INTESA SANPAOLO
International Affairs

INTESA SANPAOLO COMMENTS TO THE 3L3 COMMITTEES' GUIDELINES FOR THE PRUDENTIAL ASSESSMENT OF ACQUISITIONS AND INCREASE OF HOLDINGS IN THE FINANCIAL SECTOR REQUIRED BY DIRECTIVE 2007/44/EC
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Intesa Sanpaolo is one of the largest Italian and European banking groups, resulting from the merger between Banca Intesa and Sanpaolo IMI. The Group has a leadership in the Italian market and enjoys strategic coverage and commercial effectiveness in Central-Eastern European markets, where it is currently positioned among the top players in several countries.

Intesa Sanpaolo considers Directive 2007/44/EC on the procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector (the "Directive") as a major step forward for building an integrated European financial market.

The Group welcomes the opportunity to submit its comments to the 3L3 Committees' Guidelines for the prudential assessment of acquisitions and increase of holdings in the financial sector (the "Guidelines"), as required by the Directive. The Guidelines should reflect the business' needs of speed, certainty and predictability for carrying out of transactions, while ensuring a consistent handling of acquisitions and increase of holdings' applications across the EU. These factors will undoubtedly contribute to increase the competitiveness of companies on the marketplace and, ultimately, competition in Europe.

General Remarks

On a general note, Intesa Sanpaolo supports the 3L3 Committees' intent to foster a common understanding on the five assessment criteria provided for by the Directive, which will promote convergence of supervisory practices and avoid unpredictability, legal uncertainty for both supervisory authorities and the industry, while protecting their legitimate expectations. For the same reasons, we welcome the goal of establishing a harmonised list of information that acquirers should outline in their notifications to the competent supervisors.

Furthermore, we believe that defining appropriate cooperation arrangements ensuring an adequate and timely flow of information between supervisors - bearing in mind the narrow time frame provided for by the Directive to complete the assessments – will help the banking system at large to implement the new framework without having to bear further costs and, at the same time, avoiding delays for businesses in the finalization of transactions.

However, while we fully endorse the 3L3 Committees objectives to be pursued which will lead to the assessment procedure being clear and transparent, we have some reservations, in particular, on the list of information that acquirers should provide to

the competent supervisors. First of all, we believe that the list is too detailed and that a number of information are not relevant for the assessment and/or superfluous, which makes it time consuming for companies to collect and for supervisors to assess. Secondly, the list should be truly exhaustive, without the possibility for national supervisors to widen – up the amount of data to be requested or to further specify and detail the request. In fact, it is important, on the one hand, to ensure that the proposed acquirer knows in advance what information it is required to provide to the competent authorities; however, on the other hand, a (complete and) timely assessment of the proposed acquisition, implies that supervisors should not be allowed to (always) request additional information, as the case may be.

In addition, we believe that the body of the Guidelines and the cross references between the Guidelines and the Annexes should be coordinated so as to avoid potential uncertainties and contradictions in the practical application of (and compliance with) the provisions contained therein.

Specific Remarks

General principles

1. As regards the time limits for notification and transmission of information by the proposed acquirer and for prudential assessment by the competent authority, paragraph 7 points out that the list of information necessary to carry out the assessment, contained in Appendix II of the Guidelines shall be considered an exhaustive list. However, according to paragraph 9, there are cases in which the target supervisor may consider that some additional information is necessary for the assessment of the acquisition and may request in writing the proposed acquirer to provide it.

   It is true that, in principle, the additional information should merely clarify and complete the information submitted in accordance with the list of information. Nonetheless, since such a request triggers the beginning of the interruption period, the possibility for supervisory authorities to request additional information should be limited to the minimum and be used exceptionally. The list contained in Appendix II of the Guidelines, subdivided in two very detailed sections (see remarks under point 8 below) - containing “general information requirements” and “specific information requirements” respectively –, in principle, should be considered as exhaustive.

2. In relation to the notification requirement, paragraph 13, refers to the provision of the Directive stating that whenever significant shareholdings are held indirectly through one or more third parties, all persons in the chain of holdings who may gain significant influence, hold capital in, or have voting rights in the target financial institution have to be assessed according to the assessment criteria. According to the Guidelines, these requirements may be satisfied by assessing the person at the top of the chain and those who hold shares of the target financial institution directly, unless the target supervisor has doubts about intermediate holders.

   The assessment of the persons in the chain of holdings (between the parent company and the direct holder) may lead to the overall assessment being

prolonged – in particular, may lead to the finalization of the transaction being delayed or postponed. Furthermore, it involves further costs to be borne by the chain of companies (which may also belong to the same group).

For these reasons, it should be clarified cases in which the supervisor is entitled to assess the persons positioned, in the chain of holdings, between the parent company and the direct holder. The expression “has doubts” is too wide and does not in fact provide the industry (nor supervisors) with certainty about its scope of application.

3. Paragraph 18 of the Guidelines makes clear that the type of information required from the acquirer may depend on the particularities of the acquirer and the proposed transaction, the degree of involvement of the acquirer in the management of the target financial institution, or the level of the holding to be acquired.

   As explained under point 1 above, the possibility for supervisory authorities to request additional information should be limited to the minimum and be used exceptionally. The peculiarities cannot always justify the possibility to request further and/or much more detailed information. The list contained in Appendix II of the Guidelines in principle should be considered as exhaustive.

