

Anna TARASIUK-FLODROWSKA*

Acquisitions directive – focus on practical issues of Polish insurance companies

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Introductory work

Abstract

Changes of ownership of shares or changes in management of insurance companies constitute a very important issue for the insurance market and the competent authorities. Directive 2007/44/EC of the European Parliament and the Council, aiming at maximum harmonisation, required the EU Member States to introduce relevant amendments to their local laws in respect of the prudential assessment of the relevant acquisitions in the financial sector. The article elaborates on the implementation of the Directive to the Polish legal system and presents some practical issues that the entities taking part in the acquisition process in respect of the Polish insurance companies have to face. It is also the basis for presenting current developments of the EU in respect of the prudential assessment proceedings.

Key words: Acquisitions Directive, financial sector, implementation, prudential assessment, increase holding

1. INTRODUCTION

The limitations and various requirements regarding the acquisition of shares of insurance companies constitute a very important practical issue for the entire insurance market around the world. Needless to say, the changes of ownership of shares or changes of a similar character resulting in the factual transfer of ownership or the management of regulated companies, such as insurers, must remain under the specific, full control and supervision of the relevant authorities,

especially for the sake of the interest of the clients of such companies. The potential acquirers of control in an insurance company must be fit and proper in order to ensure that the interests of the clients will not be threatened by such an acquisition or increase in control. However, the regulations imposing certain limitations in the above respect need to be clear and unambiguous.

Such clarity and explicitness for the European Union insurance market was supposed to have been provided by the regulations of Directive 2007/44/EC of the European Parliament and of the Council amending Council Directive 92/49/EEC, and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC regarding the procedural rules and evaluation criteria for the prudential assessment of acquisitions and the increase of holdings in the financial sector (hereinafter: the Directive). The Directive was adopted on 5 September 2007¹ and indicated 21 March 2009 as the deadline for its implementation by the EU Member States.

Before the Directive was adopted there were several different regulations that related to the situations in which a natural person or legal person decided to acquire or increase a qualifying holding in a credit institution, insurance or re-insurance company, or investment firm.² Such regulations were regarded

¹ Official Journal of the EU L 247/1.

² Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance amending Directives 73/239/EEC and 88/357/EEC (Third non-life insurance directive), Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance, Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC,

* Attorney at law, Hogan Lovells, Warsaw, e-mail: anna.tarasiuk@hoganlovells.com.

as insufficient from the point of view of the prudent assessment of the acquirers of shares in such entities. According to the Preamble of the Directive, “the legal framework has, so far, provided neither detailed criteria for a prudential assessment of the proposed acquisition, nor a procedure for their application. A clarification of the criteria and the process of prudential assessment is needed to provide the necessary legal certainty, clarity, and predictability with regard to the assessment process, as well as to the result thereof.”³ The reason for the Directive that was indicated further on in the Preamble was to “specify the criteria for the supervisory assessment of shareholders and management in relation to a proposed acquisition and a clear procedure for their application.”⁴ The idea was, therefore, to make the notification process in various EU Member States clear and transparent, as well as to harmonize the conditions on which the notification proceedings were conducted, to make at the same time sure they were more cost and time effective. From the point of view of the shareholders, the Directive was to indicate the maximum time limit in which the prudential assessment needed to be completed, as the timing previously differed in various jurisdictions and proceedings, and to provide for a list of information that was required to be given to the competent authorities for the purposes of a prudential assessment. From the point of view of the competent authorities, the Directive was to specify the criteria to be applied in the prudential assessment process.

