

Sovereign Wealth Funds

What should the European Union do?

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SWFs in the EU

- Positive perception of SWFs at EU level
 - Internal market,
 - Liquidity injection,
 - Long-term investments,
 - Impact on Euro
- No CFIUS
 - No Europeanwide screening mechanism,
 - Unnecessary new legislative measures.

Top Sovereign wealth fund M&A transactions 2007-2008

Source: Thomson Financial

Target	Target Nation	Sovereign wealth fund	Value (\$m)
Citigroup	United States	Kuwait Investment Authority (KIA), GIC (Singapore)	12,500.0
UBS	Switzerland	GIC (Singapore)	11,535.0
Citigroup	United States	Abu Dhabi Investment Authority (UAE)	7,500.0
Merrill Lynch	United States	KIA (Kuwait), Korea Investment Corp	6,600.0
Merrill Lynch	United States	Temasek Holdings (Singapore)	5,600.0
Morgan Stanley	United States	China Investment Corp (China)	5,000.0
Laureate Education	United States	Caisse de Depot et Placement (Canada)	3,677.5
OMX	Sweden	DIFC (UAE)	3,551.4
Barclays	United Kingdom	China Development Bank (China)	2,980.1
Budapest Airport	Hungary	Caisse de Depot et Placement (Canada)	2,610.4
London Stock Exchange	United Kingdom	DIFC (UAE)	1,648.0
Related Cos	United States	Mubadala Development Co (UAE)	1,400.0
Carlyle Group	United States	Mubadala Development Co (UAE)	1,350.0
Och-Ziff Cap Mgmt Group	United States	Dubai International Capital (UAE)	1,258.6
Alliance Medical	United Kingdom	Dubai International Capital (UAE)	1,248.7
Mauser	Germany	Dubai International Capital (UAE)	1,159.8
OMX	Sweden	DIFC (UAE)	1,100.6
Bharti Infratel	India	Temasek Holdings (Singapore)	1,000.0
Chapterhouse Holdings Ltd	United Kingdom	GIC Real Estate (Singapore)	954.2
Barneys New York	United States	Istithmar PJSC (UAE)	942.3
Pearl Energy	Singapore	Mubadala Development Co (UAE)	877.5

“EU Approach”

- Strong European consensus
- Converging documents
 - ✓ EU Commission (February 2008)
 - ✓ EU Council (4 March 2008)
 - ✓ European Council (13–14 March 2008)
 - ✓ EU Parliament (July 2008)

Features of EU Approach

- ❑ Commitment to an open investment environment
- ❑ Respect of EC Treaty obligations and international commitments
- ❑ Support of multilateral work (IMF + OECD)
- ❑ Use of existing instruments (national/EU)
- Proportionality and transparency

Powers retained by MS

- ❑ National instruments
- ❑ Article 58 EC Treaty covers SWFs
 - ✓ public order / public security
 - ✓ SWF, SOE...
- ❑ Additional capacity at national level...
- ❑ ... to create means of oversight.

Monitoring by the EU Commission

- ❑ Limits of powers retained by MS
- ❑ Possible legal action
- ❑ Monitoring of national laws
 - ✓ Great Britain
 - Enterprise Act of 2002 (Gazprom/Centrica)
 - ✓ France
 - Decree No. 1739 of 2005
 - ✓ Germany
 - Decision on Foreign Trade and Investment Law (2008)

Judicial control - I

□ Public policy or public security justification

- list of justification measures (Art. 58(1)(b)) not exhaustive
- overriding reason or requirement in the general interest

✓ Case C-302/97 Konle [1999]

Judicial control - II

□ Proportionality test

- protection of a legitimate general interest
- strict time limits for the exercise of opposition powers
- assets or management decisions targeted must be specifically listed

□ Clarifying the interpretation of Article 58

Shortcomings EU Approach

- ✓ No reciprocity required by EU
 - Russian law on strategic sectors (2008)
 - SWFs as an opportunity to press Russia and China?
- ✓ Request of transparency
 - annual disclosure / exercise of ownership rights / disclosure of the currency composition / size and source of an entity's resources / disclosure of the home country regulation
- ✓ “27 ways” to block SWFs investments
 - Clarifying the interpretation of Article 58
 - Unilateralism / Multilateralism