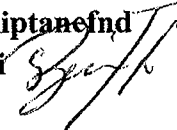


Minnisblað

Viðtakandi: Efnahags- og viðskiptanefnd
Sendandi: Viðskiptaráðuneytið 
Dagsetning: 6. apríl 2001
Málsnúmer: IVR00120045
Bréfalykill: 52.010

Efni: Tillögur um breytingar á frumvarpi um eftirlit með virkum eignarhlutum

Viðskiptaráðuneytið hefur farið yfir umsagnir um frumvarp til laga um breytingu á lagaákvæðum um eftirlit með virkum eigendum eignarhluta í fjármálafyrirtækjum. Seðlabanki Íslands og Fjármálaeftirlitið eru fylgjandi frumvarpinu en Samtök fjármálafyrirtækja og Samtök atvinnulífsins eru því andvíg. Verslunarráð Íslands leggst ekki gegn frumvarpinu í heild sinni en kemur með athugasemdir um einstaka liði þess.

Viðskiptaráðuneytið leggur til eftirfarandi breytingar á frumvarpinu í ljósi framkominna umsagna og umræðu á fundum nefndarinnar. Vakin skal athygli á því að samsvarandi breytingar eiga við um III. og IV. kafla laganna:

4. mgr. 1. gr.

Lagðar eru til nokkrar breytingar á upptalningu á upplýsingum sem fylgja skulu umsókn.

1. Orðinu „kennitala“ í 1. tölul. sleppt. Kallar á óparfa umstang fyrir erlenda umsækjendur.
2. 4. tölul. orðist svo: „Áform um breytingar á verkefnum viðskiptabanka“. Kveður markvissar á um hvað um er beðið.
3. 8. tölul. orðist svo: „Reynsla umsækjanda af fjármálastarfsemi“. Fyrri liður var talinn of opinn og ómarkviss.
4. 11. tölul. sleppt. Telja verður óparfi að umsækjendur skili inn þessum upplýsingum.
5. 13. tölul. orðist svo: „Aðrar upplýsingar sem Fjármálaeftirlitið fer fram á að umsækjandi veiti og máli skipta við mat á hæfi eigenda virkra eignarhluta“.

5. mgr. 1. gr.

Við málsgreinina bætist:

Fjármálaeftirlitinu er heimilt að veita undanþágur frá skilum á upplýsingum skv. 4. mgr. haft lögaðili ekki tók á að afla þeirra eða ef umsækjandi lýtur opinberu fjármálaeftirliti í öðru ríki og unnt sé að afla sambærilegra upplýsinga frá fjármálaeftirliti heimaríkis umsækjanda.

Sú staða getur komið upp að lögaðili geti ekki aflað allra þeirra upplýsinga sem kveðið er á um í 4. mgr., sér í lagi upplýsinga er varða eigendur umsækjandans. Fyrri hluti þessarar breytingartillögu veitir Fjármálaeftirlitinu heimild til að veita undanþágu frá skilum á upplýsingum undir þeim kringumstæðum. Til viðbótar er

lagt til að Fjármálaeftirlitið geti leitað til fjármálaeftirlita annarra ríkja um upplýsingar er varða umsækjanda er lýtur opinberu fjármálaeftirliti.

6. mgr. 1. gr.

1. másl. orðast svo:

Fjármálaeftirlitið leggur mat á hvort umsækjandi sé hæfur til að eiga eignarhlutinn með tilliti til heilbrigðs og trausts reksturs viðskiptabanka og skal gæta meðalhófs við það mat.

Viðbótin við þennan másl. er sett fram til frekari áréttingar um að meðalhófs skuli gætt við mat á hæfi eigenda og er í samræmi við 12. gr. stjórnisýslulaga.

10. mgr. 1. gr.

Nýr 8. másl. orðast svo:

Sé hlutur ekki seldur á tilskyldum tíma er Fjármálaeftirlitinu heimilt að beita aðila dagsektum skv. lögum um opinbert eftirlit með fjármálastarfsemi.

Í athugasemdum við þessa grein kemur fram að heimilt sé að beita dagsektum í þeim tilvikum þegar eignarhlutur er ekki seldur þrátt fyrir að aðila sé það skylt. Telja verður hæpið að unnt sé að beita þessum ákvæðum laganna um opinbert eftirlit með fjármálastarfsemi þar eð eigendur virkra eignarhluta eru ekki eftirlitsskyldir aðilar. Kveða þarf því á um heimild til dagsekta í lögnum.

11. mgr. 1. gr.

Við mgr. bætist nýr másl:

Sé hlutur ekki seldur á tilskyldum tíma er Fjármálaeftirlitinu heimilt að beita aðila dagsektum skv. lögum um opinbert eftirlit með fjármálastarfsemi.



GROUPE DE CONTACT

SHAREHOLDER CONTROL - A COUNTRY BY COUNTRY ANALYSIS OF THE LEGAL SITUATION IN THE EUROPEAN ECONOMIC AREA

Executive Summary

This report presents a country-by-country analysis of the experiences of EEA banking supervisors with respect to the implementation and operation of the European Community provisions on shareholder control, as embodied in Articles 5 and 11 of the Second Banking Co-ordination Directive. In short, 2BCD obliges a supervisory authority to refuse to authorise a credit institution before it has been informed of the institution's shareholder(s) which have "qualifying holdings". 2BCD also obliges supervisory authorities to refuse authorisation if they are not satisfied as to the suitability of the shareholder(s) in question.

Practical experiences: A number of EEA supervisors report that they have handled cases of unsuitable prospective or actual shareholders, and some have refused to allow an acquisition to proceed. However, none of these cases has been contested in a court of law.

The delegation of rule-making powers: Virtually all authorities have the right to issue guidelines in which they interpret the law they administer. However, in the majority of jurisdictions, the guidelines on shareholder control are hardly more than stated opinion, which may or may not be upheld in a court of law. Only one country has explicitly empowered its authority to issue statutory orders to establish "hard law" as to the interpretation of "unsuitability".

Definition of qualifying holding: In most EEA countries, the definition adopted does not go beyond the requirements of 2BCD. In some countries, separate shareholdings may be consolidated for the purposes of determining whether they are "qualifying", depending on the relationship between the shareholders and whether they are considered to act in concert.

Definition of unsuitability: As required by the Directive, supervisory authorities consider shareholder suitability in the context of the sound and prudent management of the bank. The Directive does not define the concept of unsuitability and so it is not surprising that different countries have taken different approaches to this. However, common areas of consideration include personal integrity, professional repute, financial strength and group transparency.

Investigatory powers: All EEA supervisory authorities have the right to require an actual or potential shareholder to provide whatever information is necessary for them to make a judgement as to the shareholder's suitability. They may also seek information from other

bodies and/or use databases in order to facilitate their assessment (criminal records, commercial registers etc). They are also empowered to exchange information with other supervisory authorities.

Rules of prevention and corrective action: All EEA supervisory authorities report that they would not issue a banking licence if they concluded that the major shareholder was not suitable. With respect to existing banks, supervisors have the power to object to acquisitions or increases in shareholdings which exceed certain thresholds before the acquisition/increase takes place. If the holding is acquired or increased regardless of an objection or if pre-notification has not taken place, the remedies/action open to supervisors tend to vary from one country to another. The most common action would be to suspend the voting rights attaching to the shares concerned and/or to order the bank to follow special guidelines to safeguard the bank. As a last resort, most supervisors could revoke the banking license if sound and prudent operation could not otherwise be restored.

Judicial review for questions of law: In the majority of EEA countries, the courts are empowered to determine questions of law and to substitute their own interpretation for that proposed by the supervisory authority. In other countries, the court would have regard to the interpretation of supervisory authority, as long as this was reasonable.

