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**TO : Cyprus Investment Firms**

**FROM : Cyprus Securities and Exchange Commission**

**DATE : August 01, 2017**

**CIRCULAR NO. : C231**

**SUBJECT : Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector**

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1. The Cyprus Securities and Exchange Commission (the “**CySEC**”) wishes, with this Circular, to inform the Cyprus Investment Firms (the “**CIFs**”) that European Banking Authority (the “**EBA**”), the European Insurance and Occupational Pensions Authority (the “**EIOPA**”) and the European Securities and Markets Authority (the “**ESMA**” and, together with EBA and EIOPA collectively referred to as the “**ESAs**”) published on, December 20, 2016, [Joint Guidelines](#) (the “**Guidelines**”), with ref. no. JC/GL/2016/01, on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector as a prerequisite for convergent supervisory practices by establishing a harmonised list of information that proposed acquirers should include in their notifications to the competent supervisory authorities.
2. The Guidelines are aimed at clarifying the procedural rules and the assessment criteria, which are build on the sectoral requirements, to be applied by competent authorities for the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector.
3. To this extent, even though the Guidelines are targeted to competent authorities, the procedural rules and evaluation criteria also intend to help firms by ensuring that the proposed acquirer knows what information will be required to provide to the competent authority in order to be able to assess the proposed acquisition in a complete and timely manner.
4. The Guidelines will apply from 1 October 2017.
5. Therefore, in accordance with the Guidelines, where necessary CIFs shall make every effort to comply with the Guidelines.

Sincerely

Demetra Kalogerou  
Chairman of Cyprus Securities and Exchange Commission

20 December 2016

JC/GL/2016/01

# Final Report

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Joint Guidelines on the prudential assessment of acquisitions and  
increases of qualifying holdings in the financial sector

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# 1. Executive Summary

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Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007<sup>1</sup> (the 'Directive') established the legal framework for the prudential assessment of acquisitions by natural or legal persons of a qualifying holding in a credit institution, assurance, insurance or reinsurance undertaking or an investment firm. The Directive amended the European Directives applicable to credit institutions<sup>2</sup>, investment firms<sup>3</sup>, and insurance and reinsurance undertakings<sup>4</sup>. Certain European Directives which were amended by the Directive were thereafter repealed; however, the provisions of the Directive were reflected in the relevant new sectoral Directives and Regulations.

The main objective of these Guidelines is to provide the necessary legal certainty, clarity and predictability with regard to the assessment process contemplated in the sectoral Directives and Regulations, as well as to the result thereof, by:

- a. harmonising the conditions under which the proposed acquirer of a holding in a financial institution is required to notify its decision to the competent authority responsible for the prudential supervision of the target undertaking;
- b. defining a clear and transparent procedure for the prudential assessment by the competent authorities of the proposed acquisition or increase of a qualifying holding, including setting the maximum period of time for completing the process;
- c. specifying clear criteria of a strictly prudential nature to be applied by the competent authorities in the assessment process; and
- d. ensuring that the proposed acquirer knows what information it will be required to provide to the competent authorities in order to allow them to assess the proposed acquisition in a complete and timely manner.

Due to the increasing integration of financial markets and the frequent use of group structures that extend across multiple Member States, a single acquisition or increase of a qualifying holding may be subject to scrutiny in several Member States. This has led to the adoption of a Directive based on the principle of maximum harmonisation of the procedural rules and assessment criteria

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<sup>1</sup> Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increases in holdings in the financial sector (OJ L 247, 21.9.2007, p.1).

<sup>2</sup> 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 (recast) (OJ L 177/1, 30.6.2006).

<sup>3</sup> 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 (OJ L 145/1, 30.4.2004).

<sup>4</sup> Directive 2007/44/EC amended the EU (Re-)Insurance Directives 92/49/EEC, 2002/83/EC and 2005/68/EC. Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335/1, 17.12.2009) repealed these three Directives.

throughout the European Union, without Member States being able to lay down stricter rules. Moreover, identical provisions now apply in all three financial sectors.

Achieving the goals of the Directive requires that supervisory authorities throughout the European Union and in all three sectors cooperate closely, both in the exchange of information and in the consideration of prudential issues or concerns about the financial institutions they supervise, and that they promote convergence in their supervisory practices, within the new common legal framework for the prudential assessment of acquisitions contemplated by the sectoral Directives and Regulations.

In 2008 the former three Level-3 Committees (CEBS, CESR and CEIOPS) developed non-binding guidelines for the prudential assessment of acquisitions (the '3L3 Guidelines'). The European Banking Authority (the 'EBA'), the European Insurance and Occupational Pensions Authority ('EIOPA') and the European Securities and Markets Authority ('ESMA' and, together with EBA and EIOPA, the 'ESAs') jointly reviewed and updated the 3L3 Guidelines with the aim of:

- a. reaching a common understanding on the five assessment criteria laid down by the Directive, as a prerequisite for convergent supervisory practices; and
- b. establishing a harmonised list of information that proposed acquirers should include in their notifications to the competent supervisory authorities.

The requirements of these Guidelines build on the sectoral requirements regarding procedural rules and evaluation criteria for the prudential assessment of acquisitions and increases of holdings in the financial sector, without prejudice to and without duplication of these requirements.

### **Next steps**

The Guidelines will be translated into the official European Union languages and published on the websites of the ESAs. The deadline for competent authorities to report whether they comply with the Guidelines will be two months after the publication of the translations. The Guidelines will apply from 1 October 2017.

## 2. Background and rationale

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1. The present Guidelines should be read with the sectoral Directives and Regulations as background. The sectoral Directives and Regulations set out identical procedural rules and evaluation criteria for the prudential assessment of acquisitions and increases in holdings in the financial sector. The two main objectives are:
  - a) to improve the legal certainty, clarity and transparency of the supervisory approval process with regard to acquisitions and increases of qualifying holdings in the banking, insurance and securities sectors; and
  - b) to ensure that all proposed acquisitions or disposals of a qualifying holding are treated in the same way throughout the EU and across sectors.
2. In February 2013 the Commission published a report on the application of the Directive (the ‘EC review report’<sup>5</sup>). The EC review report gave a positive assessment of the application of the EU legal framework, as no substantial compliance issues have emerged in the Member States and the data did not reveal any significant differences between the treatment of domestic and cross-border transactions. Whilst the EC review report proved that, overall, the legislative regime works satisfactorily, the survey showed that some issues still need to be addressed. The Guidelines provide for an update and further clarifications on these aspects, with the aim of fostering the achievement of the abovementioned goals of the sectoral Directives and Regulations. In order to take into account the specificities of generally applicable national corporate rules, the Guidelines offer, in some cases, common indicators to be considered by the competent authorities, rather than unique definitions.
3. The EC review report identified the following main issues:
  - a) the lack, in the sectoral Directives and Regulations, as well as in the 3L3 Guidelines, of harmonised definitions of the notions of ‘indirect qualifying holding’ and ‘persons acting in concert’, as different methods are employed by national competent authorities to establish the existence of indirect shareholding and whether persons are acting in concert and hence different interpretations exist as to whether, under such circumstances, a proposed acquisition or increase of a holding has to be notified or not;
  - b) the lack of consensus on whether the notion of a ‘decision to acquire’ should be applicable or not in situations where the acquirer has crossed a threshold without taking a conscious decision to do so;
  - c) the need to enhance the coherent application of the proportionality principle, as it seems that national supervisory authorities do not sufficiently apply the proportionality principle in terms of

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<sup>5</sup> [http://ec.europa.eu/finance/general-policy/docs/committees/130211\\_report\\_en.pdf](http://ec.europa.eu/finance/general-policy/docs/committees/130211_report_en.pdf)

both the information required and the assessment procedure, in particular in the assessment of intra-group transactions (some apply a 'light version' of the procedure in such cases or even do not always require a formal notification for intra-group transactions within cross-border banking groups; in contrast, others assess all intra-group transactions in the same way as the rest of the notifications);

d) the need to clarify that the solvency of the proposed acquirer should be assessed under the criterion related to 'the financial soundness of the proposed acquirer', as well as to provide some consistency in the interpretation of the use of own funds versus borrowed funds and on the documents required by the national supervisory authorities for the assessment of this criterion;

e) the need to clarify what constitutes money laundering and terrorist financing when assessing 'whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof';

f) the need to address certain inconsistencies that have been observed with regard to the application of the provisions of the Directive on the time limits, related to the different understanding of the acknowledgement of receipt among Member States, and to clarify whether conditional approvals of the acquisitions are compatible or not with the wording of the Directive; and

g) the need to further improve cooperation between competent authorities.