2. IMPORTANT ELEMENTS OF THE DIRECTIVE IN RELATION TO THE INSURANCE COMPANIES

In a nutshell, the Directive imposes an obligation on the EU Member States to require any natural or legal person, or such persons acting in concert (proposed acquirer), who have taken a decision either to acquire, directly or indirectly, a qualifying holding in an insurance company, or to further increase, directly or indirectly, such a qualifying holding in an insurance company as a result of which the proportion of the voting rights, or of the capital held, would reach or exceed

20%, 30% or 50% or so that the insurance company would become its subsidiary (proposed acquisition), first to notify in writing the competent authorities of the insurance company in which they were seeking to acquire or increase a qualifying holding, indicating the size of the intended holding and relevant information.⁵ A similar obligation is imposed on the entity that plans to dispose of the shares of the insurance company.⁶

The notification procedure relating to the intended acquisition seems to be quite easy to follow. According to the Directive, the competent authorities shall, promptly and in any event within 2 working days following the receipt of the notification, confirm such receipt. It also indicates the maximum limit of 60 working days as from the date of the written acknowledgement of the receipt of the notification and all the documents required by the EU Member State to be attached to the notification (assessment period), to complete the proceedings by the competent authorities. There is also an obligation imposed on the competent authorities to inform the proposed acquirer of the date of the expiry of the assessment period at the time of acknowledging the receipt. The competent authorities may, during the assessment period, if necessary, and no later than on the 50th working day of the assessment period, request any further information that is necessary to complete the assessment. Such a request should be made in writing and should specify the additional information required. For the period between the date of the request for the information by the competent authorities and the receipt of the response by the proposed acquirer, the assessment period is interrupted, but the interruption period shall not exceed 20 working days.⁷ Any further requests by the competent authorities for the completion or clarification of the information shall be at their discretion, but may not result in an interruption of the assessment period.

The completion of the assessment requires the competent authorities either to oppose the proposed acquisition, or to remain silent, or to set a maximum period for concluding the proposed acquisition. In the first case, the competent authority needs to inform the proposed acquirer of the opposition within 2 working

Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council Directives 73/239/EEC, 92/49/EEC as well as Directives 98/78/EC and 2002/83/EC and Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions.

³ Directive, Preamble, Point 2.

⁴ Directive, Preamble, Point 3, second sentence.

⁵ According to the Directive, the EU Member States need not apply the 30% threshold where they already apply a threshold of one-third.

⁶ Except for prudential assessment proceedings.

⁷ It is possible to extend the interruption up to 30 working days only in cases related to the proposed acquirer – if it is situated or regulated outside the EU, or is not subject to extended supervision, i.e. supervision under the Directive or Directives 85/611/EEC, 2002/83/EC, 2004/39/EC, 2005/68/EC, or 2006/48/EC.

days and provide the reasons for this decision. In the second case, the lack of opposition means the transaction is deemed to be approved.

The assessment process has also been clarified and it was made clear that the main aim of the assessment is to make sure of the sound and prudent management of the insurance company in which the acquisition has been proposed.

The Directive provides several criteria of assessment that should be understood as critical for the assessment of a potential acquirer, including the “reputation of the proposed acquirer.” By the “reputation of the proposed acquirer”, the Directive understands the “determination of whether any doubts exist about the integrity and professional competence of the proposed acquirer and whether these doubts are founded”⁸, which seems to be particularly important if the acquirer is not a regulated entity.

The competent authorities are therefore obliged to appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following criteria:⁹

- (a) the reputation of the proposed acquirer (this includes the integrity and professional competence of the potential acquirer¹⁰);
- (b) the reputation and experience of any person who will direct the business of the insurance company as a result of the proposed acquisition;
- (c) the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the insurance undertaking in which the acquisition has been proposed;
- (d) compliance with the prudential requirements based on the Directive and, where applicable, other Directives, notably, Directives 73/239/EEC, 98/78/EC, 2002/13/EC, and 2002/87/EC, in particular, whether the group of which it will become a part of has a structure that makes it possible to exercise effective supervision, effectively exchange information among the competent authorities, and determine the allocation of responsibilities among the competent authorities;
- (e) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or financing terrorism within the meaning of Article 1 of Directive 2005/60/EC¹¹ is

being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

According to the Directive, the competent authorities may oppose the proposed acquisition only if there are reasonable grounds for doing so on the basis of the criteria set out in the Directive, or if the information provided by the proposed acquirer is incomplete.