Judicial review for questions of fact: In the majority of EEA countries, the court has the power to conduct a full review of cases referred to it, but would support the supervisory authority's decision unless that decision was judged to be an unreasonable one, based on the facts. The full burden of proof lies with the supervisory authorities in only two countries.

Conclusions: While this is a complex legal area, the lack of detail within the Directive has led EEA countries to adopt different detailed interpretations consistent with the purpose of the Articles. However, no Member State identified weaknesses or shortcomings in its legal framework concerning the implementation of Articles 5 and 11 of 2BCD.

Preface

- 1 According to Article 5 of the Second Council Directive of 15 December 1989 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions and amending Directive 77/780/EEC (89/646/EEC)¹, the competent authorities shall not grant authorization for the taking-up of the business of credit institutions as defined in the first indent of Article 1 of Directive 77/780/EEC² before they have been informed of the identities of the shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings³, and the amount of those holdings. Over and above that, the Article obliges the competent authorities to refuse authorization if, taking into account the need to ensure the sound and prudent management of a bank, they are not satisfied as to the suitability of the abovementioned shareholders or members. The particular requirements are spelt out in further detail in Article 11 of the Directive. The entire complex is commonly referred to as Shareholder Control.

- 2 The EC provisions on Shareholder Control were implemented into German law by the 4th Banking Act Amendment Act, which entered into force on January 1, 1993. When these provisions were reviewed towards the end of 1997, the German delegate distributed a questionnaire to the other members of the Groupe de Contact. On its meeting in January 1998 the Groupe de Contact adopted the questionnaire as a Groupe de Contact paper.

- 3 The country by country analysis focuses on eight topics:

Topic 1	Practical Experience
Topic 2	Delegation of Rule-Making Powers to the Supervisory authorities
Topic 3	Definition of „Qualifying Holding“
Topic 4	Definition of „Unsuitability“
Topic 5	Investigatory Powers
Topic 6	Rules of Prevention and Corrective Action
Topic 7	Judicial Review for Questions of Law
Topic 8	Judicial Review for Questions of Fact

¹ hereinafter referred to as „2nd Banking Coordination Directive“ or „2BCD“

² hereinafter referred to as „banks“, whether licensed or licensing application still pending; if licensed also referred to as „authorized institutions“

³ hereinafter referred to as „major shareholders“

Practical Experience

- 4 In the majority of countries in the European Economic Area⁴ the supervisory authorities have already had to handle cases of unsuitable major shareholders, actual or prospective ones, since the implementation of the EC provisions on Shareholder Control. In Belgium, Denmark, Greece, Ireland, Italy, the Netherlands, Portugal, Sweden, Spain and the UK the supervisory authorities have - in a few instances - refused an acquisition. By now, in these Member States no decision of the respective supervisory authorities as to the suitability of a major shareholder or a prospective major shareholder has been contested in a court of law. Of course, this will not reflect the fact that some countries will have discouraged potentially unsuitable shareholders from formally applying in the first place.
- 5 In Germany the supervisory authorities were able to handle some cases outside the court; others have been taken to court.
- 6 Since shareholders of banks based in Luxembourg are almost exclusively well renowned international banks or belong to supervised banking groups, their suitability does not, in general, raise any problems. This has also been the case concerning recent new banks in Liechtenstein.
- 7 In Austria, so far, the suitability of a major shareholder has not been in question. The Austrian supervisory authorities have already had to deal with unsuitable prospective shareholders; however, they were able to handle those cases without taking formal action.
- 8 In Iceland and Liechtenstein so far the suitability of a major shareholder has not been in question. The same holds valid for Norway; until now, the assessment of major shareholders has not been a decisive reason to turn down an application for an exemption from the particular Norwegian holding rules.

Delegation of Rule-Making Powers to the Supervisory Authorities

- 9 Topic 2 concerns whether, in the implementation of the European legislation on Shareholder Control in the Member States, rule-making powers have been expressly or implicitly conferred upon the supervisory authorities to issue regulation which
 - (a) fill in the details, whereas the respective Act of Parliament does only enshrine the basic principles on Shareholder Control, or, over and beyond that,
 - (b) ascertain the facts which, if established, conclude the unsuitability of a major shareholder or would-be major shareholder.
- 10 Virtually all supervisory authorities have the right to issue guidelines in which they interpret the law they administer. As regards Shareholder Control, in the majority of

⁴ hereinafter referred to as „Member States“

jurisdictions, those guidelines are hardly more than stated opinion, which may or may not be upheld in a court of law depending on the judges' interpretation of the law.

- 11 Whereas in virtually all Member States the legislative bodies may to a more or less limited extent delegate legislative powers to the executive in that they expressly vest the competent authorities with the authority in a defined context to issue statutory orders having the force of law, it appears that no Member State (except Italy) has empowered the banking supervisory authorities to issue such orders to establish „hard law“ as to what establishes the unsuitability of a major shareholder or would be major shareholder or as to what establishes a qualifying holding which is binding even on a court of law unless it is found contrary to a legal provision of higher rank or a constitutional norm.
- 12 In France, the Comité de la réglementation bancaire et financière (CRBF) to which banking regulatory rule-making power has been delegated has not exercised it in this field. Therefore the criteria of the suitability of the shareholder have not been defined by a regulation.
- 13 In some Member States, due to a different concept of rule of law, instead of the formal delegation of legislative powers, an Act of Parliament may expressly or implicitly convey rule-making powers in that if the agency's decision is contested in a court of law, the court would have regard to the interpretation proposed by the supervisory authority to the extent that the respective law leaves room for interpretation and the authority's interpretation was reasonable; this is the case in Ireland and the UK.

Definition of Qualifying Holding

- 14 In most Member States the definition of „qualifying holding“ does not go beyond the requirements of the 2nd Banking Coordination Directive.
- 15 The situation is particular in Belgium, Germany, Ireland, Italy, Norway and Spain, where several different shareholders, direct or indirect, legal or beneficial ones, which separately do not possess a qualifying holding, may be considered to do so jointly. If these shareholders, beneficiaries or persons who exert control over a shareholding institution are in a certain relationship to each other or are assumed to act in concert in the exercise of shareholder rights, their holdings are consolidated.
- 16 In Belgium, Italy, Luxembourg, the Netherlands and Spain, the threshold of what constitutes as qualifying is down to 5 % of the capital stock of the bank in question. In France, shareholdings of 10% and above are considered to be qualifying.

Definition of Unsuitability

- 17 As the Directive only enshrines the objective, which is to ensure sound and prudent management of the bank, the concept of implementation differs considerably in the Member States. While in the majority of Member States, shareholder control is only

designed to ensure an effective supervision and to shelter the authorized institutions from detrimental influence of their shareholders, Luxembourg appears to go as far as to employ the provisions on Shareholder Control to admit as major shareholders of banks only institutions which are expected to be a source of strength to the Luxembourg bank.

- 18 In the UK, the supervisory authority may object to certain shareholders if, for example, the shareholder is not fit and proper, the interests of depositors would be threatened or the bank would fail to meet the prudential criteria.
- 19 In Belgium, the relevant law specifies that the Banking and Finance Commission in its assessment of the suitability of a shareholder shall take into account the need to ensure the sound and prudent management of the bank. This concept refers to the autonomous management of the bank. The Banking and Finance Commission has construed the general concept of suitability to include adequate financial strength of the shareholder and transparent group structure.
- 20 The situation is somewhat similar in Denmark, Finland and the UK, where a major shareholder or prospective major shareholder is considered unsuitable if the supervisory authority finds that he does or would, respectively, threaten the sound and prudent operation of the bank.
- 21 The Austrian authorities consider in the assessment of suitability also the interests of the other shareholders.
- 22 The power to license credit institutions has been delegated by the French banking Act, to an agency called "Comité des établissements de crédit et des entreprises d'investissement" (CECEI).