4. As mentioned in the EC review report, the Action Plan on Corporate Governance and Company Law of 12 December 2012 addresses the issue of acting in concert. The Commission recognised 'the need for guidance to clarify the conceptual boundaries and to provide more certainty on this issue in order to facilitate shareholder cooperation on corporate governance issues. During 2013 the Commission will work closely with the competent national authorities and ESMA with a view to developing guidance to clarify the rules on acting in concert, notably in the context of the rules applicable to takeover bids.'
5. In November 2013 ESMA published a statement on practices governed by the Takeover Bid Directive, focusing on shareholder cooperation issues relating to acting in concert and the appointment of board members<sup>6</sup>.
6. The Commission asked the three ESAs to review and further clarify the 3L3 Guidelines in order to provide solutions, where feasible, to the issues outlined above. When reviewing and updating the content of the 3L3 Guidelines, several other concepts outlined in other sectoral Directives,

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<sup>6</sup> <https://www.esma.europa.eu/sites/default/files/library/2015/11/2014-677.pdf>

Regulations and draft regulatory standards<sup>7</sup> were taken into consideration in order to avoid inconsistencies and potential overlaps.

7. Regarding the issue of whether competent authorities are permitted to impose limitations or conditions on the approval of a proposed acquisition of a qualifying holding, competent authorities should follow the approach indicated by the European Court of Justice on this matter<sup>8</sup>.

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<sup>7</sup> In particular: Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids; Directive 2008/22/EC of the European Parliament and of the Council of 11 March 2008 amending Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, as regards the implementing powers conferred on the Commission; Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC; and ESMA's Draft technical standards under Article 10a(8) of MiFID on the assessment of acquisitions and increases in qualifying holdings in investment firms.

<sup>8</sup> Judgment of the Court of 25 June 2015 in Case C-18/14, Request for a preliminary ruling from the College van Beroep voor het bedrijfsleven (Netherlands) lodged on 16 January 2014 — CO Sociedad de Gestión y Participación SA and Others v De Nederlandsche Bank NV and Others.

# 3. Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector

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## Status of these Joint Guidelines

This document contains Joint Guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC; Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC; and Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (the 'ESAs' Regulations'). In accordance with Article 16(3) of the ESAs' Regulations, competent authorities and financial institutions shall make every effort to comply with the Guidelines.

The Joint Guidelines set out the ESAs' view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. Competent authorities to which the Joint Guidelines apply should comply by incorporating them into their supervisory practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where the Joint Guidelines are directed primarily at financial institutions.

## Reporting requirements

In accordance with Article 16(3) of the ESAs' Regulations, competent authorities shall notify the respective ESA of whether they comply or intend to comply with these Joint Guidelines, or otherwise with reasons for non-compliance, within two months from the publication of the translations. In the absence of any notification by this deadline, competent authorities will be considered by the respective ESA to be non-compliant. Notifications should be sent to [compliance@eba.europa.eu](mailto:compliance@eba.europa.eu), [JointQHGuidelines.compliance@eiopa.europa.eu](mailto:JointQHGuidelines.compliance@eiopa.europa.eu) and [compliance.jointcommittee@esma.europa.eu](mailto:compliance.jointcommittee@esma.europa.eu) with the reference 'JC/GL/2016/01'. A template for notifications is available on the ESAs' websites.

Notifications should be submitted by persons with the appropriate authority to report compliance on behalf of their competent authorities.

Notifications will be published on the ESAs' websites, in line with Article 16(3).

## **Title I – Subject matter, scope and definitions**

### **1. Subject matter**

These Guidelines are aimed at clarifying the procedural rules and the assessment criteria to be applied by competent authorities for the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector.

### **2. Scope and level of application**

These Guidelines apply to competent authorities in the prudential assessment of acquisitions or increases of qualifying holdings in target undertakings.

### **3. Definitions**

3.1 For the purposes of these Guidelines, the following definitions apply:

- (i) 'competent authority' means any of the following:
  - (a) the competent authorities identified in point (i) of Article 4(2) of Regulation (EU) No 1093/2010<sup>9</sup> establishing the European Banking Authority (the 'EBA');
  - (b) the competent authorities identified in point (i) of Article 4(2) of Regulation (EU) No 1094/2010<sup>10</sup> establishing the European Insurance and Occupational Pensions Authority ('EIOPA'), namely the supervisory authorities defined in Directive 2009/138/EC<sup>11</sup> on the taking up and pursuit of the business of insurance and reinsurance (Solvency II);
  - (c) the competent authorities identified in point (i) of Article 4(3) of Regulation (EU) No 1095/2010<sup>12</sup> establishing the European Securities Market Authority ('ESMA'), as

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<sup>9</sup> Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p.12).

<sup>10</sup> Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p.48).

<sup>11</sup> Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of insurance and reinsurance (Solvency II) (OJ L 335, 17.12.2009, p.1).

<sup>12</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p.84).

defined in point (22) of paragraph 1 of Article 4 of Directive 2004/39/EC<sup>13</sup> on markets in financial instruments and, as of 3 January 2017, in point (26) of paragraph (1) of Article 4 of Directive 2014/65/EU<sup>14</sup> on markets in financial instruments and in Article 22 of Regulation (EU) No 648/2012<sup>15</sup> on OTC derivatives, central counterparties and trade repositories;

- (ii) 'control' means the relationship between a parent undertaking and a subsidiary undertaking, as defined in, and determined in accordance with the criteria set out in, Article 22 of Directive 2013/34/EU<sup>16</sup> on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings – which criteria, for the purposes of these Guidelines, target supervisors should apply beyond the scope of application of Directive 2013/34/EU – or a similar relationship between any natural or legal person and an undertaking;
- (iii) 'management body' has the meaning given to this term in point (7) of Article 3(1) of Directive 2013/36/EU<sup>17</sup> on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms;
- (iv) 'management body in its supervisory function' has the meaning given to this term in point (8) of Article 3(1) of Directive 2013/36/EU;
- (v) 'proposed acquirer' means a natural or legal person who, whether individually or acting in concert with another person or persons, intends to acquire or to increase, directly or indirectly, a qualifying holding in a target undertaking;
- (vi) 'qualifying holding' has the meaning given to this term in point (36) of Article 4(1) of Regulation (EU) No 575/2013<sup>18</sup> and in point (21) of Article 13 of Directive 2009/138/EC, namely 'a direct or indirect holding in an undertaking which represents 10% or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of that undertaking';
- (vii) 'sectoral Directives and Regulations' means collectively:

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<sup>13</sup> 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 (OJ L 145, 30.4.2004, p.1).

<sup>14</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p.349).

<sup>15</sup> Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p.1).

<sup>16</sup> Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p.19).

<sup>17</sup> Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2012, p.338).

<sup>18</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p.1).

- (a) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC;
- (b) Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of insurance and reinsurance (Solvency II);
- (c) Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012, on OTC derivatives, central counterparties and trade repositories;
- (d) 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;
- (e) Regulation (EU) 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012; and
- (f) Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014, on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU;
- (viii) 'shareholder' or 'member' means a person who owns shares in the target undertaking or, depending on the legal form of an institution, other owners or members of the target undertaking;
- (ix) 'target supervisor' means the competent authority, as defined in point (i) above, which is responsible for the supervision of the target undertaking;
- (x) 'target undertaking' or 'financial institution' means any of the following: a credit institution (as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013), an investment firm (as defined in point (1) of Article 4(1) of Directive 2014/65/EU), an insurance undertaking (as defined in point (1) of Article 13 of Directive 2009/138/EC), a reinsurance undertaking (as defined in point (4) of Article 13 of Directive 2009/138/EC) and a central counterparty (as defined in point (1) of Article 2 of Regulation (EU) No 648/2012); and
- (xi) 'third countries considered equivalent' means, for the purposes of the application of the prudential assessment criteria set out in Sections 10, 11, 12 and 13 of these Guidelines, those non-EU countries in which regulated financial institutions are subject to a supervisory regime which is determined to be equivalent under the conditions specified by the sectoral Directives and Regulations.

