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**Re: Joint guidelines for the prudential assessment of acquisitions and increase of holdings in the financial sector required by Directive 2007/44/EC**

The Division Bank and Insurance of the Austrian Federal Economic Chamber, as the representative of the entire Austrian banking industry, appreciates the possibility to comment on the joint guidelines for the prudential assessment of acquisitions and increase of holdings in the financial sector required by Directive 2007/44/EC as follows:

### General

We welcome the intention to harmonise this area of the right of supervision further, particularly with a view to administrative practice. Due to the maximum harmonisation approach of Directive 2007/44/EC, more importance will be placed on these guidelines. There is a certain diametrical opposition between maximum harmonisation and non-binding international guidelines, particularly with a view to the constitution law of the Member States. The maximal harmonisation approach sets these guidelines apart from other CEBS guidelines by introducing a constitutional component, which is to be resolved by each Member State's (MS) legislative branch, e.g. by empowering supervisory bodies to issue statutory instruments.

### Comments in detail

#### **Item 12:**

Where the terms of the legislation are "unintentionally" exceeded or insufficiently implemented, and reporting of this fact is considered necessary, the question arises what legal consequences a prohibition would entail, since the activities concerned are conducted by parties not involved in the procedure. In this case, at least the relevant persons engaged in the activity would need to become parties in the procedure, since their legal position would be directly affected by an interdiction. A prohibition without involving the persons engaged in the activity would be dubious from a constitutional point of view.

**Items 14 ff:**

When an equity interest is acquired that in turn holds equity interests in other financial sector companies and is domiciled in other Member States, the question of competence arises: according to the draft proposal, the duty to notify also applies to indirect equity interests. This means that if an equity interest were to be acquired in a parent company outside of a Member State, which in turn has subsidiary companies in the Member State (MS) concerned, the party making the acquisition would be required to notify the relevant authorities in that MS. In accordance with the present draft proposal, the national supervisory body would have a right to bar the acquisition. However, items 14ff suggest that the opposite is true and stipulate that the "final decision" is to be taken by the "acquirer supervisor", making reference to recital 10 of Directive 2007/44/EC.

In effect, items 14ff can only apply in cases in which the indirect equity interests do not exceed the relevant threshold volumes for equity interests. This should also be stated in the guidelines in order to prevent any misunderstanding.

**Items 22 ff:**

It does not appear to be the intention of the author of the Directive to make it de facto impossible to acquire equity interests in financial companies through excessive requirements..

**Items 33 and 40:**

The requirement that "the persons who effectively direct the business" must meet the reliability criteria is not specifically mentioned in the Directive; it is only stated that the "acquirer" shall meet these requirements. It is safe to assume at least for companies subject to supervision that the business managers - who are presumably the recipients of this statement - are reliable.

**Punkt 85:**

The text passage "not completely clear" and "increase the risk of ML/TF" should be deleted, since it appears to be rather vague. While the reference to "non-cooperative" countries is acceptable, the reference "country or territory that has not taken sufficient measures ..." is too generalised, since such a classification depends on many factors. At the very least there should be no automatic action in these cases, but the competent authority should be required to justify its concerns.

Yours sincerely,

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