According to article 15 of the Banking Act, the CECEI shall take into account the suitability of the persons investing capital and, where applicable, their guarantors. As there is no statutory order prescribing the criteria to appreciate suitability, the CECEI has set up its own criteria of evaluation that it applies on a case by case basis.

In its annual report the Committee summarises its criteria of evaluation of the suitability of a qualified shareholder. By opposite unsuitable shareholding may be defined.

So far it can be asserted that a prospective qualified shareholder would be considered as unsuitable:

- if a comprehensive information is not given to the Committee or if the group's structure is deemed intransparent;
- if its professional records are not satisfactory;

- if its financial situation is unsatisfactory or inappropriate to give adequate support to the credit institution, which moreover has to be proportionate to the importance of the share or to the influence on the management of the institution;
- if the organisation of the shareholding of the credit institution does not assure a durable cohesion of the shareholders or could obstruct a sound surveillance of the institution by the supervisory body.

23 In Greece, an existing or prospective (major) shareholder is assumed unsuitable in the following circumstances:

- in the case of natural persons, their probity, competence, soundness of judgment and diligence for carrying out their responsibilities is evidently in doubt or evidence of serious conflicts of interest is found. To this effect, supervisors have access to criminal records to determine illegal or unethical conduct on the part of major shareholders, while particular steps are taken to detect possible conflicts of interest. In any case, strict limits may be set on the bank's exposures to its major shareholders, the violation of which would render the shareholders unsuitable. Where major shareholders hold positions of influence in the bank, such considerations are more closely followed up.
- in the case of legal persons, unsuitability would depend on their major shareholders or managers being similarly in doubt. Shareholder control is in these cases enhanced by virtue of the fact that the Bank of Greece may, in order to establish and monitor the identities of the natural persons controlling the legal person(s) in question, require that the voting shares of such legal persons be registered and/or require that the person(s) holding (at any particular time) more than a specified share of the voting rights of that legal person be approved by the Bank.
- in the case of excessive concentration of the bank's share capital to a very small number of shareholders, the Bank of Greece has the right to require that the bank's shares be quoted on a stock exchange.

24 In Germany, a major shareholder or prospective major shareholder is assumed unsuitable if facts established by the FBSO do, also in consideration of the contravening evidence, reasonably support the conclusion

(1) that the prospective major shareholder is not trustworthy (due to a criminal record, non-transparency of his personal record or business conduct, origin of funds, bankruptcy proceedings etc.) or for other reasons fails to satisfy the requirements to be made in the interest of a sound and prudent operation of the bank, or

(2) that the prospective association would compromise effective supervision for lack of transparency in the group structure or, in case of cross-border affiliations,

due to the absence of satisfactory collaboration between the German and the foreign authorities.

- 25 In Iceland the term „suitability“ in the context of Shareholder Control is to be construed in view of the need to ensure a sound and prudent operation of the bank on a case to case basis.
- 26 In Ireland and Liechtenstein the term „suitability“ in the context of Shareholder Control is not narrowed down by the Banking Act, so that the term is subject to assessment on a case to case basis.
- 27 In Luxembourg, in order to be considered suitable by the supervisory authority, shareholders must, in the first place, meet the condition of professional repute and prove their financial strength. Beyond these elementary criteria, major shareholders are required to be well known professionals of the banking and financial sector and thus be able to provide also the necessary financial, technical and human resources to the bank. The major shareholders' unsuitability is furthermore assessed in the light of their implications on the transparency of the group structure. Particular consideration is given to the question of whether the bank and the group are submitted to an adequate consolidated supervision. The financial strength and suitability of the major shareholder or would-be major shareholder are examined on the basis of all relevant information available, i.e. previous financial statements, ratings from rating agencies, business plans, informal meetings between the supervisory authority and the major shareholder or would-be major shareholder. The supervisory authority is also likely to consult the competent authorities in the major shareholder's home country. On a going concern basis, particular attention is paid to the policy adopted by major shareholder/group towards its Luxembourg subsidiary and its specific business functions in the group as well as to the actual business relations between the major shareholder/group and its subsidiary on the assets side, the liabilities side and on the off-balance sheet (regarding volume, purpose and pricing). The quality of the follow-up of the subsidiary's activities by the parent shareholder is also an important issue in this regard.
- 28 The Nederlandsche Bank assesses unsuitability on a case by case basis by the following criteria, as laid down in the 1992 Act on the Supervision of the Credit System:
- (1) the acquisition would be contrary to sound banking policy,
 - (2) the acquisition would lead to a situation in which the bank involved would be part of an non-transparent group that this would hinder adequate supervision,
 - (3) the acquisition could lead to an undesirable development within the credit system.

For major acquisitions, the Ministry of Finance has to give approval as well.

29 In Portugal, the Banco de Portugal may oppose a major shareholder or major shareholder in any of the following circumstances:

- (1) if the manner in which the major shareholder or prospective major shareholder habitually does business or if the nature of his professional activity indicates a marked tendency to take excessive risks,
- (2) if major shareholder's or prospective major shareholder's financial and economic situation is inadequate in relation to the amount of the proposed holding,
- (3) if the supervisory authority has reason to doubt the legality of the origin of the funds used to acquire the holding, or the true identity of the holder of those funds,
- (4) if major shareholder or prospective major shareholder refuses to meet the conditions required for the financial reorganization of the bank which have been previously established by the supervisory authority,
- (5) if major shareholder or prospective major shareholder has been, within the past five years, the object of the penalty of the suspension of the exercise of voting rights in a bank, financial company or holding company, subject to supervision by the supervisory authority,
- (6) if major shareholder's or prospective major shareholder's fit- or properness is compromised by any of the following facts
 - adjudged bankrupt or insolvent by a national or foreign court, or considered responsible for the bankruptcy or insolvency of a company which he had controlled or in which he had been member of the board, director or manager,
 - member of the board, director or manager of a company whose insolvency or bankruptcy, either in Portugal or abroad, was prevented, suspended or avoided by reorganisation measures or by other preventive or suspensive measures, or holder of a controlling interest in such a company, in cases where he was deemed by the competent authorities to have been responsible for that situation,
 - convicted, in Portugal or abroad, for fraudulent bankruptcy, bankruptcy due to negligence, fraudulent preference, forgery, larceny, theft, creditors defrauding, extortion, breach of trust, dishonesty, usury, corruption, issue of uncovered cheques, embezzlement of money or property of the public or co-operative sector, harmful mismanagement in an economic unit of the public or co-operative sector, false declarations, unauthorized taking of deposits or other repayable funds, money laundering, improper use of insider information, manipulation of the stock market or crimes envisaged by the Company law,
 - convicted, in Portugal or abroad, for infringement of legal rules or regulations governing the activity of banks, financial companies or financial institutions,

insurance activity and the stock market, whenever warranted by the seriousness or repetitive nature of the offences.

(7) if the structure and characteristics of the business group in which the bank is or would be included do not permit adequate supervision.