## **Title II – Proposed acquisition of a qualifying holding and cooperation between competent authorities**

### **Chapter 1 – General concepts**

#### **4. Acting in concert**

4.1 For the purposes of the sectoral Directives and Regulations, target supervisors should consider as acting in concert any legal or natural persons who decide to acquire or increase a qualifying holding in accordance with an explicit or implicit agreement between them, taking into account the other relevant provisions of these Guidelines and, in particular, paragraphs 4.2 to 4.12 hereof. Target supervisors should not be precluded from concluding that certain persons are acting in concert merely due to the fact that one or several such persons are passive, as inaction may contribute to creating the conditions for an acquisition or increase of a qualifying holding or for exercising influence over the target undertaking.

4.2 The target supervisor should take into account all relevant elements in order to establish, on a case-by-case basis, whether certain parties act in concert, which would trigger the conditions for the notification to the target supervisor and the prudential assessment of any intended acquisition.

4.3 When certain persons act in concert, target supervisors should aggregate their holdings in order to determine whether such persons acquire a qualifying holding or cross any relevant threshold contemplated in the sectoral Directives and Regulations.

4.4 Each of the persons concerned, or one person on behalf of the rest of the group of persons acting in concert, should notify the target supervisor of the relevant acquisition or increase of a qualifying holding.

4.5 When no notification evidencing that certain persons are acting in concert has been submitted to the target supervisor, the latter should not be precluded from examining whether such persons are in fact acting in concert. For this purpose, the target supervisor should take into account as indicators that persons may be acting in concert the factors set out in paragraph 4.6, which does not constitute an exhaustive list of factors. The fact that any particular factor is present does not necessarily in itself lead to the conclusion that the relevant persons are acting in concert.

4.6 With a view to assessing whether certain persons are acting in concert, the target supervisor should consider in particular any of the following factors:

- (a) shareholder agreements and agreements on matters of corporate governance (excluding, however, pure share purchase agreements, tag along and drag along agreements and pure statutory pre-emption rights); and
- (b) other evidence of collaboration, for example:
  - (1) the existence of family relationships;
  - (2) whether the proposed acquirer holds a senior management position or is a member of a management body or of a management body in its supervisory function of the target undertaking or is able to appoint such a person;

- (3) the relationship between undertakings in the same group (excluding, however, those situations which satisfy the independence criteria set out in paragraph 4 or, as the case may be, 5 of Article 12 of Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, as subsequently amended);
- (4) the use by different persons of the same source of finance for the acquisition or increase of holdings in the target undertaking; and
- (5) consistent patterns of voting by the relevant shareholders.

4.7 The target supervisor should not apply the regime relating to the notification and prudential assessment of acquisitions of, or increases in, qualifying holdings in such a way as to inhibit cooperation between shareholders aimed at exercising good corporate governance.

4.8 The target supervisor, when determining whether cooperating shareholders are acting in concert, should carry out a case by case analysis and should assess each case on its own merits. If there are facts, in addition to the shareholders' engagement in any activity set out in paragraph 4.9 on a particular occasion, which indicate that the shareholders should be regarded as persons acting in concert, then the target supervisor should take those facts into account in making its determination. There might, for example, be facts about the relationship between the shareholders, their objectives, their actions or the results of their actions which suggest that their cooperation in relation to an activity contemplated in paragraph 4.9 is not merely an expression of a common approach on a specific matter, but one element of a broader agreement or understanding between the shareholders.

4.9 When shareholders, in accordance with national law and, where relevant, EU law, cooperate or engage in any of the activities set out in the non-exhaustive list below, the target supervisor should not consider such cooperation, in and of itself, as leading to the conclusion that they are acting in concert:

- (a) entering into discussions with each other about possible matters to be raised with the company's management body;
- (b) making representations to the company's management body about company policies, practices or particular actions that the company might consider taking;
- (c) other than in relation to the appointment of members of the management body, exercising shareholders' statutory rights to:
  - (1) add items to the agenda of a general meeting;
  - (2) table draft resolutions for items included or to be included on the agenda of a general meeting; or
  - (3) call a general meeting, other than the annual general meeting;
- (d) other than in relation to a resolution for the appointment of members of the management body and, in so far as such a resolution is provided for under national company law, agreeing to vote in the same way on a particular resolution put to a general meeting, in order, for example:
  - (1) to approve or reject:
    - i.a proposal relating to directors' remuneration;
    - ii.an acquisition or disposal of assets;
    - iii.a reduction of capital and/or share buy-back;

- iv.a capital increase;
- v.a dividend distribution;
- vi.the appointment, removal or remuneration of auditors;
- vii.the appointment of a special investigator;
- viii.the company's financial statements; or
- ix.the company's policy in relation to the environment or any other matter relating to social responsibility or compliance with recognised standards or codes of conduct; or

(2) to reject a related party transaction.

4.10 If shareholders cooperate by engaging in an activity which is not included in paragraph 4.9, the target supervisor should not consider that fact, in and of itself, as meaning that those persons should be regarded as persons acting in concert.

4.11 When considering cases of cooperation between shareholders in relation to the appointment of members of the management body, target supervisors should, in addition to examining the facts described in paragraph 4.8 (including the relationship between the relevant shareholders and their actions), also consider other facts such as:

- (a) the nature of the relationship between the shareholders and the proposed member(s) of the management body;
- (b) the number of proposed members of the management body being voted for pursuant to a voting agreement;
- (c) whether the shareholders have cooperated in relation to the appointment of members of the management body on more than one occasion;
- (d) whether the shareholders are not simply voting together but are also jointly proposing a resolution for the appointment of certain members of the management body; and
- (e) whether the appointment of the proposed member(s) of the management body will lead to a shift in the balance of power in such management body.

4.12 For the avoidance of doubt, the interpretation of the notion of acting in concert set out in these Guidelines should apply exclusively to the prudential assessment of acquisitions and increases in qualifying holdings in the financial sector to be carried out in accordance with the sectoral Directives and Regulations and should not affect the interpretation of any similar notion contemplated in other EU legislative acts, such as Directive 2004/25/EU on takeover bids.

## 5. Significant influence

5.1 Pursuant to the sectoral Directives and Regulations, a proposed acquisition or increase in a holding which does not amount to 10% of the capital or voting rights of the target undertaking should be subject to prior notification and prudential assessment if such holding would enable the proposed acquirer to exercise a significant influence over the management of the target undertaking, whether such influence is actually exercised or not. In order to assess whether significant influence may be exercised, the target supervisor should take several factors into account, including the ownership structure of the target undertaking and the actual level of involvement of the proposed acquirer in the management of the target undertaking.

5.2 The target supervisor should take into account the following non-exhaustive list of factors for the purpose of assessing whether a proposed acquisition of a holding would make it possible for the proposed acquirer to exercise significant influence over the management of the target undertaking:

- (a) the existence of material and regular transactions between the proposed acquirer and the target undertaking;
- (b) the relationship of each member or shareholder with the target undertaking;
- (c) whether the proposed acquirer enjoys additional rights in the target undertaking, by virtue of a contract entered into or of a provision contained in the target undertaking's articles of association or other constitutional documents;
- (d) whether the proposed acquirer is a member of, has a representative in or is able to appoint a representative in the management body, the management body in its supervisory function or any similar body of the target undertaking;
- (e) the overall ownership structure of the target undertaking or of a parent undertaking of the target undertaking, having regard, in particular, as to whether shares or participating interests and voting rights are distributed across a large number of shareholders or members;
- (f) the existence of relationships between the proposed acquirer and the existing shareholders and any shareholders agreement that would enable the proposed acquirer to exercise significant influence;
- (g) the proposed acquirer's position within the group structure of the target undertaking; and
- (h) the proposed acquirer's ability to participate in the operating and financial strategy decisions of the target undertaking.

5.3 With a view to determining whether significant influence could be exercised, the target supervisor should take into account all the relevant facts and circumstances.

## 6. Indirect acquisitions of qualifying holdings

6.1 In accordance with the sectoral Directives and Regulations, a qualifying holding is a direct or indirect holding in an undertaking which (i) represents 10% or more of the capital or of the voting rights or (ii) makes it possible to exercise significant influence over the management of that undertaking. The criteria for assessing whether a holding would enable a proposed acquirer to exercise significant influence are laid down in Section 5 above.

