

Comments

on the Guidelines of the joint committees for the prudential assessment of acquisitions and increase of holdings in the financial sector required by Directive 2007/44/EC

The German Insurance Association basically agrees to the explanations of directive 2007/44/EG given in the guidelines for the prudential assessment of acquisitions and increase of holdings in the financial sector. The guidelines are coherent with the directive to a large degree. They create legal certainty by detailed explanations and rules. Nevertheless we see the need to amend the guidelines with regard to the following aspects:

No. 18 Proportionality Principle

Restructuring within a Group will, as a rule, demonstrate a case where the Proportionality Principle leads to less stringent requirements and should thus be mentioned in the Guidelines:

“...the particularities of the proposed transaction (*e.g. lean requirements should apply to the restructuring within a group*), the degree...

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The acquirer may not be aware of investigations carried out on him especially in the initial stages where he has not yet been heard. As an incomplete declaration “will call into question the approval” we think a restriction having regard to the actual knowledge of the acquirer is necessary:

“But in all cases, the acquirer himself should attest in a signed statement that none of the situations described in points 24 to 26 occurs or has occurred in the past *to the best of his knowledge.*”

Gesamtverband der Deutschen
Versicherungswirtschaft e. V.

German Insurance Association

Wilhelmstraße 43 / 43 G, D-10117 Berlin
Phone: +49 30 2020-5000
Fax: +49 30 2020-6000

60, avenue de Cortenberg
B - 1000 Brüssel
Phone: +32 2 28247-30
Fax: +32 2 28247-39

Contact:
Dr. Axel Wehling
Dr. Bernhard Gause

E-Mail: a.wehling@gdv.de
b.gause@gdv.de

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Financial soundness of the proposed acquirer

Criteria with regard to the financial soundness of the acquirer which go beyond the ability to meet the group solvency requirements after the completion of the transaction should not be established. Especially the approval of the transaction should not depend on an improvement of the group's financial situation due to the acquirer's financial strength. The directive does not require such improvement. No. 55 should thus be clarified by adding a sentence:

“As a general guideline it is sufficient that the group solvency requirements can be fulfilled after the transaction and that the financial status-quo of the group is maintained.”

Berlin, October, 1st 2008