30 In Italy, persons with holdings exceeding 5% of the bank's capital must satisfy the integrity requirements laid down by law. The law also provides for the verification of the other requisites provided for in connection with holdings of banks' capital for persons (i.e. natural persons, companies and entities of all kinds) who possess, directly or indirectly, holdings that exceed 5% of the capital of the bank or which result in control. To this end, the Banca d'Italia, with the aim of ensuring the sound and prudent management of the bank, assesses the quality of such persons in terms of correctness of their business dealings and the soundness of their financial position. Importance may also be attached to links of any kind – including those of a family or associative nature – between the holder of the capital and other persons who are in a situation that would compromise the aforementioned conditions. In carrying out such verifications, the Banca d'Italia uses the information and data in its possession and may draw on confidential information obtained through co-operation with other public authorities or with the competent supervisory authorities of the foreign countries concerned.

31 A major shareholder or a prospective major shareholder is considered unsuitable by the Swedish Financial Supervision Authorities ("Finansinspektionen");

(1) if he exercises, or can be assumed to exercise, his influence in a manner obstructing a sound development of the activities of the bank,

(2) if he in essential respects has neglected his obligations as a business man or with respect to other economic affairs, or

(3) if he has committed a serious crime.

The Finansinspektionen may also prevent the acquisition of a qualifying holding in a bank in case the acquisition would involve such close links to another company that would prevent an efficient supervision of the bank. There is also a corresponding rule concerning the possibility for the supervisory authority to refuse authorisation on the same grounds.

32 In Spain, according to regulation, a qualified shareholder or a prospective qualified shareholder is considered unsuitable if:

(1) he does not have a good commercial and professional reputation,

(2) his financial situation is not satisfactory in order to give financial support to the bank,

- (3) the group structure is intransparent,
- (4) the supervisory authority can't obtain the necessary information,
- (5) excessive risk which the major shareholder takes in his activities inside or outside the financial sector might infect the bank.

Investigatory Powers

- 33 The supervisory authorities in all Member States have the right to require, to the extent reasonable, information they deem necessary to make an informed judgement as to the suitability of a major shareholder or prospective major shareholder. All supervisory authorities may exchange information with other supervisory authorities. All supervisory authorities have direct or indirect access to more or less detailed databases (criminal records, commercial registers etc.) to support the judgement.
- 34 Besides the right to have the shareholder or shareholders provide information and produce documentation, the Swedish Finansinspektionen, which does not have direct access to the national criminal and bankruptcy records, may relate to the responsible authorities to have them provide it with the necessary information. Finansinspektionen may also obtain information from the tax authorities regarding major shareholders or prospective major shareholders. In 1994, the task of building up a public EDP register of all the institutions supervised by Finansinspektionen was broadly completed. The register contains basic information on the about 2,000 institutions under Finansinspektionen's supervision. At present, it is possible to store around 150 different types of information for each individual institution, whereas the quantity of information in the register varies, depending on the category of institution. Finansinspektionen is also linked to the Swedish Patent and Registration Office (PRV) trade and industry data base. That database has details on some 330,000 Sweden-based companies, including information regarding the board of directors, share capital, address of business etc. In Sweden every individual has his own person code number, which is useful in tracking a person's record or finding out if there's a potential for conflict of interests as regards persons holding stocks or executive positions in different companies.
- 35 The Belgian supervisory authorities rely on their own data bases and official registers to check the suitability of a prospective major shareholder. The Office of the Attorney General is asked whether the prospective major shareholder or, in case of legal person, its managing directors do have a criminal record or are subject to criminal investigation.
- 36 The situation is more or less similar to Sweden, Belgium or somewhere in-between in the other Member States. It appears that all Member States except Germany are still considering formal requests for information and documentation sufficient for the

purposes of shareholder control. However, the process could also be complemented by one or several meetings with the applicant.

- 37 The German supervisory authorities had to undergo the experience that data bases, no matter how detailed they were, and formal requests to major shareholders or prospective major shareholders to convey information and produce documents might not suffice as there were people out there who dared to lie to the supervisor or to misrepresent or withhold information and as not every crook had got his fingerprints in a public data base. The issue had to be taken to Parliament for rectification. As of 1 April 1998 an Act of Parliament has been adopted which empowers the supervisory authorities to subject the business of established major shareholders, of would-be major shareholders and even of persons who are merely reasonably suspected of being major shareholders to full-blown on-site inspections as if they were regulated institutions.
- 38 In Greece, the Bank of Greece may, for the purpose of exercising shareholder control, seek additional information or documents from shareholders or potential shareholders (including legal persons) and carry out on-site inspections to verify the information provided. Major shareholders (and in the case of legal persons their managers or owners), not complying with such requests may face criminal proceedings.

Rules of Prevention and Corrective Action

- 39 Topic 6 focuses on the rules of prevention and corrective action towards unsuitable major shareholder's infiltrating the banking system.
- 40 First of all, it is noteworthy that, in all Member States, the competent authorities may as envisaged by the Directive not issue a banking licence if they conclude in the licensing procedure that a major shareholder of the bank is not suitable with regard to the sound and prudent operation of the bank.
- 41 For the measures with regard to unsuitable shareholders in the ongoing supervisory process, a distinction has to be made between the entrance of new shareholders and the handling of unsuitable shareholders who are already established in the bank.
- 42 All supervisory authorities must be informed of and in advance approve of any natural or legal person's acquisition of a qualifying holding in a bank or such increases of the qualifying holding which cause it to reach or exceed a limit of 20 %, 33 % and 50 %, respectively, or the bank to become a subsidiary. In Spain, the relevant thresholds are further broken down to 10%, 15 %, 20 %, 25 %, 33 %, 40 %, 50 %, 66 %, 75 % or 100 %. In the UK, the thresholds are broken down to 10%, 20%, 33%, 50% and 75%. Where a major shareholding is reduced, the notification duties apply analogously. In the Netherlands, every increase has to be approved.
- 43 The reporting duties apply vice versa on the part of the bank which becomes aware that one of the thresholds above is reached (the relevant thresholds in the Netherlands are 5%, 10%, 20%, 33% and 50%)

- 44 In Belgium, the relevant thresholds are even further broken down. As mentioned above, under Belgium banking law already a direct or indirect holding of as little as 5 % of the capital stock of the bank in question establishes a qualifying holding, which requires advance notification to the Banking and Finance Commission along the lines of the 2nd Banking Coordination Directive. The next notification is due when the holding is to reach or surpass 10 %, and then every 5 %. Regulations in Italy are very similar to Belgium.
- 45 In Greece, natural or legal persons possessing a qualifying holding in a credit institution which, however, is less than 33% of the bank's share capital are required to inform the Bank of Greece of any increase in that holding which exceeds 2% of the bank's share capital.
- 46 The supervisory authorities in Austria, Denmark, Greece, Italy, Liechtenstein, the Netherlands, Portugal, Sweden and Spain shall (i.e. they have no discretion but to) object to the intended acquisition if they are not satisfied that the acquisition or increase would not conflict with the regard of the prudent and sound management of the bank. In Finland, Germany, Iceland, Ireland, Luxembourg and the UK the supervisory authorities appear to have discretion according to the letter of the relevant law, although in practice the discretion would be exercised in conformity with the requirement of the Directive. Under UK law, the supervisory authority has to be satisfied that the shareholder is fit and proper. In Sweden, the burden of proof is on the applicant.

In France, if a major shareholder becomes unsuitable, two types of measures can be used:

- according to article 33 of the banking law, in case of failure to comply with the licensing requirements, the Commission Bancaire or the CECEI may apply to a judicial commercial Court to suspend the exercise of the voting rights attached to unregularly held direct or indirect shares or equity interests in credit or financial institutions until such time as the situation has been rectified.
- according to article 19 of the banking law, the CECEI shall withdraw the licence whenever the institution no longer fulfils the conditions on which authorisation depends.

No practical experience of using those powers has been made up to now.