6.2 This Section sets out the relevant tests for assessing if a qualifying holding is acquired indirectly and the size of such holding when:

- (a) a natural or legal person acquires or increases a direct or indirect participation in an existing holder of a qualifying holding; or
- (b) a natural or legal person has a direct or indirect holding in a person which acquires or increases a direct participation in a target undertaking.

For each person under (a) or (b) above, the control criterion as described in paragraph 6.3 should be applied first. If, from the application of such criterion, it is ascertained that the relevant person does not exert or acquire, directly or indirectly, control over an existing holder or an acquirer of a qualifying holding in a target undertaking, the multiplication criterion, as illustrated in paragraph 6.6, should be subsequently applied in respect of that person. The control and the multiplication criteria should be applied, as described in this Section, along each branch of the corporate chain.

6.3 The first step envisages the application of the notion of control and, accordingly, all natural or legal persons

- (a) who acquire, directly or indirectly, control over an existing holder of a qualifying holding in a target undertaking, irrespective of whether such existing holding is direct or indirect; or
- (b) who, directly or indirectly, control the proposed direct acquirer of a qualifying holding in a target undertaking

should be considered to constitute indirect acquirers of a qualifying holding.

In both case (a) and case (b) the indirect acquirers include the ultimate natural person or persons at the top of the corporate control chain.

6.4 In the case set out in paragraph 6.3, item (a), above, relating to the direct or indirect acquisition of control over an existing holder of a qualifying holding, each of the persons acquiring, directly or indirectly, control over an existing holder of a qualifying holding should be an indirect acquirer of a qualifying holding and should submit the prior notification to the target supervisor. The existing holder of the qualifying holding should not be required to submit the prior notification. The target supervisor may allow the person or persons at the top of the corporate control chain to submit the prior notification also on behalf of the intermediate holders. The size of the holding of each indirect acquirer so identified should be deemed equal to the qualifying holding of the existing holder over which control is acquired.

6.5 In the case set out in paragraph 6.3, item (b), above, relating to the indirect acquisition of, or increase in, a qualifying holding by a person as a consequence of such person having, directly or indirectly, control over the proposed direct acquirer of a qualifying holding in the target undertaking,

the direct acquirer and the indirect acquirers so identified should submit a prior notification to the target supervisor regarding their intention to acquire or increase a qualifying holding. The target supervisor may allow the person or persons at the top of the corporate control chain to submit the prior notification also on behalf of the intermediate holders; however, this is without prejudice to the proposed direct acquirer's obligation to submit to the target supervisor the prior notification in respect of its own acquisition of a qualifying holding. The size of the holding of each indirect acquirer should be deemed to be equal to the qualifying holding acquired directly.

6.6 The second step applies where the application of the control criterion, as illustrated in paragraph 6.3, does not determine that a qualifying holding was acquired indirectly by the person to which the control criterion is applied. In such case, in order to assess whether a qualifying holding is acquired indirectly, the multiplication criterion illustrated below applies. Such criterion entails the multiplication of the percentages of the holdings across the corporate chain, starting from the participation held directly in the target undertaking, which has to be multiplied by the participation held at the level immediately above (the result of such multiplication being the size of the indirect holding of the latter person) and continuing up the corporate chain for so long as the result of the multiplication continues to be 10% or more. A qualifying holding will be deemed to be acquired indirectly:

- (a) by each of the persons in respect of which the result of the multiplication is 10% or more; and
- (b) by all persons holding, directly or indirectly, control over the person or persons identified pursuant to the application of the multiplication criterion in accordance with item (a) of this paragraph 6.6.

6.7 Irrespective of the application of the control or of the multiplication criterion, where indirect acquirers are supervised entities and the target supervisor is already in possession of up-to-date information, the target supervisor may deem it sufficient, taking into account the particular circumstances of the case, to assess fully only the person or persons at the top of the corporate control chain, in addition to the proposed direct acquirer. This does not affect the obligation of any of the concerned entities to submit a notification to the target supervisor regarding the intention to directly or indirectly acquire or increase a qualifying holding in a credit institution, except for the possibility of the target supervisor to allow the person or persons at the top of the corporate control chain to submit the prior notification also on behalf of the intermediate holders.

6.8 Annex II sets out, for the sake of clarity, a number of examples of how the criteria described above apply in practice.

## **7. Decision to acquire**

7.1 Target supervisors should take the following non-exhaustive list of elements into account in order to assess whether a decision to acquire has been made:

- (a) whether the proposed acquirer was aware or, considering information it could have had access to, should have been aware of the acquisition/increase of a qualifying holding and the transaction giving rise to it; and
- (b) whether the proposed acquirer had the ability to influence, to object to or to prevent the proposed acquisition or increase of a qualifying holding.

7.2 Target supervisors should adopt a narrow interpretation of the exceptional circumstances when it would be deemed that there is no decision to acquire, as almost always the acquirer will have taken or omitted to take certain action which will have contributed to the circumstances leading to a threshold being crossed or a holding being acquired.

7.3 Should shareholders cross a threshold involuntarily within the meaning of paragraph 7.2, they should notify the competent authorities immediately upon becoming aware of such event, even if they intend to reduce their level of shareholding so that it once again falls below the threshold level. Examples of scenarios in which shareholders may cross a threshold involuntarily include a repurchase by the financial institution of shares held by other shareholders, which leads directly to such threshold being exceeded.

## **8. Proportionality principle**

8.1 Pursuant to the sectoral Directives and Regulations, the target supervisor should carry out the prudential assessment of proposed acquirers in accordance with the principle of proportionality. This is envisaged in respect of (i) the intensity of the assessment, which should take into account the likely influence the proposed acquirer may exercise on the target undertaking and (ii) the composition of the required information, which should be proportionate to the nature of the proposed acquirer and of the proposed acquisition. Without prejudice to the considerations set out in items (i) and (ii), the proportionality principle could also impact the assessment procedures that the target supervisors carry out following the notification of a proposed acquisition and lead to some procedural simplifications, especially in cases of two or more proposed acquirers acting in concert or of proposed indirect acquisitions. The criteria to be considered when applying the principle of proportionality include the nature of the proposed acquirers, the objective of the acquisition or increase of a qualifying holding and the extent to which the proposed acquirer may exercise influence over the target undertaking.

8.2 The target supervisor should calibrate the type and breadth of information required from the proposed acquirer, taking into account, amongst other matters, the nature of the proposed acquirer (legal or natural person, supervised financial institution or other entity, whether or not the financial institution is supervised in the EU or in a third country considered equivalent, etc.), the specifics of the proposed transaction (intra-group transaction or transaction between persons which are not part of the same group, etc.), the degree of involvement of the proposed acquirer in the management of the target undertaking and the size of the holding to be acquired.

8.3 Concerning the reputation of the proposed acquirer (as contemplated in Title II, Chapter 3, Section 10), while the target supervisor should always assess the integrity of the proposed acquirers against the same requirements regardless of the influence over the target undertaking, the assessment of the professional competence should be reduced for proposed acquirers who are not in a position to exercise any influence over the target undertaking or who intend to acquire holdings purely for passive investment purposes.

8.4 When calibrating the assessment of the financial soundness of a proposed acquirer (as contemplated in Title II, Chapter 3, Section 12), the target supervisor should take into account the nature of the proposed acquirer, as well as the degree of influence the proposed acquirer would have over the target undertaking following the proposed acquisition. In this regard, in accordance with the proportionality principle, the target supervisor should distinguish between cases where control over the target undertaking is acquired and cases where the proposed acquirer would be

likely to exercise little or no influence. If a proposed acquirer gains control over the target undertaking, the assessment of the financial soundness of the proposed acquirer should also cover the capacity of the proposed acquirer to provide further capital to the target undertaking in the mid-term, if necessary, and its stated intentions in respect of whether it would provide such capital.

8.5 For intra-group transactions, the target supervisor should apply the proportionality principle as follows:

- a notification should be submitted by the proposed acquirer, identifying the upcoming changes in the group (for instance, the revised group structure chart) and providing the required information, as laid down in the sectoral Directives and Regulations, concerning the new persons and/or entities in the group. This refers to the direct or indirect owners of the qualifying holding, as well as to the persons who effectively direct the business of the proposed acquirer;
- the full assessment procedure is only necessary for the new persons and/or entities in the group and the new group structure; and
- if there is a change in the nature of a qualifying holding so that an indirect qualifying holding becomes a directly held qualifying holding and the relevant holder has already been assessed, the target supervisor should consider limiting its assessment to the changes having occurred since the date of the last assessment.