First assessment criterion - Reputation of the proposed acquirer

4. In relation to the integrity of the proposed acquirer, Intesa Sanpaolo welcomes the principle pointed out under paragraph 22 which makes clear that the acquirer is assumed to be of good repute (i.e. trustworthy) if there is no evidence to the contrary, this implying the absence of negative records.

   However, the Guidelines recognize that the concept of absence of negative records may vary according to national laws and regulations. As a result, the target supervisor retains discretionary power to determine which other situations cast doubt on the trustworthiness of the acquirer.

   Intesa Sanpaolo takes note that the relevant national legislation is (for the time being) not harmonized and that national supervisors still enjoy discretion in that regard. The 3L3 Committees should nevertheless urge their members to be as convergent as possible in the interpretation of the concept of absence of negative records, at least in connection with the appraisal of the suitability of the proposed acquirer and the financial soundness of the proposed acquisition. This would increase legal certainty for market operators and avoid cases of “forum shopping”, i.e. business decisions being taken depending on the applicable national legal framework.

   Likewise, and to the same extent, convergence is required in relation to para. 28 which outlines that Member States may judge the relevance of criminal records differently, based on their different national legal framework.

5. Furthermore, in order to provide both supervisors and market players with certainty and clarity in relation to the content and the interpretation of the Guidelines, Intesa Sanpaolo would welcome a re-wording of a number of paragraphs, which we outline here below:

   - para. 24: the integrity requirement should be assessed taking into account, amongst others, any relevant criminal offences currently being tried or having been tried in the past – it should be clarified that for criminal offences to be relevant, these should always (and anyway) be listed amongst the criminal records;

   - para. 25: the integrity of the proposed acquirer may also be affected by current or past investigations, since they may cast doubts on the integrity of the acquirer – from our point of view, investigations should be relevant for the integrity assessment only in so far as they lead to a proceedings against the acquirer being started;

   - para. 26: to examine the acquirer's correctness in past business dealings – which is key, according to the Guidelines, to assess its integrity – supervisors should pay attention, in particular, to "[...] refusal of a registration, authorisation, membership, or licence to carry out a trade, business, or profession; or revocation, withdrawal, or termination of such registration, authorisation, membership, or licence; [...] dismissal from employment or a position of trust, fiduciary relationship, or similar situation, or having been asked to resign from employment in such a position" – we believe that the evaluation on the absence of correctness in past business dealings should be based on objective grounds able to reasonably undermine the integrity and reputation of the acquirer. In particular, supervisors should not focus on the "refusal", "revocation, withdrawal, or termination", "expulsion", "dismissal" or "resignation" themselves but rather on the grounds on which they have been based (e.g. an authorization may have been refused due to the fact that one of the documents submitted was not notarized, as requested);

   - para. 34: when assessing the integrity of the acquirer, the supervisory authority may take into consideration any person linked to the acquirer: i.e., any person who has, or appears to have, a family or business relationship with the acquirer – the concepts expressed in this paragraph are too wide. It should be clarified, first of all, which family/business relationships are considered relevant; in addition, 3L3 Committees should help the industry to understand more in depth under which circumstances a person may appear to have a family or business relationship with the acquirer.

Second assessment criterion - Reputation and experience of those who will direct the business

6. Intesa Sanpaolo welcomes the mapping exercise which the 3L3 Committees are carrying out with regard to the domestic provisions implementing "fit and proper" requirements for individuals in banks, insurance companies, and investment firms and look forward to the issuing of the stand alone document which will promote a common and more general understanding of these requirements.

Fifth assessment criterion - Suspicion of money laundering or terrorist financing

7. We believe that some of the assumptions contained in paragraph 84 and 85 of the Guidelines are expressed in too wide terms (namely “reasonable person”, “not completely clear“), leaving supervisors with discretion in the application/interpretation of the provisions and not providing the industry with legal certainty about their scope and the circumstances under which they are applied.

Appendix II - List of information required for the assessment of an acquisition

8. Preliminary, as pointed out in the general remarks’ section, Intesa Sanpaolo considers the list to be too detailed and that a number of data are not particularly relevant for the assessment and/or superfluous, which makes it time consuming for companies (to collect) and for supervisors (to assess). By way of example, see in particular the information requested in Appendix II concerning the (contemplated) shareholder's agreements with other shareholders in relation to the target financial institution, the financing of the acquisition as well as the impact of the acquisition on the general organisational structure of the target institution.

   Furthermore, we understand that both the list of general information requirements and the list of specific information requirements are intended to be exhaustive (also according to paragraph 7 of the Guidelines). However:
   - para. 1 of Appendix II, contradictorily, add confusion and uncertainties saying that the list of general information requirements contains all of the information which will normally (i.e. usually, as a rule) be requested;
   - footnote 17 of Appendix II points out that the acquirer may be exempted by the target supervisor from providing some of the listed information if this information does not seem to be necessary for the sound assessment of the acquirer in the specific case; yet, it does not mention the fact that, according to para. 9 of the Guidelines, in some cases the supervisor may also request in writing that the proposed acquirer provides the additional information.

   As already pointed out under paragraph 1 above, the possibility for the supervisory authorities to request additional information should be limited to the minimum and be used exceptionally. The list contained in Appendix II of the Guidelines in principle should be considered exhaustive.

   Finally, it is worth making clear, to the benefit of applicants, whether the documents to be provided should be submitted in stamp free paper or, rather, legalized/notarized paper or if other specific formalities need to be complied with.

For any further comments or questions, please contact:

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