For the same reasons of clarity the EU Member States have been obliged to produce and make publicly available a list specifying the information that is necessary to carry out the assessment and that list must be provided to the competent authorities at the time of notification. This information must be proportionate and adjusted to the nature of the proposed acquisition and the proposed acquirer. The Directive also declares that the list of requested information should provide for specific cases in which the competent authorities may request less extensive information and that the competent authorities should not require information that is irrelevant for a prudential assessment.

This requires that the supervisory authorities from various EU Member States cooperate with each other when making the relevant assessment of the acquirer. In particular it indicates that, although the final decision regarding the prudential assessment remains with the competent authority responsible for the supervision of the entity in which the acquisition is proposed, the competent supervisory authority should take into full account the opinion of the competent authority responsible for the supervision of the proposed acquirer.¹²

3. GUIDELINES

The Directive itself provides rather a general approach to the information and documents that should be provided in relation to the notification proceedings. In order to supplement the Directive, the Guidelines for the prudential assessment of acquisitions and increases in holdings in the financial sector required by the Directive have been issued.¹³ The Guidelines are non-binding, but aim at providing

of the financial system for the purpose of money laundering and terrorist financing (Official Journal of the EU L 309/15).

¹² Directive, Preamble 10.

¹³ CEBS/2008/214, CEIOPS-3L3-19/08, CESR/08-543b, “Guidelines for the prudential assessment of acquisitions and increases in holdings in the financial sector required by Directive 2007/44/EC”, available at: <http://www.eba.europa.eu/getdoc/6268b37d-77db-4e29-8fbc-33b0a8984ec7/3L3-MA-Guidelines.aspx>, 27. 3. 2012.

⁸ Directive, Preamble, point 8.

⁹ Directive, Article 1, Sec. 3.

¹⁰ Guidelines for the prudential assessment of acquisitions and increases in holdings in the financial sector required by the Directive 2007/44/EC, (hereinafter: Guidelines), p. 10.

¹¹ Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use

a common understanding of the prudential assessment criteria indicated in the Directive and the intention was that they are the basis for the implementation approach undertaken by the relevant regulators of the EU Member States. The Guidelines present the list¹⁴ of the information necessary to carry out the assessment which the Directive requires the EU Member States to make publicly available and indicates that the list should be exhaustive. Nevertheless, in some cases a supervisory authority may not require the potential acquirer to provide as much information as indicated in the list, for example, if some information is already in the possession of the supervisory authority, or can be obtained via official channels, i.e. from another supervisory authority. For the sake of the clarity and time efficiency of the proceedings, the Guidelines also instruct the supervisory authorities of the EU Member States to inform the proposed acquirer of the absence of any objections against a proposed acquisition as soon as possible after having made their decision.¹⁵

4. IMPLEMENTATION OF THE DIRECTIVE IN POLAND

Although there was a significant period of time provided for the implementation of the Directive, Poland took quite some time to do so.¹⁶

The implementation of the Directive to the Polish legal system took place on 25 June 2010 by way of the Act on amendments to the Banking Law Act, the Act on Insurance Activity, the Investment Funds Act, the Act on Financial Instruments Trading, and the Act on Financial Market Supervision¹⁷ (hereinafter: the Amending Act) that provided, inter alia, a new wording to articles 35-37, 47, 223f, 223i-m, and 223t of the Polish Act on Insurance Activity, (hereinafter: the Insurance Activity Act¹⁸). What is more, the Ordinance from the Ministry of Finance dated 20 August 2010, (hereinafter: the Ordinance), was adopted regarding the list of all the documents that need to be provided for proceedings purposes attached to the notification on the intention to acquire or take out shares or rights from shares of a domestic insurance company, or the intention to become a dominant entity towards a

domestic insurance company.¹⁹ Although the idea of the Directive and the Guidelines was to make the whole process of notification and document collection easier, more cost efficient and uniform in all the EU Member States, it appears that from a practical point it may be difficult to achieve such uniformity.