8.6 Under certain circumstances, such as in the case of acquisitions by means of a public offer, the proposed acquirer may encounter difficulties in obtaining information which is needed to establish a full business plan. In these cases, the proposed acquirer should bring such difficulties to the attention of the target supervisor and point out the aspects of its business plan that might be modified in the near future. In well-justified circumstances, the target supervisor should not oppose the proposed acquisition on the sole basis of the lack of some required information, the absence of which can be justified by the nature of the transaction, if the information provided appears sufficient to understand the likely outcome of the acquisition for the target undertaking and to carry out the prudential assessment and provided that the proposed acquirer undertakes to provide the missing information as soon as possible after the closing of the acquisition.

## Chapter 2 – Notification and assessment of proposed acquisition

### 9. Assessment period and information to be provided

9.1 According to the sectoral Directives and Regulations, the notification has to be acknowledged in writing by the target supervisor to the proposed acquirer promptly and in any event within two working days from receipt of the notification. The notification should be considered to be complete when it includes all the required information set out in the list to be published in accordance with the relevant legislation for the purposes of the prudential assessment by the target supervisor. Such acknowledgment should exclusively constitute a procedural step relating to the formal completeness of the notification, having the effect of starting the 60 working days period for the prudential assessment, and does not entail a substantive review by the target supervisor of the documentation provided. The acknowledgement does not prejudice the target supervisor's entitlement, consistently with the sectoral Directives and Regulations, to request further information and to oppose the proposed acquisition on grounds arising from the prudential assessment or if the information

provided by the proposed acquirer is subsequently assessed to be incomplete. In such acknowledgement of receipt, the target supervisor informs the proposed acquirer of the date of expiry of the assessment period.

9.2 Where the notification is incomplete, the target supervisor should acknowledge receipt of the notification within two working days. Such notification would not, however, have the contents and effects specified in paragraph 9.1 and the target supervisor is not obliged to specify the missing information in the acknowledgment of receipt, but may detail such information in a separate letter to be issued within a reasonable time period. Upon receipt of all required documents, the target supervisor should acknowledge receipt of the notification in writing pursuant to, and with the effects and contents specified in, paragraph 9.1.

9.3 To avoid undue delays in the notification and assessment process of significant or complex transactions, acquirers are encouraged to engage in pre-notification contacts with the target supervisor.

Significant or complex transactions could include:

- (a) transactions where the proposed acquirer or the target undertaking has a complex group structure;
- (b) cross-border transactions;
- (c) transactions involving significant proposed changes to the business plan or strategy of the target undertaking; and
- (d) transactions involving the use of substantial debt financing.

Pre-notification contacts should focus on the information required by the target supervisor to start its assessment of an acquisition or increase of a qualifying holding. In the case of cross-border transactions triggering several notifications of acquisitions of qualifying holdings within the European Union, the target supervisor of the EU parent target undertaking is encouraged to liaise and coordinate with the other target supervisors with the aim, where possible, of aligning the notification and assessment process.

9.4 Pursuant to the sectoral Directives and Regulations, the Member States are required to publish a list specifying the information that is necessary to carry out the assessment of acquisitions and increases of qualifying holdings. Subject to paragraph 9.5, Annex I sets out the recommended list of information which should be required by the competent authorities to carry out the assessment.

9.5 The following arrangements shall apply in relation to Annex I:

- (a) as of the date of application of the regulatory technical standards developed by ESMA pursuant to Article 10a(8) of Directive 2004/39/EC on markets in financial instruments and Article 12(8) of Directive 2014/65/EU on markets in financial instruments and relating to an exhaustive list of information to be provided by proposed acquirers, the requirements set out in Annex I shall no longer apply to acquisitions and increases of qualifying holdings in investment firms;

- (b) as of the date of application of the regulatory technical standards developed by the EBA pursuant to Article 8(2) of Directive 2013/36/EU on the information to be provided for the authorisation of credit institutions, it is recommended that the list of information to be provided in respect of acquisitions and increases of qualifying holdings in credit institutions should be composed of the following:
  - i. the information set out in Sections 7-12 of Annex I;
  - ii. the information required in accordance with those regulatory technical standards for proposed shareholders or members with qualifying holdings;
  - iii. the information required in accordance with those regulatory technical standards in respect of members of the management body and members of senior management who will direct the business of the credit institution;
- (c) until the date of application of the regulatory technical standards referred to in item (b), it is recommended that the list of information to be provided in respect of acquisitions and increases of qualifying holdings in credit institutions should be composed of the following:
  - i. the information set out in Sections 7-12 of Annex I; and
  - ii. the information set out in the annex to the Joint CEBS, CESR and CEIOPS Guidelines for the prudential assessment of acquisitions and increases in holdings in the financial sector required by Directive 2007/44/EC (CEBS/2008/14; CEIOPS-3L3-19/08; CESR/08-543b), provided that the annex of the Joint CEBS, CESR and CEIOPS Guidelines remains applicable only for that information which is not covered by Annex I and in any event only until application of the technical standards referred to in item (b);
- (d) as of the date of application of the regulatory technical standards to be developed by EIOPA pursuant to Article 58(8) of Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) relating to an exhaustive list of information to be provided by proposed acquirers, the requirements set out in Annex I shall no longer apply to acquisitions and increases of qualifying holdings in insurance or reinsurance undertakings.

## Chapter 3 – Assessment criteria for a proposed acquisition

### 10. Reputation of the proposed acquirer – first assessment criterion

10.1 The assessment of the reputation of the proposed acquirer should cover two elements:

- (a) his integrity; and
- (b) his professional competence.

10.2 The integrity requirements should be applied regardless of the size of the qualifying holding that the proposed acquirer intends to acquire and of its involvement in the management or the influence that it is planning to exercise on the target undertaking. The assessment should also cover the legal and beneficial owners of the proposed acquirer.

10.3 By contrast, the assessment of professional competence should take into account the influence that the proposed acquirer will exercise over the target undertaking. This means that, according to the proportionality principle, the competence requirements are reduced for proposed acquirers who are not in a position to exercise, or undertake not to exercise, significant influence over the target undertaking. In such circumstances, the evidence of adequate management competence should be sufficient.

10.4 If the proposed acquirer is a legal person, the requirements must be satisfied by the legal person, as well as by all of the persons who effectively direct its business, and in any case by those persons who meet the criteria set out in Article 3(6)(a)(i) or 3(6)(c) of Directive (EU) 2015/849.

10.5 Subject to paragraph 10.8, the professional competence requirement should generally be considered to be met if:

- (a) the proposed acquirer is a person already considered to be sufficiently competent in its capacity as a holder of a qualifying holding in another financial institution which is supervised by the same competent supervisor or by another competent supervisor in the same country or in another Member State;
- (b) the proposed acquirer is a natural person who already directs the business of the same or another financial institution which is supervised by the same competent supervisor or by another competent supervisor in the same country or in another Member State; or
- (c) the proposed acquirer is a legal person regulated and supervised as a financial institution by the same competent supervisor or by another competent supervisor in the same country or in another Member State;

and there is no new or revised evidence that could cast reasonable concerns regarding the proposed acquirer's professional competence. For instance, just because a proposed acquirer has been judged competent to control (for example) a small firm providing financial advice, it does not necessarily mean that it is competent to control a more significant firm, such as a large credit institution.

10.6 The circumstances set out in paragraph 10.5 are also relevant for the assessment of the proposed acquirer's integrity but do not constitute, by themselves, sufficient grounds for the target supervisor to assume the proposed acquirer's integrity. The target supervisor should always carry out an integrity check in respect of the proposed acquirer, as there might have been further developments since the date of the previous assessment or the authority having carried out such assessment might not have been aware of certain information. However, the target supervisor may draw on the outcome of previous integrity assessments when deciding on the level and extent of new information sought. If the target supervisor has reasonable grounds to assume that the outcome of a new integrity assessment might be different from an existing assessment, for example because it is aware of adverse information concerning the proposed acquirer, a full integrity check should be performed. If the result of the integrity check is different from the existing assessment, the target supervisor should inform the authority having carried out the existing assessment.