Moreover one should note that:

- disciplinary action, up to the striking off the list of authorised credit institutions, can be taken by the Commission Bancaire if the credit institution – for lack of support by its shareholders – does not meet prudential standards.
- the Commission Bancaire may take the initiative to appoint a provisional administrator – to whom will be transferred all the power for administering,

managing and representing the legal person – when the credit institution can no longer be run on a normal basis (for instance because of a major conflict between major shareholders).

- 47 In Iceland, the supervisory authority has to relate the issue with its proposals to the Minister of Commerce, who has reserved the decision of whether to approve or disapprove of an acquisition. The Minister may disapprove of the acquisition or increase if he finds the would-be major shareholder incompetent considering the regard of the sound and prudent management of the bank involved; he is in no way bound by the proposals of the supervisory authority.
- 48 In Italy, the law provides that persons (i.e. natural persons, companies and entities of all kinds) who engage, either personally or through companies, in significant business activity in sectors other than banking and finance may not be authorised to acquire holdings that exceed 15% of the capital of the bank or which would result in control. This prohibition does not apply where the person concerned shows that the non-banking and non-financial activities performed directly do not exceed 15% of the total activities performed directly. If the person possesses, directly or indirectly, controlling interests in companies, there is the requirement that the sum of the balance sheet assets of the non-banking and non-financial companies controlled shall not exceed 15% of the business assets of the applicant and of all the companies he controls. Financial activities are those referred to in the Annex to the 2BCD plus insurance business.
- 49 In all Member States the supervisory authorities approval or disapproval shall be submitted no later than three months after the supervisory authorities have been informed of the intended acquisition.
- 50 The situation is particular in Norway. Subject to individual exemptions, no private shareholder may hold larger holdings in a Norwegian bank than 10 per cent of the share capital. However before granting individual exemptions, a „fit and properness“ of the potential shareholders is one of several factors that are looked into. When foreign banks establish a subsidiary in Norway, this is subject to approval by the Ministry of Finance; the shareholders are, in the approval-procedure, subject to a „fit and properness“ evaluation.
- 51 If the qualifying holding is acquired or increased regardless of the objection by the supervisory authority or if the major shareholder has not notified the supervisory authority in the first place, the supervisory authorities in Austria, Belgium, Denmark, Finland, Germany, Greece and Liechtenstein have the legal authority to suspend the voting rights attaching to the shares held by the major shareholder or by legal persons under the control of the major shareholder. In Belgium, the supervisory authority may order the shareholders to dispose of the shares within an established period. A number of measures are available if these decisions are not complied with.

- 52 In addition in Austria, if the offender is a bank, the Federal Minister of Finance may as to the offending bank
- (1) prohibit entirely or in part the withdrawal of capital or profits as well as distributions of capital or profit,
 - (2) appoint a commissioner over the bank with authority to interfere with any single transaction which might offend the law,
 - (3) unset the bank management, or
 - (4) withdraw or limit the banking licence.
- 53 In Portugal, the acquisition of or the increase in a qualifying holding, without the holder having made the previous notification, or which Banco de Portugal has opposed, shall bring about the prohibition to exercise voting rights in what concerns the excess over the limit (10, 20, 33 or 50 %) that has been unlawfully overstepped. Banco de Portugal shall communicate the prohibition to the management board of the bank, which is held to inform the stockholders meeting of the prohibition. If the voting rights are exercised despite the prohibition, the resolution adopted is subject to nullification unless it can be shown that the resolution would not have been different without the prohibited exercise of voting rights. The voidableness may be pleaded under the terms of the general law or by Banco de Portugal.
- 54 In Italy and Spain the situation is similar to Portugal. In Spain, if the supervisory authority is not informed, or if the operation is performed despite its opposition, by provision of the Law and automatically, the voting rights of those participations cannot be exercised. In case they are exercised, the agreements adopted with those votes will be liable to be annulled by a judicial resolution. In addition to other shareholders and third parties involved, the supervisory authority is competent to ask for their annulment.
- 55 In Greece, in addition to the suspension of voting rights, the Bank of Greece may impose the following sanctions:
- a fine in favour of the Greek State of up to 10% of the value of shares acquired or increased (or up to 5% of the value of the shares disposed of) without proper notification or authorisation.
 - exclude offending shareholders (natural persons) from holding directors' or executive posts in that credit institution.
- 56 In Ireland the purposed acquisition is invalid by force of law, if the qualifying holding is acquired or increased regardless of the objection by the Central Bank of Ireland or if the acquirer has not requested approval from the Central Bank of Ireland in the first place. Moreover, the transaction, albeit invalid under the law of

transactions, constitutes a criminal offence, which may be prosecuted summarily by the Central Bank of Ireland.

- 57 In Luxembourg the contravener is obliged to remedy the unlawful situation within a period to be set by the supervisory authority. If at the end of the period prescribed the situation has not been rectified, the supervisory authority may suspend the voting rights attaching to the holdings provided that the shareholder's influence is, in the judgement of the supervisory authority, likely to be detrimental to the sound and prudent management of the bank.
- 58 The Netherlands report that the contravener is obliged to resolve the unlawful situation within a period to be set by the Minister of Finance or by the Nederlandsche Bank on his behalf if the qualifying holding is acquired or increased regardless of the objection by the Nederlandsche Bank or if the acquirer has not requested approval from the Nederlandsche Bank in the first place. If any control attaching to the qualifying holding has been exercised by the contravener before the unlawful situation is rectified, a resolution adopted owing in part to the control exercised is subject to nullification. If that is the case the Minister of Finance or the Nederlandsche Bank acting on his behalf may appeal to the district court within whose jurisdiction the bank is established to have the court declare the resolution null and void. The same holds true if the holder does not comply with the restrictions attached to the declaration of non-objection.
- 59 In Sweden the supervisory authority has the legal authority to order the acquirer not to represent his shares or parts at general meetings to the extent the shares or parts are subject to required permission, and to request the district court in whose jurisdiction the bank is established to appoint a suitable person as administrator to represent those shares or to order him to dispose of as many shares that the holding thereafter is no longer a qualified holding.
- 60 In the UK the acquirer may, first of all, be guilty of a criminal offence, for which the Financial Services Authority is a prosecutory authority. Next, the FSA may place restrictions on the shares held by that person including restricting the voting rights attaching to the shares. Finally, the Court may, upon application by the FSA, order the sale of the shares (the same remedy exists in Italy).
- 61 In Germany, a major shareholder found unsuitable may sell his shares only with the approval by the Federal Banking Supervisory Office.
- 62 Criminal prosecution is not only a prospect for contraveners in the UK, but also in Greece and the Netherlands. In other Member States the offender may face fines because of administrative offences (e.g. Germany, Portugal, Liechtenstein and Spain). In Italy, both types of sanction are in place, depending on the offence.
- 63 Moreover, in addition, in Spain, the offender or, if the offender is a legal person, its managing director, can be incapacitated from being manager of a credit institution

during a period of up to ten years. When the problem is serious, the Banco de España is entitled by Law to decide the intervention of the credit institution or the substitution of its managers.

- 64 The Banco de Portugal may as penalty to the offender:
- publish the final decision in the „Diário de República (official gazette) or in widely read newspapers,
 - (when offender is a natural person) prohibit him from being a member of the management or auditing board as well as from occupying corporate or directive posts in a bank or financial company, for a period of six months to ten years,
 - prohibit the exercise of (all) voting rights in any bank, financial company or holding company which is subject to the supervision by Banco de Portugal, for a period of one year to ten years,

While the first penalty is self-executing, the other two become immediately enforceable and their enforceability only ends with a court decision definitely revoking them; preliminary court injunction is not available for the offender.