Previously, although the notification process regarding the acquisition of shares (changes of control) in the insurance companies was not heavily regulated, the Polish Financial Supervisory Authority, (hereinafter: the KNF²⁰), adopted certain practice on the basis of which the notifying parties were obliged to submit documents that the KNF found to be relevant to the notification process. This practice was based on similar provisions and requirements regarding the establishment of insurance companies in Poland and was quite easy to follow.

Needless to say, the first notification proceedings after the implementation of the Directive to the Polish legislation required a deep analysis of the intentions of the Directive and the requirements of a competent authority. There were some doubts as to how the new Polish legal provisions should be interpreted and a number of practical issues that may be considered important.²¹

5. PRACTICAL ISSUES – POLISH PERSPECTIVE

The Amending Act and the Ordinance, on one hand, are very specific in respect of the documents that need to be presented during the notification proceedings, but on the other hand, provide some room for legal interpretation.

In general, the Amending Act and the Ordinance follow the rules of the Directive and the Guidelines. The latter has been the basis for the wording of the Ordinance. However, although the Directive and the Guidelines intended to harmonize the conditions for the notification and information that needs to be provided, due to jurisdictional discrepancies, it was inevitable that certain differences in the documents or information requirements appeared between the regulations of the EU Member States.

One of the examples that can be presented here relates to the documents and information concerning reputation of the potential acquirer. There is no doubt

¹⁴ Guidelines, Appendix II, page 32–39.

¹⁵ Guidelines, page 6.

¹⁶ France implemented the Directive in several legal acts in the period of 24 July 2009 – 2 November 2009 and German law implementing the Directive came into force in March 2009.

¹⁷ Polish Journal of Laws, No 126, item 853.

¹⁸ Polish Journal of Laws, No 11, item 66.

¹⁹ Polish Journal of Laws of 2005, No 161, item 1082.

²⁰ Komisja Nadzoru Finansowego.

²¹ According to the information published by KNF “Report from KNF’s activity in 2011” available on www.knf.gov.pl, 1. 4. 2012 there were 11 notification proceedings regarding the acquisition of shares in insurance companies pending in 2011.

that, local regulations of various EU Member States may provide for specific requirements regarding the obligation to issue certain documents or issue such documents in specific form. It is also possible that some jurisdictions do not require certain documents to be issued at all or that these documents can be replaced with relevant statements. In view of the above, it should be noted that, the Polish regulations require the presentation of documents confirming²² the qualifications and professional experience of the persons who effectively direct the business of the acquirer (managers).²³ It is generally understood that, the documents and information that should be provided should consist of diplomas (educational proof) and work certificates (proof of professional experience). In the case where the acquirer is a foreign entity, the requirements of the Ordinance may not be fully met. This is because some jurisdictions do not impose an obligation on the employers (contractors) to issue any document that would work as a proof of employment at that particular entity, while, according to the Polish law, the employer is obliged to issue such a document after the termination or expiration of the employment.²⁴ In practice, in view of the Polish legal provisions, a simple résumé of the manager may also be treated as insufficient to be regarded as a statement that could replace the work certificate. This is why the potential acquirers need to consider providing such proof of professional experience in any other way which is acceptable under the Polish legal provisions. This includes extracts from registers (if the managers performed certain management functions that required registration at publicly available registers). However, the statements can also be accepted by the supervisory authority if it is clear that the work certificate or diploma has not been issued or cannot be issued due to the legal provisions in certain jurisdictions. Other interpretation of the current Polish legal provisions should not be accepted, as the Appendix II of the Guidelines, mainly refers to the “curricula vitae detailing previous professional experience and activities currently performed.”²⁵

²² Ordinance, § 2 item 7.

²³ There is one exception, according to the Insurance Activity Act information on the qualifications and professional experience as well as information on convictions and pending proceedings is not required if the entity submitting the notification is a credit institution, insurance undertaking, reinsurance undertaking, investment firm or a managing company, which obtained the authorisation to perform the activity in a Member State, provided that this circumstance is indicated in the notification.