10.7 If any of the situations contemplated in paragraph 10.5 apply in respect of a proposed acquirer supervised by a competent supervisor in a third country considered equivalent, the assessment of integrity and professional competence may be facilitated by cooperating with the competent supervisory authority in such third country.

10.8 Where Article 24 of Directive 2013/36/EU does not apply, when considering whether to rely on the assessment carried out by another authority, competent authorities should take into account the extent to which such other competent authorities will be able to share all relevant information about the proposed acquirer, including information about any measures or concerns that may not have been made public.

## A) INTEGRITY

10.9 A proposed acquirer should be considered to be of good repute if there is no reliable evidence to suggest otherwise and the target supervisor has no reasonable grounds to doubt his or her good repute. All relevant information available for the assessment should be taken into account, without prejudice to any limitations imposed by national law and regardless of the country where any relevant events occurred.

10.10 Integrity requirements imply, but are not limited to, the absence of 'negative records'. This notion is further specified in national laws or regulations, although these laws differ on the meaning of negative records, recognising that the target supervisor retains discretionary power to determine which other situations cast doubt on the integrity of the proposed acquirer.

10.11 Any criminal or relevant administrative records should be taken into account, considering the type of conviction or indictment, the level of appeal, the sanction received, the phase of the judicial process reached and the effect of any rehabilitation measures. Other matters which should be considered include the surrounding (including mitigating) circumstances and the seriousness of any relevant offence or administrative or supervisory action, the time period elapsed and the proposed acquirer's conduct since the offence, as well as the relevance of the offence or administrative or supervisory action to the proposed acquirer's status as a holder of a qualifying holding. Target supervisors may judge the relevance of criminal records differently according to the type of conviction, whether it is still possible to appeal against the sanction (definitive vs. non-definitive convictions), the type of punishment (imprisonment vs. less severe sanctions), the length of the sentence (more vs. less than a specified period), the phase of the judicial process reached (conviction, trial, indictment) and the effect of rehabilitation.

10.12 The cumulative effects of more minor incidents, which individually do not impinge on the reputation of a proposed acquirer but might collectively have a material impact, should also be considered.

10.13 Particular account should be taken of the following factors, which may call into question the integrity of a proposed acquirer:

- (a) any conviction or prosecution of a criminal offence, in particular:
  - i. any offences under the laws governing banking, financial, securities and insurance activity, or concerning securities markets or securities or payment instruments;
  - ii. any offences of dishonesty, fraud or financial crime, including money laundering and terrorist financing, market manipulation, insider trading, usury and corruption;
  - iii. any tax offences;
  - iv. any other offences under legislation relating to companies, bankruptcy, insolvency or consumer protection;
- (b) any relevant findings from onsite and off-site controls, from investigations or enforcement actions, to the extent that they relate to the proposed acquirer either directly or indirectly, by way of its ownership or control, and the imposition of any administrative sanctions for non-compliance with provisions governing banking, financial, securities or insurance activities or those concerning securities markets, securities or payment instruments, or any financial services legislation and regulation or other matters contemplated in sub-paragraph (a) above;

- (c) any relevant enforcement actions by any other regulatory or professional bodies for non-compliance with any relevant provisions; and
- (d) any other information from credible and reliable sources that is relevant in this context. When considering whether information from other sources is credible and reliable, competent authorities should consider both the extent to which the source is public and trustworthy, as well as the extent to which the information is provided by several independent and reputable sources, is consistent over a period of time and there are no reasonable grounds to suspect that it is false.

10.14 Competent authorities should not consider that the absence of a criminal conviction or prosecution, administrative and enforcement action constitutes in and of itself sufficient evidence of a proposed acquirer's integrity, in particular where allegations of criminal conduct persist.

10.15 Attention should be paid to the following factors regarding the propriety of the proposed acquirer in past business dealings:

- (a) any evidence that the proposed acquirer has not been transparent, open and cooperative in its dealings with supervisory or regulatory authorities;
- (b) any refusal of any registration, authorisation, membership or licence to carry out a trade, business or profession, any revocation, withdrawal or termination of such registration, authorisation, membership or licence and any expulsion from a professional body or association;
- (c) the reasons for any dismissal from employment or any position of trust, fiduciary relationship or other similar situation, as well as any request to resign from such a position; and
- (d) any disqualification by any competent authority from acting as a person who directs the business.

10.16 Target supervisors should assess the relevance of such situations on a case-by-case basis, recognising that the characteristics of each situation may be more or less severe and that some situations may be significant when considered together, even though each of them in isolation may not be significant.

10.17 In cases involving the acquisition of a new qualifying holding, the information requirements on which the assessment of integrity is based may vary according to the nature of the acquirer (natural vs. legal person, regulated or supervised entity vs. unregulated entity).

10.18 The target supervisor should be able to take risk-sensitive and proportionate measures to verify the existence of adverse events relating to the proposed acquirer, including by asking the proposed acquirer, to the extent not already provided, to supply documents evidencing that no such events have occurred (for instance, recent extracts from the criminal register, if the relevant authority issues such extracts) and, if necessary, by requesting confirmation from other authorities (judicial authorities or other regulators), regardless of whether such authorities are domestic or foreign. The target supervisor should also consider, to the extent they are relevant and the source appears trustworthy, other indications of wrongdoing, such as adverse media reports and allegations.

10.19 Failure by the proposed acquirer to provide the extracts contemplated in paragraph 10.18, the delayed submission thereof or the submission of an incomplete declaration will call into question the approval of the acquisition.

10.20 In the case of an increase in an existing qualifying holding which crosses the relevant thresholds contemplated in the sectoral Directives and Regulations, and to the extent that the integrity of the proposed acquirer has previously been assessed by the target supervisor, the relevant information should be updated as appropriate.

10.21 When assessing the integrity of the proposed acquirer, the target supervisor may take into consideration the integrity and reputation of any person linked to the proposed acquirer, meaning any person who has, or appears to have, a close family or business relationship with the proposed acquirer.

## **B) PROFESSIONAL COMPETENCE**

10.23 The professional competence of the proposed acquirer covers competence in management (the ‘management competence’) and in the area of the financial activities carried out by the target undertaking (the ‘technical competence’).

10.24 The management competence may be based on the proposed acquirer’s previous experience in acquiring and managing holdings in companies, and should demonstrate due skill, care, diligence and compliance with the relevant standards.

10.25 The technical competence may be based on the proposed acquirer’s previous experience in operating and managing financial institutions as a controlling shareholder or as a person who effectively directs the business of a financial firm. In this case also, the experience should demonstrate due skill, care, diligence and compliance with the relevant standards.

10.26 In the case of an increase in an existing qualifying holding, and to the extent that the professional competence of the proposed acquirer has been assessed previously by the target supervisor, the relevant information should be updated as appropriate. Under the proportionality principle, this updated assessment of the professional competence of the proposed acquirer should take into account the increased influence and responsibility associated with the increased holding.

10.27 If the proposed acquirer is a legal person, the assessment of professional competence should cover the persons who effectively direct the business of the proposed acquirer. The assessment of technical competence should relate primarily to the financial activities currently performed by the proposed acquirer and/or by companies in the group to which it belongs.

10.28 Persons may acquire significant holdings in financial companies with the aim of diversifying their portfolio and/or obtaining dividends or capital gains, rather than with the aim of becoming involved in the management of the financial institution concerned. Having regard to the likely influence of the proposed acquirer over the target institution, the professional competence requirements for this type of acquirer could be significantly reduced.

10.29 Similarly, when the acquisition of control or of a shareholding allows the proposed acquirer to exercise a strong influence (e.g. a holding which confers a veto power), the need for technical competence will be greater, considering that the controlling shareholders will be able to define and/or approve the business plan and strategies of the financial institution concerned. In the same way, the degree of technical competence needed will depend on the nature and complexity of the activities envisaged.

10.30 The following situations regarding past and present business performance and financial soundness of a proposed acquirer with regard to their potential impact on his or her professional competence should also be considered:

- (a) any inclusion on any list of unreliable debtors or any similar negative records with a credit bureau, if available;
- (b) the financial and business performance of the entities owned or directed by the proposed acquirer or in which the proposed acquirer had or has significant share with special consideration to any rehabilitation, bankruptcy and winding-up proceedings and whether and how the proposed acquirer has contributed to the situation that led to the proceedings;
- (c) any declaration of personal bankruptcy; and
- (d) any civil lawsuits, administrative or criminal proceedings, large investments or exposures and loans taken out, in so far as they can have a significant impact on the financial soundness.