- 65 In cases where a major shareholder, who has lawfully notified the supervisory authority before the acquisition and whom the supervisory authority has allowed to proceed with the acquisition (i.e. who was initially considered to be suitable or “fit and proper”) turns out to be unsuitable later, the supervisory authorities may
- suspend the exercise of the voting rights (Belgium, Finland, Germany, Greece, Italy, Liechtenstein, Luxembourg, Portugal, Spain, Sweden, UK), the exercise of voting rights after suspension being null and void by law (Germany) or voidable by the competent court of law upon the motion of the supervisory authority (Belgium, Portugal and Spain), or turn to the competent court of law to issue such order (Ireland), the exercise of voting rights in contempt of such court order being null and void (Austria) by law, and make public the suspension (Belgium). Sweden notes that the shareholder may still exercise the voting rights of shares amounting to a non-qualifying holding.
 - order the bank to follow specific guidelines (Belgium, Denmark, Germany, Greece, Iceland, Ireland, Liechtenstein, Luxembourg, Netherlands, Portugal, UK),
 - appoint a superintendent to the bank whose authorization is required for all acts and decisions of the decision-making bodies within the bank (Belgium, Spain),
 - order the replacement of the bank’s managing directors (Spain) and junior managers (UK), and, in case of non-compliance, replace the bank’s decision-making bodies with one or more managers or directors (Belgium),
 - temporarily limit the direct or indirect exercise of all or part of the bank’s activities or prohibit these activities (Belgium, Ireland and UK),

- order shareholder's removal from the Board of Directors (Germany, Greece, Portugal, UK) and any other management position in the bank (Greece, Portugal, UK), or turn to the competent court of law to issue an order prohibiting the shareholder from issuing directions to directors, management and staff of the bank (Ireland),
- prohibit any new transaction between the bank and the major shareholder or with any legal person under his control (Ireland and UK), and may declare due and payable the loans which the bank has extended to the major shareholder or any legal person under his control (Greece).
- directly order the sequestration of the shares (Belgium) or move before the competent court of law for such order (Germany),
- order the major shareholder to dispose of as many shares as to reduce the holding to e.g. a no longer qualifying one (Belgium, Germany, Sweden, UK), or move before the competent court of law for such an order (Ireland),
- bar shareholder or, if the offender is a legal person, the managing directors for up to ten years from holding management positions in domestic banks (Spain),
- lodge a complaint with the Office of the Prosecutor against unsuitable shareholders, who may then face criminal prosecution (Greece),
- as ultima ratio revoke the banking licence if sound and prudent operation cannot be restored otherwise (Belgium, Finland, Germany, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Portugal, Spain, Sweden, UK).

- 66 In Belgium and Ireland, non-compliance with corrective action constitutes an offence which is subject to criminal prosecution. Coercive fines may be imposed by the Belgian, German, Liechtenstein, Norwegian and Spanish authorities.
- 67 If somebody holds shares in a Norwegian bank in breach of the holding rules, Kredittilsynet may issue an order to the shareholder in question to rectify the situation within a given time-limit. If the situation is not rectified within the time-limit, Kredittilsynet may impose coercive fines, either as non-repeatable fines or as daily fines. The Ministry of Finance may have shares which are held in breach of the holding rules sold on public auction after publishing in the Norwegian Gazette an announcement to this effect with a four weeks deadline for compliance.

Scope of Judicial Review for Questions of Law

- 68 The scope of judicial review for questions of law is quite different. In Austria, Belgium, Denmark, Germany, Greece, Iceland, Liechtenstein, Luxembourg, the Netherlands, Portugal, Spain and Sweden the courts are empowered to a full review for questions of law: To the extent that the law leaves room for interpretation, the court is free to substitute its own interpretation of the law for the interpretation

proposed by the supervisory authority in these Member States. Notably as regards the question of what facts do establish the unsuitability of a major shareholder or prospective major shareholder the final say rests, so to say, with the courts.

- 69 The situation is different in Ireland, the UK and to some extent in Luxembourg, where, in the case of a suspension, the court would have regard to the interpretation proposed by the supervisory authority, as long as the interpretation is reasonable in the light of the law.
- 70 In France, a decision by the Committee to withdraw the licence can be contested in Court, and the decision by a judicial commercial Court to suspend the exercise of the voting rights can be appealed. As neither the Banking Act nor specific regulation define the criteria of suitability, the Court is free to substitute its own interpretation to the points necessarily listed in the decision issued by the Committee. However, experience shows that the Court, if its competence cannot be shared in the scrutiny of the respect of the legal procedure, is inclined to recognise the technical expertise of specialised committees such as the CECEI.
- 71 In Norway the extent of judicial review of questions of law depends on the language used by the Act applied, e.g. words as „after the agency in question’s decision...“, or „... the agency may decide whether...“ will restrict judicial review to of whether a misuse of power has been exercised.

Scope of Judicial Review for Questions of Fact

- 72 The scope of judicial review for questions of fact differs again widely. In all Member States, except the UK, Ireland, and, depending on the issue, Luxembourg, the court would, as a matter of principle, not give any deference to fact determinations made by the supervisory authority; rather it would investigate the case itself (full judicial review for questions of fact). As a minimum the court would try the evidence offered by the supervisory authority to prove the unsuitability of a major shareholder or prospective major shareholder on the one hand and the evidence to the contrary introduced by the plaintiff before it arrives at the conclusion whether the facts justify the decision of the supervisory authority in the light of the law. In the UK the scope of review depends on whether the case is taken to the Banking Appeal Tribunal (BAT)⁵, or to the High Court. As far as the BAT is concerned, the tribunal considers on the basis of the information available to the supervisory authority, whether the supervisory authority’s decision was unlawful (e.g. without jurisdiction) or was within the range of decisions the tribunal could have made. Before the High Court, judicial review is only concerned with the fairness and reasonableness of the

⁵ The BAT is a special tribunal set up by the Banking Act to appeal against decisions by the Financial Services Authority as banking supervisory authority. Though the BAT is formally not a court, it substantially has adjudicative functions, and it is independent of the FSA when it exercises these functions.

decision-making process and the resolution of questions of law. As such, it is less likely to receive appeals than the Tribunal.

- 73 In Luxembourg (in the case of a suspension) Ireland and Portugal it may occur that the court or tribunal would review the case only on the basis of the evidence which was available to the agency at the time the decision was adopted; neither the plaintiff nor the agency may introduce new evidence. The court will uphold the contested agency decision provided that the finding is supported by substantial evidence and the evidence is conclusive. The position is similar in the UK, the main difference being that the Tribunal has a limited ability to allow the introduction of new evidence.
- 74 As the facts on which the agency has based its decision - from an independent point of view - may often not clearly support either decision for or against the plaintiff („non liquet“), different standards of proof may apply. In most Member States (Austria, Denmark, France, Germany, Ireland, Liechtenstein, the Netherlands, Norway, Sweden, Spain and the UK) the court is likely to uphold the agency's decision if it is satisfied on the balance of probabilities that the decision is conclusively supported by reliable evidence. It should be noted that the administrative law proceedings differ considerably from Member State to Member State ranging from a rather limited judicial review which is generally not concerned with the merits of the case but rather with the legality of the decision-making process and which, notably, only rarely allows the introduction of new evidence in the court proceedings, as is the case in Ireland and the UK, to a full-blown judicial review by an administrative court which is held to investigate the case itself before it decides on the basis of the available evidence whether to uphold or override the agency decision.
- 75 In Belgium, Iceland and, until recently in Germany, the full burden of proof appears to be on the supervisory authorities; the competent court would only uphold the agency's decision if it finds that the facts on which the defendant's unsuitability is based upon be proven beyond reasonable doubt.