²⁴ Act dated 26 June 1994 on Labour Law (unified text: Journal of Laws of 1998, No. 21 item 94 with further amendments, article 97 § 1.

²⁵ Guidelines, Appendix II, Part I, Section 1, (a) (2).

Similar technical problem applies to the residential address of a manager of the potential acquirer. The Polish law requires the acquirer to provide the manager’s ID that indicates the place of residence of the manager.²⁶ In many countries the address of residence does not appear on any ID. However, in this case, a statement should also be sufficient.

Many problems with the documents to be provided at the notifications proceedings in Poland are connected with the clean criminal record certificates that are required for each manager of the potential foreign acquirer.²⁷ According to the Polish law, the potential acquirer needs to present clean criminal record certificates for the managers from each of the countries they have resided in over the last 10 years. Also, the criminal records certificates cannot be older than 3 months before the date the notification has been submitted. Needless to say, there are two important practical problems – timing and meaning of the “residency.” Obtaining criminal record certificates in some countries is so time consuming that the 3 months period of validity for the purpose of the notification proceedings can be regarded as relatively short. The meaning of “residency” can also be important from the point of view of practice especially if the manager has been working for many companies in various jurisdictions. The most important is, however, the 10 years period which should be covered by the clean criminal record certificate and which does not appear to be indicated in the Guidelines.²⁸

Another practical example of specific regulations of the Polish law is also related to the criterion regarding the “reputation of the proposed acquirer.” The prudential assessment requires a number of documents to be provided to the KNF in the notification proceedings, including a structure chart²⁹ of the potential acquirer, to inform about the direct and indirect subsidiaries of the shareholder and all the entities in which the shareholder possesses a significant share.³⁰ This chart is to include

²⁶ Ordinance, § 2 item 5).

²⁷ Ordinance, § 2 item 8) a).

²⁸ Guidelines, Appendix II, Part I – general information requirements.

²⁹ Ordinance, § 2 item 3.

³⁰ In general, significant share means possessing directly or indirectly at least 20% of the capital or the right to exercise at least 20% of the votes in the decision making body and other rights to the capital resulting in obtaining the benefits. Detailed definition has been included in the Act dated 22 May 2003 on Insurance Activity (Journal of Laws of 2010 No 11 item 66) that refers to the Act dated 15 April 2005 on supplementary supervision over the credit institutions, insurance and reinsurance companies, as well as investment firms that constitute financial conglomerate (Journal of Laws No 83 item 719).

information about the entities within the group: legal, factual, financial, or capital, as well as the personal relations within the group. The chart should provide the following information about the shareholder and its subsidiaries: registered office, subject of its activity, description of the relation between the shareholder and its subsidiaries (the nature and scope of the relation, including the ownership structure and the number of shares), and the supervisory authority indication, if applicable. Although the legal provisions refer to the shareholder (potential acquirer), it is not entirely clear as to whether such requirement also applies to the dominant companies above such shareholder and to what extent. The Polish new legal provisions do not explain in what form the said information should take, or whether it can be at all limited.

This issue is very important in the case of large capital groups which may have thousands of subsidiaries across the world. Although the Guidelines expressly relates to the chain of holdings that should be assessed against the assessment criteria³¹ and in Appendix II also refer to the strict organisational requirements in this respect³², it also mentions the proportionality principle. The Guidelines elaborates on the proportionality principle³³ stating that, it should apply to the composition of the required information and to the assessment procedures. In other words, it should apply to both, the particularities of the acquirer, as well as the proposed transaction, indicating as to what extent the assessment should be made. As an example, the Guidelines indicates that the proportionality principle “implies that in the case of intra group transactions, where there is no real or substantial change in the direct or ultimate shareholding of the financial institution, although all the required information should be provided, the shareholders’ group should not be reassessed since the transaction does not really affect the influence of the supervision exercised by the competent authority over the financial institution being the subject of the transaction.”³⁴ Although the criteria of the application of the proportionality principle, according to the Guidelines, are quite clear, it is, however, difficult to apply the proportionality principle to individual proceedings, taking into account the Polish regulations on the structure chart that should be provided.