## **11.Reputation and experience of those who will direct the business of the target undertaking – second assessment criterion**

11.1 Where the proposed acquirer is in a position to appoint new persons to direct the business of the target undertaking as a result of the proposed acquisition and proposes to do so, such persons need to be fit and proper.

11.2 This criterion is without prejudice to the ongoing fit and proper requirements that apply to persons who currently direct the business under the sectoral Directives and Regulations.

11.3 If the proposed acquirer intends to appoint a person who is not fit and proper, then the target supervisor should oppose the proposed acquisition.

11.4 This criterion should be assessed in accordance with the relevant provisions of the sectoral Directives and Regulations which set out as a condition for granting authorisation that the persons who will direct the business must be 'fit and proper'. The assessment of the suitability of such persons should, in respect of acquisitions and increases of qualifying holdings in credit institutions, be carried out in accordance with the EBA Guidelines on the assessment of the suitability of members of the management body and key function holders (EBA/GL/2012/06), as amended or replaced from time to time.

## **12.Financial soundness of the proposed acquirer – third assessment criterion**

12.1 The financial soundness of the proposed acquirer should be understood as the capacity of the proposed acquirer to finance the proposed acquisition and to maintain, for the foreseeable future, a sound financial structure in respect of the proposed acquirer and of the target undertaking. This capacity should be reflected in the overall aim of the acquisition and the policy of the proposed acquirer regarding the acquisition, but also – if the proposed acquisition would result in a qualifying holding of 50% or more or in the target undertaking becoming a subsidiary of the proposed acquirer – in the forecast financial objectives, consistent with the strategy identified in the business plan.

12.2 The target supervisor should determine whether the proposed acquirer is sufficiently sound from a financial point of view to ensure the sound and prudent management of the target

undertaking for the foreseeable future (usually three years), having regard to the nature of the proposed acquirer and of the acquisition.

12.3 The target supervisor should oppose the acquisition if it concludes, based on its analysis of the information received, that the proposed acquirer is likely to face financial difficulties during the acquisition process or in the foreseeable future.

12.4 The target supervisor should also analyse whether the financial mechanisms put in place by the proposed acquirer to finance the acquisition, or existing financial relationships between the proposed acquirer and the target undertaking, could give rise to conflicts of interest that could affect the target undertaking.

12.5 The depth of the assessment of the financial soundness of the proposed acquirer should be linked to the likely influence of the proposed acquirer, the nature of the proposed acquirer (for instance, whether the proposed acquirer is a strategic or a financial investor, including whether it is a private equity fund or a hedge fund) and the nature of the acquisition (for instance, whether the transaction is significant or complex, as described in paragraph 9.3). The characteristics of the acquisition may also justify differences in the depth and methods of the analysis by the competent supervisor. In this regard, one should distinguish situations where the acquisition leads to a change in the control of the target undertaking from situations where it does not.

12.6 The information required for the assessment of the financial soundness of the proposed acquirer will depend on the status of the proposed acquirer, for example, whether it is:

- (a) a financial institution subject to prudential supervision;
- (b) a legal entity other than a financial institution; or
- (c) a natural person.

12.7 If the proposed acquirer is a financial institution subject to prudential supervision by another (EU or equivalent) competent supervisor, the target supervisor should take into account the assessment of the proposed acquirer's financial situation by such other supervisor, together with the documents gathered and transmitted directly by the supervisor of the proposed acquirer to the target supervisor.

12.8 The cooperation process between competent supervisors may be influenced by the nature and the location of the proposed acquirer, as follows:

- (a) if the proposed acquirer is a supervised entity in another Member State, the assessment of its financial soundness should rely heavily on the assessment made by the supervisor of the proposed acquirer, which has all the information on the profitability, liquidity and solvency of the proposed acquirer, as well as on the availability of the resources for the acquisition (without prejudice, however, to the possibility of the target supervisor disagreeing with the assessment of the proposed acquirer's supervisor); or
- (b) if the proposed acquirer is a financial entity supervised by a competent supervisor in a third country considered equivalent, the assessment may be facilitated by cooperation with that competent supervisor.

12.9 While the use of borrowed funds to finance the acquisition should not, in and of itself, lead to the conclusion that the proposed acquirer is unsuitable, the target supervisor should assess if such indebtedness negatively affects the financial soundness of the proposed acquirer or the target undertaking's capacity to comply with prudential requirements (including, where relevant, the commitments provided by the proposed acquirer to meet prudential requirements).

### **13.Compliance with prudential requirements of the target undertaking – fourth assessment criterion**

13.1 The proposed acquisition should not adversely affect the target undertaking's compliance with prudential requirements.

13.2 This specific assessment of the proposed acquirer's plan at the time of the acquisition is complementary to the responsibilities of the target supervisor for the ongoing supervision of the target undertaking.

13.3 The target supervisor should take into consideration not only the objective facts, such as the intended holding in the target undertaking, the reputation of the proposed acquirer, its financial soundness and its group structure, but also the proposed acquirer's declared intentions towards the target undertaking expressed in its strategy (including as reflected in the business plan). This could be backed up by appropriate commitments of the proposed acquirer to meet prudential requirements under the assessment criteria laid down in the sectoral Directives and Regulations. These commitments may include, for example, financial support in case of liquidity or solvency problems, corporate governance issues, the proposed acquirer's future target share in the target undertaking and directions and goals for development.

13.4 The target supervisor should assess the ability of the target undertaking to comply at the time of the proposed acquisition, and to continue to comply after the acquisition, with all prudential requirements, including capital requirements, liquidity requirements and large exposures limits, as well as with requirements related to governance arrangements, internal control, risk management and compliance.

13.5 If the target undertaking will be part of a group as a result of the proposed acquisition, the target supervisor should be satisfied that it will not be prevented from exercising effective supervision, from effectively exchanging information with the competent authorities or from determining the allocation of responsibilities among the competent authorities by the close links of the new group of the target undertaking to other natural or legal persons. The target supervisor should not be prevented from fulfilling its monitoring duties by the laws, regulations or administrative provisions of another country governing a natural or legal person with close links to the target undertaking, or by difficulties in the enforcement of those laws, regulations or administrative provisions.

13.6 The prudential assessment of the proposed acquirer should also cover its capacity to support adequate organisation of the target undertaking within its new group. Both the target undertaking and the group should have clear and transparent corporate governance arrangements and adequate organisation.

13.7 The group of which the target undertaking will become a part should be adequately capitalised.

13.8 The target supervisor should also consider whether the proposed acquirer will be able to provide the target undertaking with the financial support it may need for the type of business pursued by and/or envisaged for it, to provide any new capital that the target undertaking may require for future growth in its activities and to implement any other appropriate solution to accommodate the target undertaking's needs for additional own funds.

13.9 If the proposed acquisition would result in a qualifying holding of 50% or more or in the target undertaking becoming a subsidiary of the proposed acquirer, the fourth criterion should be assessed at the time of acquisition and on a continuous basis for the foreseeable future (usually three years). The business plan provided by the proposed acquirer to the target supervisor should cover at least this period. On the other hand, in cases of qualifying holdings of less than 20%, the information requirements should be reduced, as contemplated in Annex I.

13.10 The business plan should clarify the plans of the proposed acquirer concerning the future activities and organisation of the target undertaking. This should include a description of its proposed group structure. The plan should also evaluate the financial consequences of the proposed acquisition and include a medium-term forecast.

## **14. Suspicion of money laundering or terrorist financing by the proposed acquirer – fifth assessment criterion**

14.1 The anti-money laundering and terrorist financing assessment complements the integrity assessment and should be carried out regardless of the value and other characteristics of the proposed acquisition.

14.2 If:

- (a) the target supervisor knows or suspects, or has reasonable grounds for knowing or suspecting, that the proposed acquirer is or was involved in money laundering operations or attempts, whether or not this is directly or indirectly linked to the proposed acquisition;
- (b) the target supervisor knows or suspects, or has reasonable grounds for knowing or suspecting, that the proposed acquirer has carried out terrorist activities or terrorist financing, in particular if the proposed acquirer is subject to a relevant financial sanctions regime; or
- (c) the proposed acquisition increases the risk of money laundering or terrorist financing,

the target supervisor should oppose the proposed acquisition.