Conclusions

- 76 2BCD lays down only in general terms the requirements for shareholder control, for example, it does not define the term unsuitability. Furthermore, different legal systems and powers for supervisors are in place across EEA countries, for example some supervisors have the power to revoke or withdraw a banking license as a last resort where an shareholder acquires a qualifying holding despite being considered unsuitable; others do not have this power. It is, therefore, not surprising that the approaches taken and interpretations adopted in practice differ from one country to another, consistent with the Directive. Legal certainty is also impaired, as supervisors in most countries produce guidelines rather than “hard law” on their interpretation in this area, which may or may not be upheld by the courts.
- 77 Such differences in approach might be a concern where they could lead to a kind of arbitrage – for example shareholders seeking to benefit from less stringent

“suitability” rules in a particular EEA country. However, the scope for this seems limited and, in any case, supervisors are empowered to share information with each other to minimise the potential for unsuitable shareholders to “slip through the net”.

- 78 It is also important to note that, although explicitly questioned, no Member State identified weaknesses or shortcomings in its legal framework concerning the implementation of the Articles 5 and 11 of 2BCD.

**Groupe de Contact
August 1999**

Annex Questionnaire on Shareholder Control

	Austria	Belgium	Denmark	Finland	France	Germany	Greece	Iceland	Ireland	Italy	Liechtenstein	Luxembourg	Netherlands	Norway	Portugal	Spain	Sweden	UK	
1. Practical Experience	Acquisition denied in several cases; no court experience ¹	Acquisition denied in several cases; no court experience	Acquisition denied in several cases; no court experience	Acquisition denied in several cases; no court experience	Acquisition denied in several cases; no court experience	Refusal of acquisition in some cases; some of them being taken to the court	Acquisition denied in several cases; no court experience	No practical relevance ²	Acquisition denied in some cases; no court experience	Acquisition denied in several cases; no court experience	No practical relevance	No practical relevance	Acquisition denied in several cases; no court experience	No practical relevance	Acquisition denied in several cases; no court experience	Acquisition denied in several cases; no court experience	Refusal of acquisition in some cases; none has been taken to court	Acquisition denied in several cases; no court experience	
2. Delegation of Rule Making Powers to the Supervisory Authorities as to What Establishes the Unquestionable Major Shareholder Would-be Major Shareholder or as to What Establishes a Qualifying Holding									Implied delegation ⁴	explicit delegation	no delegation	no delegation	no delegation	no delegation	no delegation	no delegation	no delegation	no delegation	
3. Definition of Qualifying Holding	EC Standard ⁵	Joint Hands Approach	EC Standard	EC Standard	EC Standard	Joint Hands Approach ³	EC Standard	EC Standard	Joint Hands Approach	Joint Hands Approach	EC Standard	EC Standard	Joint Hands Approach	Joint Hands Approach	EC Standard	Threshold of what constitutes qualifying holding is down to 5%	EC Standard	EC Standard	
4. Definition of Unsuitability	personal integrity, professional reputation, financial strength	personal integrity, professional reputation, financial strength, group transparency	personal integrity, professional reputation, financial strength, group transparency	personal integrity, professional reputation, financial strength, group transparency	personal integrity, professional reputation, financial strength, group transparency	personal integrity, professional reputation, group transparency with foreign authorities	personal integrity, professional reputation, serious conflicts of interest, group transparency	personal integrity, professional reputation	personal integrity, professional reputation	personal integrity, professional reputation, financial strength, group transparency	personal integrity, professional reputation, financial strength, group transparency	personal integrity, professional reputation, financial strength, group transparency	personal integrity, professional reputation, financial strength, group transparency	personal integrity, professional reputation, financial strength, group transparency	personal integrity, professional reputation, financial strength, group transparency	Threshold of what constitutes qualifying holding is down to 5%	personal integrity, professional reputation, financial strength, group transparency	personal integrity, professional reputation, financial strength, group transparency	Fit and proper requirements, including personal integrity, professional reputation

1 Denial of acquisition or other supervisory measures to restrict unsuitable major shareholders or would-be major shareholders have not been contemplated in a court of law yet.

2 A shareholder's unsuitability has not been at issue yet.

3 The supervisory authorities have not been delegated legislative powers in this regard.

4 No formal delegation of legislative powers, but courts may have regard to the interpretation offered by the supervisory authority to the extent that the statutory wording leaves room for interpretation and provided that the interpretation is reasonable and not contradicting higher ranking law.

5 The national implementation does not go beyond the definition prescribed by 2BCD Art. 1 (10).

6 The Joint Hands Approach in Belgium, Germany, Ireland, Italy and Norway goes beyond EC Standard in that several different shareholders, direct or indirect, legal or beneficial ones, which separately do not possess a qualifying holding may be considered to do jointly so; if these shareholders, beneficiaries or persons who exert control over a shareholding institution are in a certain relationship to each other or are assumed to act in concert in the exercise of their shareholder rights, their holdings are consolidated.

	Austria	Belgium	Denmark	Finland	France	Germany	Greece	Iceland	Ireland	Italy	Lichten-stein	Luxem-bourg	Nether-lands	Norway	Portugal	Spain	Sweden	UK	
5. Investigatory Powers	supervisory authorities have direct or indirect access to commercial or criminal registers; may require major share-holders and would-be major share-holders to provide information and disclose documenta-tion	supervisory authorities have direct or indirect access to commercial or criminal registers; may require major share-holders and would-be major share-holders to provide information and disclose documenta-tion	supervisory authorities have direct or indirect access to commercial or criminal registers; may require major share-holders and would-be major share-holders to provide information and disclose documenta-tion	supervisory authorities have direct or indirect access to commercial or criminal registers; may require major share-holders and would-be major share-holders to provide information and disclose documenta-tion	supervisory authorities have direct or indirect access to commercial registers or to some part of criminal registers; may require major shareholder and would-be major shareholder to provide information and disclose documentat ion; Commission Bancaire may conduct on-site inspections	supervisory authorities have direct or indirect access to commercial or criminal registers; may require major share-holders and would-be major share-holders to provide information and disclose documenta-tion; may verify information by on-site inspections	supervisory authorities have direct or indirect access to commercial or criminal registers; may require major share-holders and would-be major share-holders to provide information and disclose documenta-tion; may verify information by on-site inspections	supervisory authorities have direct or indirect access to commercial or criminal registers; may require major share-holders and would-be major share-holders to provide information and disclose documenta-tion	supervisory authorities have direct or indirect access to commercial or criminal registers; may require major share-holders and would-be major share-holders to provide information and disclose documenta-tion	supervisory authorities have direct or indirect access to commercial or criminal registers; may require major share-holders and would-be major share-holders to provide information and disclose documenta-tion	supervisory authorities have direct or indirect access to commercial or criminal registers; may require major share-holders and would-be major share-holders to provide information and disclose documenta-tion	supervisory authorities have direct or indirect access to commercial or criminal registers; may require major share-holders and would-be major share-holders to provide information and disclose documenta-tion	supervisory authorities have direct or indirect access to commercial or criminal registers; may require major share-holders and would-be major share-holders to provide information and disclose documenta-tion	supervisory authorities have direct or indirect access to commercial or criminal registers; may require major share-holders and would-be major share-holders to provide information and disclose documenta-tion	supervisory authorities have direct or indirect access to commercial or criminal registers; may require major share-holders and would-be major share-holders to provide information and disclose documenta-tion	supervisory authorities have direct or indirect access to commercial or criminal registers; may require major share-holders and would-be major share-holders to provide information and disclose documenta-tion	supervisory authorities have direct or indirect access to commercial or criminal registers; may require major share-holders and would-be major share-holders to provide information and disclose documenta-tion	supervisory authorities have direct or indirect access to commercial or criminal registers; may require major share-holders and would-be major share-holders to provide information and disclose documenta-tion	supervisory authorities have direct or indirect access to commercial or criminal registers; may require major share-holders and would-be major share-holders to provide information and disclose documenta-tion