The proportionality principle was implemented to the Polish law e.g. by limitation of the list of information

or documents required in the notification proceedings in the certain circumstances. For example the list of information regarding business plans towards the insurance company differs depending on the number of shares to be acquired as the possibility of influencing the factual decision making process also depends on the number of shares held. Additionally, documents confirming qualifications and professional experience as well as information on convictions and pending proceedings are not required if the potential acquirer is a financial institution, indicated in the Insurance Activity Act, which obtained the authorisation to perform the activity in the EU Member State. The practice, however, shows that, this issue is still problematic and the current regulations do not provide uniform solutions to fully apply the proportionality principle. As an example, according to the Polish regulations, the potential acquirer is obliged to provide the same extensive list of documents for a transfer in the same capital group (when the ultimate dominant company does not change) as the acquirer outside the group (when the ultimate dominant changes). Additionally, there is an exclusion regarding documents confirming qualifications or education for the managers of the acquirer being a regulated company, but there is no exclusion for the manager performing functions in a non-regulated company even if he/she performs functions in a supervised company not being the acquirer. Literal interpretation of the Polish law leads to a conclusion that such managers are obliged to prove their qualifications even if they have been approved by a competent authority in this or any other EU Member State. This is because the exclusion in the Insurance Activity Act refers only to the situation if the acquirer is the supervised company. Although the Insurance Activity Act mentions that the list of documents which should be attached to the notification should ensure proportionality of the required information depending on the intended influence of the entity submitting the notification on the process of managing the insurance company, the clause is very general and refers only to the influence of the entity and is not sufficient to apply the proportionality principle in full in the mentioned cases.³⁵

It should, however, be noted, that despite some technical difficulties that may be connected with the collection of certain documents, the implementation of the Directive to the Polish legal system made the

³¹ Guidelines, Point 13, page 7.

³² Guidelines, Appendix II, Part I – General information requirements, point 2 (21) and (22).

³³ Guidelines, Point B – The Proportionality principle, page 8.

³⁴ *Ibidem*.

³⁵ Please note that the issue of proportionality requirements has been referred to in the public consultation on the application of Directive 2007/44/EC as regards acquisitions and increase of holdings in the financial sector, by the European Commission, available at http://ec.europa.eu/internal_market/, 27. 3. 2012.

proceedings before the supervisory authority easy to understand to the entities from the other EU Member States.

It should also be mentioned that, following the successful implementation of the Directive in Poland, both the insurance market, and the supervisory authority are trying to work out some rules of conduct to make the notification proceedings easier and less time consuming. One such action is the letter of the Chairman of the KNF³⁶ that was issued on 18 November 2011 and addressed to those entities being dominants towards domestic insurance and reinsurance companies in which it reminded the shareholders of the insurance companies to notify the KNF of any potential intention to dispose of shares immediately after they appear (actually before a formal notification on an acquisition is submitted to the KNF by a potential acquirer). In fact, the KNF requires the shareholder to inform the supervisory authority on the intention to dispose of the shares even before the potential acquirer has been chosen, the latter being notified to the KNF as soon as the relevant decision has been made. The KNF advises to consult on the potential transaction at a very early stage, just after a mere “intention” has been established. The letter does not constitute any legal obligation as such, and should be regarded as a recommendation from the supervisory authority. It, however, seems to follow the Guidelines that encourage making preliminary contacts with the supervisory authorities since it may be beneficial and useful especially in case the proposed transaction is complex.³⁷

