC, new Article 19a(1)(g)

[Insertion]

(g) **where the proposed acquirer has its head office and is supervised outside the EU, whether the proposed acquirer is effectively supervised in the third country concerned, and whether the competent authorities of this third country are prepared to cooperate satisfactorily with the competent authorities which have authorised the credit institution in which the acquisition is sought;**

*Justification* — See paragraph 2.5 of the opinion

## Amendment 14

Article 5 of the proposed directive

Amendment to Directive 2006/48/EC, new Article 19a(1)(h)

[Insertion]

(h) **whether the corporate governance arrangements of the credit institution in which the acquisition is sought are sufficiently robust to prevent a potential deadlock in the decision-making processes of that credit institution following the proposed acquisition;**

*Justification* — See paragraph 2.6 of the opinion

## Amendment 15

Article 5 of the proposed directive

Amendment to Directive 2006/48/EC, Article 19a(2)

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.

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

*Justification* — See paragraph 2.3 of the opinion

## Amendment 16

Article 5 of the proposed directive

Amendment to Directive 2006/48/EC, Article 19a(3)

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.~~

3. **Competent authorities may decide to approve a proposed acquisition or increase of a qualifying holding on condition that the proposed acquirer complies with any commitments it has entered into in relation to the competent authorities with a view to meeting the criteria set out above.** Member States shall **not** examine the acquisition in terms of the economic needs of the market.

*Justification* — See paragraphs 2.6 and 2.8 of the opinion

## Amendment 17

## Article 5 of the proposed directive

## Amendment to Directive 2006/48/EC, 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:

[...] (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.

In addition to Articles 19 and 19a and unless specified otherwise, **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** if the proposed acquirer is one of the following:

[...] (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 prudential assessment of the proposed acquisition.

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 expressed by the competent authority of the proposed acquirer.

*Justification* — See paragraph 4 of the opinion

## Amendment 18

## Article 5 of the proposed directive

## Amendment to Directive 2006/48/EC, 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 19bas well as the reasons given to the proposed acquirer.

[...]

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 **where either:**

- (a) the competent authority, on completion of its assessment, has decided to oppose the proposed acquisition and the Commission has received a formal complaint from the proposed acquirer; or
- (b) there are reasonable grounds to suspect that the competent authority has manifestly misapplied the prudential assessment criteria or procedures.

[...]

*Justification* — See paragraph 5 of the opinion

## Amendment 19

## Article 5 of the proposed directive

## Amendment to Directive 2006/48/EC, Article 21(3)

Article 21(3) of Directive 2006/48/EC <sup>(4)</sup>

(3) In determining a qualifying holding and other levels of holding referred to in this Article, the voting rights referred to in ~~Article 92 of Directive 2001/34/EC~~ shall be taken into consideration.

Directive 2006/48/EC is amended as follows <sup>(5)</sup>:

[...] Article 21(3) is replaced by the following:

(3) In determining a qualifying holding and other levels of holding referred to in this Article, 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.

*Justification* — See paragraph 6.2 of the opinion

<sup>(4)</sup> Here, strikethrough indicates where the ECB proposes deleting text from the current Article 21(3) of the Banking Directive.

<sup>(5)</sup> Here, bold indicates where the ECB proposes inserting new text into the current Article 21(3) of the Banking Directive.

## Amendment 20

## Article 5 of the proposed directive

## Amendment to Directive 2006/48/EC, Article 129

Directive 2006/48/EC is amended as follows:

[Deletion]

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.'~~

*Justification* — See paragraph 4 of the opinion

## Amendment 21

## Article 5 of the proposed directive

## Amendment to Directive 2006/48/EC, Article 150(2)(f)

- (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.~~
- (f) **specification of the format, structure and content of, and the procedures applicable to:**
- notification required from proposed acquirers under Article 19(1);
  - the acknowledgment of receipt received from the competent authorities under Article 19(2), and
  - the list referred to in the first subparagraph of Article 19a(4) specifying the information necessary to carry out the supervisory assessment under Article 19a(1);
- (g) clarification of the notion of 'persons acting in concert' referred to in Article 19(1);
- (h) clarification of the criteria against which competent authorities may consider whether a proposed acquisition or increase of holding under Article 19(1) constitutes a complex case within the meaning of Article 19(6)(c);
- (i) specification and clarification of the prudential assessment criteria set out in Article 19a(1); or
- (j) **specification and clarification of the type of commitments referred to in Article 19a(3) that proposed acquirers may enter into in relation to competent authorities.**

*Justification* — See paragraphs 2.8, 3.5, 3.6 and 6.3 of the opinion

## Amendment 22

## Article 6a of the proposed directive (new)

## Review

[Insertion]

## Article 6a

## Review

By [...] the Commission shall, in cooperation with the Member States, review and report on the application of this Directive and shall submit its report to the Parliament and the Council together with any appropriate proposals.

*Justification* — See paragraph 6.5 of the opinion

## Amendment 23

## Article 6(1) of the proposed directive

*Transposition*

- |   |  |
|---|--|
| 1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [ <del>six</del> months after the entry into force of this Directive] at the latest. [...] | 1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [ <b>twelve</b> months after the entry into force of this Directive] at the latest. [...] |
|---|--|

*Justification* — See paragraph 6.5 of the opinion

## Amendment 24

## Article 7 of the proposed directive (new)

- |  |  |
|--|--|
| This Directive shall enter into force on the day of its publication in the <i>Official Journal of the European Union</i> . | 1. This Directive shall enter into force on the day of its publication in the <i>Official Journal of the European Union</i> .  |
|  | 2. <b>Prudential assessment performed in relation to a proposed acquisition or increase of a qualifying holding for which the notification referred to in Article 19(1) has been submitted to the competent authorities prior to the entry into force of the laws, regulations and administrative provisions necessary to comply with this Directive, shall be carried out in accordance with the national laws of the Member States in force at the time of notification.</b> |

*Justification* — See paragraph 6.5 of the opinion

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