	Austria	Belgium	Denmark	Finland	France	Germany	Greece	Iceland	Ireland	Italy	Liechtenstein	Luxembourg	Netherlands	Norway	Portugal	Spain	Sweden	UK	
6. Rules of Prevention and Corrective Action																			
6.1 Prior Information																			
	EC Standard ⁷	Belgium 5%, 10%, 15%, ..., 100%.	EC Standard	EC Standard	EC Standard	EC Standard	Greece goes beyond EC Standard in that increases in qualified holdings of more than 2% of the share capital and up to 33% should also be notified	EC Standard	EC Standard	Italy goes beyond EC Standard in that thresholds which trigger notification are further broken down to 5%, 10%, 15%, 20%, 33%, 50% or control.	EC Standard	EC Standard	EC Standard	Norway goes beyond EC Standard in that, subject to individual exemptions, no private shareholder may hold larger holdings in a Norwegian bank than 10 % of the share capital	EC Standard	Spain goes beyond EC Standard in that thresholds which trigger notification are further broken down 10% 15 % 20 % 25 % 33 % 40 % 50 % 66 % 75 % 100 %	EC Standard	EC Standard	
6.2 Discretion not to Disapprove of the Acquisition when Prospective Shareholder is Found Unsuitable	no	no	no	formally yes	no	formally yes	no	formally yes	formally yes	no	no	formally yes	no	formally yes	no	no	no	no	formally yes
6.3 Suspend Voting Rights Attaching to the Shares	yes	yes	yes	yes	yes, by court order upon application by the supervisory authorities or by other shareholders	yes	yes	yes	Yes, by court order upon agency application.	yes	yes	yes	yes	Voting rights attaching to shares which are acquired in breach of holding regulation are suspended by law without requiring further agency action.	yes	Voting rights attaching to shares which are acquired in breach of holding regulation are suspended by law without requiring further agency action.	yes	yes	

⁷ as required by 2BCD Art. 11 (1) sent. 2

	Austria	Belgium	Denmark	Finland	France	Germany	Greece	Iceland	Ireland	Italy	Liechtenstein	Luxembourg	Netherlands	Norway	Portugal	Spain	Sweden	UK
6.4 Order to Sell the Shares	no	yes	no	no	no	yes	no	no	yes (by court order upon application by the supervisory authority)	no	no	no	no	yes	no	no	yes	Yes (by court order upon application by the supervisory authority)
6.5 Subject Sale of Shares to Prior Approval by the Supervisory Authority	no	no	no	no	no	yes	no	no	Any acquisition of a qualifying holding is subject to the prior approval of the supervisory authority	no	no	no	no	no	no	no	no	no
6.6 Failure to Notify Supervisory Authority prior to Acquisition or Acquisition notwithstanding Opposition by the Supervisory Authority subject to Criminal Prosecution	no	yes	no	no	no	no	yes	no	Yes (may be prosecuted by the supervisory authority itself)	no	no	no	yes	no	no	no	no	no
6.7 Failure to Notify Supervisory Authority prior to Acquisition or Acquisition notwithstanding Opposition by the Supervisory Authority subject to Administrative Fines	no	yes for penal fines. For fines imposed by supervisor, yes for banks, no for shareholders	no	no	no (unless acquirer is supervised entity)	yes	no	no	no	no	yes	no	no	no	yes	no	no	no

	Austria	Belgium	Denmark	Finland	France	Germany	Greece	Iceland	Ireland	Italy	Liechtenstein	Luxembourg	Netherlands	Norway	Portugal	Spain	Sweden	UK		
6.8 Order Sequestration of the Shares																				
	Yes, by the agency.	Yes, by the agency.	no	no	no	Yes, by court order upon agency application.	no	no	Yes, by court order, upon agency application.	no	no	no	no	no	no	no	Yes, by court order upon agency application.	no	no	
6.9 Order the Bank to Follow Special Guidelines to Confine Shareholder's Derivative Influence on the Bank	no	yes	yes	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no
					prohibiting transaction between bank and unsuitable shareholder															
6.10 Removal of Unsuitable Shareholder from the Board of Directors and Junior Management Positions in the Bank	no	no	no	no	no	Agency order shareholders removal from the Board of Directors.	Agency may order unsuitable share- holder's removal from the Board of Directors any junior management position in the bank.	no	Agency may apply to court to issue an order prohibiting unsuitable shareholder from issuing directions to directors, management and staff of the bank.	no	no	no	no	no	no	no	no	no	no	Agency may order unsuitable share- holder's removal from the Board of Directors any junior management position in the bank.
6.11 Prohibit Transactions between Bank and Unsuitable Shareholder	no	no	no	no	no	no	yes	no	no	no	no	no	no	no	no	no	no	no	no	yes
					only if justified by situation of bank itself															

	Austria	Belgium	Denmark	Finland	France	Germany	Greece	Iceland	Ireland	Italy	Liechtenstein	Luxembourg	Netherlands	Norway	Portugal	Spain	Sweden	UK	
6.12 Appoint Superintendent to the Bank whose Authorization is Required for All Acts, and Decisions of the Decision-Making Bodies in the Bank																			
6.13 Withdraw Banking Licence	no	yes	no	no	yes	no	no	no	no	no	no	no	no	no	no	no	no	no	no
6.14 Non-Compliance with Corrective Action Subject to Criminal Prosecution																			
6.15 Non-Compliance with Corrective Action Subject to Corrective Fines	no	yes	no	no	no	no	no	no	yes	no	no	no	no	no	no	no	no	no	yes
Judicial Review for Questions of Law	full judicial review	full judicial review	full judicial review	full judicial review	full judicial review	full judicial review	full judicial review	full judicial review	judicial review	judicial review	judicial review	full judicial review	full judicial review	full judicial review	full judicial review	full judicial review	full judicial review	full judicial review	judicial review limited by role of the Banking Tribunal ⁴
Judicial Review for Questions of Fact	Substantial Evidence Rule ⁹	Compelling Evidence Rule ¹⁰	Substantial Evidence Rule	Substantial Evidence Rule	Substantial Evidence Rule	Substantial Evidence Rule	Substantial Evidence Rule	Compelling Evidence Rule	Substantial Evidence Rule	Substantial Evidence Rule	Substantial Evidence Rule	Substantial Evidence Rule	Substantial Evidence Rule	Substantial Evidence Rule	Substantial Evidence Rule	Substantial Evidence Rule	Substantial Evidence Rule	Substantial Evidence Rule	Substantial Evidence Rule

yes for penal fines. For fines imposed by supervisor, yes for banks, no for shareholder⁵

yes (by the Minister of Commerce upon proposal by the Bank Inspector-¹¹)
yes (with the consent of the Minister for Finance)

judicial review implied by legislation of legislative powers
judicial review implied by legislation of legislative powers

⁴ The court, in the United Kingdom the Banking Appeal Tribunal, shall uphold the agency's decision if it is satisfied, on the balance of probabilities that the decision is supported by reliable evidence.
⁵ The court is likely to uphold the agency's decision if it is satisfied, on the balance of probabilities, that the decision is supported by reliable evidence.
¹⁰ The court shall only uphold the agency's decision if it finds that the facts which conclude the major shareholder's or would-be major shareholder's unsuitability are proven beyond reasonable doubt.