6. POST IMPLEMENTATION – FURTHER ACTIONS

According to article 6 of the Directive, the Commission has to review the application of the Directive and submit a report to the European Parliament and the Council, together with any appropriate proposals to review the Directive. To fulfil this obligation a public consultation was arranged in order to obtain useful information on how the Directive has been applied in the EU Member States and to help the Commission to prepare the report on the application

of the Directive.³⁸ The period of public consultation on the application of Directive as regards acquisitions and increases of holdings in the financial sector was scheduled from 8 December 2011 to 10 February 2012. A number of the answers from this consultation provided by individuals, registered organizations and public authorities have been published on the internet.³⁹ The final results of the consultation and the following steps have not been published as yet, but according to the information presented, there were a small number of participants in the consultations (standpoint of none of the Polish entities have been published). Nevertheless, the results of the review may have an impact on future regulations or interpretations of the current provisions of law. They may also help to provide a common understanding on the prudential assessment criteria laid down by the Directive and the establishing of an exhaustive and harmonized list of information that the proposed acquirers should include in their notifications to the supervisory authorities. It is not expected that the final results will have a direct impact on individual jurisdictions, but may transpire to be a useful tool for improving the possible inefficiencies or difficulties which can be found in practice related to acquisitions in the financial sector.

7. CONCLUSION

Adopting the Directive is regarded to be an important step forward in relation to the prudential assessment of the relevant acquisitions in the financial sector. It brought some uniformity and new solutions for the transfer of ownership or increase of control in particular on the EU insurance market.

Although the Directive was supposed to provide uniform rules for the notification procedure as well as clarity and explicitness in this respect for the European Union insurance market, it was inevitable that there will be some differences in implementation of the Directive in each of the EU Member States. It was caused by both, the general character of the legal provisions of the Directive in respect of the list of documents necessary for the prudential assessment purposes and the differences in legal regulations in various jurisdictions.

³⁶ Letter of Andrzej Jakubiak, President of the Polish Commission for Financial Supervision dated 18 November 2011, no. DNS/WI/ 606/ 356/1/1, addressed to the entities being dominants towards domiciled insurance and reinsurance companies, available at: http://www.knf.gov.pl/Images/ZU_zbywanie_akcji_18-11-2011_tcm75-28451.pdf, 27. 3. 2012.

³⁷ Guidelines, point 17, page 8.

³⁸ Information on the public consultation on the application of the Directive as regards acquisitions and increases of holdings in the financial sector has been announced on the internet at: http://ec.europa.eu/internal_market/consultations/2011/acquisitions_en.htm, 27. 3. 2012.

³⁹ Available at: http://ec.europa.eu/internal_market/consultations/2011/acquisitions/index_en.htm, 27. 3. 2012.

It should be indicated that Poland implemented the Directive in a way that follows the assumptions of the Directive and suggestions of the Guidelines. The conformity with the legal provisions at the EU level, however, does not mean that, all the practical problems can be fully avoided. Still, both, the market and the competent authorities work on the proper understanding of the provisions that implemented the Directive, bearing in mind its intentions and aims.

Hopefully, the full outcome of the public consultation on the application of Directive will be shared between the market players and used to develop further the uniform rules in the discussed respect.

SUMMARY

The changes of the ownership of shares, or the changes in the management of insurance companies are definitely one of the most important issues for the insurance market. The importance of the matter should be seen by both the competent authorities, as well as the players on the insurance market and their clients. The lack of proper regulations may lead, not only to differences in the prudent assessment of the

notifying parties, but also to various discrepancies in the definition of “prudential” or “prudent”. Directive 2007/44/EC of the European Parliament and the Council should be treated as a satisfactory and sufficient tool for the uniformization of the assessment and the requirements towards the notifying parties themselves.

The aim of the Directive is the achievement of the maximum harmonisation of the regulatory requirements of the EU Member States’ legal systems, once they implement it into their local laws. This, of course, depends on the form of such implementation. By all means, the implementation should be complete, however, the expectations towards the implementation cannot be so high as to put aside local law requirements and attitudes. It may, therefore, be understandable that the relevant EU Member States try to define some particularities that are specific for either their own legal system or other causes. It must be remembered, however, that, these particularities cannot contradict the provisions of the Directive, or its aim.

Despite several specific regulations of the Polish law towards the Directive, it should be stated that Poland has fully implemented the Directive. Any detailed regulations in this respect that may be regarded as specific to the local market should be treated only as technical, and in compliance with the Directive.