The assessment should also cover the persons with close personal or business links to the proposed acquirer, including the legal and beneficial owners of the proposed acquirer.

14.3 When assessing whether a proposed acquisition gives rise to an increased risk of money laundering or terrorist financing, the target supervisor should consider the information about the proposed acquirer gathered during the assessment process, evaluations, assessments or reports drawn up by international organisations and standard setters with competencies in the field of anti-money laundering, predicate offences to money laundering and combating the financing of terrorism, as well as open media searches.

14.4 The target supervisor should also oppose the acquisition even when there are no criminal records, or where there are no reasonable grounds to suspect that money laundering is being committed or attempted, if the context of the acquisition would give reasonable grounds to suspect there will be an increased risk of money laundering or terrorist financing.

This could be the case, for example, if the proposed acquirer is established in or has relevant personal or business links itself (or through any family member or persons known to be close associates) with a country or territory the Financial Action Task Force identified as having strategic deficiencies that pose a risk to the international financial system or with a country or territory identified by the European Commission as having strategic deficiencies in its national anti-money laundering or counter-terrorist financing regime that pose significant threats to the financial system. In any event, particular attention should be paid where the legislation of the third country does not permit the application of anti-money laundering and terrorist financing combating measures consistent with those applicable in the European Union. Competent authorities should also consider the relevant reports of organisations such as Transparency International, the OECD and the World Bank.

14.5 Within this context, target supervisors should also assess information regarding the source of the funds that will be used for the proposed acquisition, including both the activity that generated the funds, as well as the means through which they have been transferred, to assess whether this may give rise to an increased risk of money laundering or terrorist financing. Target supervisors should verify that:

- (a) the funds used for the acquisition are channelled through chains of financial institutions, all of which are subject to effective anti-money laundering and terrorist financing supervision by competent authorities (i) in the EU or (ii) in non-EU countries which, on the basis of credible sources such as mutual evaluations, detailed assessment reports or published follow-up reports, have requirements to combat money laundering and terrorist financing consistent with the FATF Recommendations and effectively implement those requirements;
- (b) the information on the activity that generated the funds, including the history of the business activities of the proposed acquirer and on the financing scheme is credible and consistent with the value of the deal; and
- (c) the funds have an uninterrupted paper trail back to their origins, or other information that allows the supervisory authorities to resolve all doubts as to their legal origin.

14.6 Should the target supervisor be unable to verify the source of funds in the manner described in paragraph 14.5, it should consider whether the explanation provided by the proposed acquirer is reasonable and credible, having regard to the outcome of the proposed acquirer's integrity assessment.

14.7 Missing information or information regarded as incomplete, insufficient or liable to give rise to suspicion – for example, capital movements not accounted for, cross-border relocations of

headquarters, reshuffles in management or legal person owners, earlier associations of the owners, or the management of the company by criminals – should trigger increased supervisory diligence and requests by the target supervisor for further information and, should reasonable suspicion subsist, the target supervisor should oppose the acquisition.

## **Title III – Final provisions and implementation**

These Guidelines apply as of 1 October 2017. On and from such date, the Joint CEBS, CESR and CEIOPS Guidelines for the prudential assessment of acquisitions and increases in holdings in the financial sector required by Directive 2007/44/EC (CEBS/2008/14; CEIOPS-3L3-19/08; CESR/08-543b) are repealed, without prejudice to item (c) of paragraph 9.5.

## Annex I – Recommended list of information required for the assessment of an acquisition of a qualifying holding

### ***Section 1*** ***Subject matter***

This Annex sets out the recommended list of information to be required, subject to paragraph 9.5 of the Guidelines, by target supervisors to be included by a proposed acquirer in the notification of a proposed acquisition of, or increase in, a qualifying holding for the assessment of the proposed acquisition.

### ***Section 2*** ***Information to be provided by the proposed acquirer***

The information to be provided by the proposed acquirer to the competent authority of the target undertaking should be that referred to in Sections 3 to 13 of this Annex, depending on whether the information relates to a natural person or a legal person or a trust.

### ***Section 3*** ***General information relating to the identity of the proposed acquirer***

1. Where the proposed acquirer is a natural person, the proposed acquirer should provide the target supervisor with the following information relating to his identity:
  - (a) personal details including the person's name, date and place of birth, personal national identification number (where available), address, and contact details;
  - (b) a detailed curriculum vitae (or equivalent document), stating relevant education and training, previous professional experience, and any professional activities or other relevant functions currently performed.
2. Where the proposed acquirer is a legal person, the proposed acquirer should provide the target supervisor with the following information:
  - (a) documents certifying the business name and registered address of its head office, and postal address if different, contact details and its national identification number (where available);
  - (b) registration of legal form in accordance with relevant national legislation;
  - (c) an up-to-date overview of entrepreneurial activities;
  - (d) a complete list of persons who effectively direct the business, their name, date and place of birth, address, contact details, national identification number, where available, and detailed curriculum vitae (stating relevant education and training, previous professional experience, any professional activities or other relevant functions currently performed);
  - (e) the identity of all persons who may be considered to be beneficial owners of the legal person, their name, date and place of birth, address, contact details, and national identification number, where available.
3. For trusts that already exist or would result from the proposed acquisition, the proposed acquirer should provide the target supervisor with the following information:

- (a) the identity of all trustees who will manage assets under the terms of the trust document and, where applicable, their respective shares in the distribution of income;
- (b) the identity of all persons who are beneficial owners or settlors of the trust property and, where applicable, their respective shares in the distribution of income.

#### **Section 4**

##### ***Additional information relating to the proposed acquirer that is a natural person***

1. The proposed acquirer that is a natural person should provide the target supervisor with the following additional information:
  - (a) the following information concerning the proposed acquirer, and any undertaking directed or controlled by the proposed acquirer, over the last 10 years:
    - (1) criminal records, criminal investigations or proceedings, relevant civil and administrative cases, and disciplinary actions (including disqualification as a company director or bankruptcy, insolvency or similar procedures), notably through an official certificate (if and in so far as it is available from the relevant Member State or third country), or through another equivalent document. For ongoing investigations information could be provided through a declaration of honour;
    - (2) open investigations, enforcement proceedings, sanctions, or other enforcement decisions against the proposed acquirer;
    - (3) refusal of registration, authorisation, membership or licence to carry out a trade, business or profession; or the withdrawal, revocation or termination of such a registration, authorisation, membership or licence; or expulsion by a regulatory or government body or a professional body or association;
    - (4) dismissal from employment or a position of trust, fiduciary relationship, or similar situation;
  - (b) information as to whether an assessment of reputation of the proposed acquirer has already been conducted by another supervisory authority, the identity of that authority, and evidence of the outcome of the assessment;
  - (c) information regarding the current financial position of the proposed acquirer, including details concerning sources of revenues, assets and liabilities, pledges and guarantees, granted or received;
  - (d) a description of the business activities of the proposed acquirer;
  - (e) financial information including credit ratings and publicly available reports on the undertakings controlled or directed by the proposed acquirer and, if applicable, on the proposed acquirer;
  - (f) a description of the financial and non-financial interests or relationships of the proposed acquirer with the persons listed in the following points:
    - (1) any other current shareholder of the target undertaking;
    - (2) any person entitled to exercise voting rights of the target undertaking in any of the following cases or a combination of them:
      - voting rights held by a third party with whom that person or entity has concluded an agreement, which obliges them to adopt, by concerted

- exercise of the voting rights they hold, a lasting common policy towards the management of the issuer in question;
  - voting rights held by a third party under an agreement concluded with that person or entity providing for the temporary transfer for consideration of the voting rights in question;
  - voting rights attaching to shares which are lodged as collateral with that person or entity, provided the person or entity controls the voting rights and declares its intention of exercising them;
  - voting rights attaching to shares in which that person or entity has the life interest;
  - voting rights which are held, or may be exercised within the meaning of the first four items of this sub-paragraph (2), by an undertaking controlled by that person or entity;
  - voting rights attaching to shares deposited with that person or entity which the person or entity can exercise at its discretion in the absence of specific instructions from the shareholders;
  - voting rights held by a third party in its own name on behalf of that person or entity;
  - voting rights which that person or entity may exercise as a proxy where the person or entity can exercise the voting rights at its discretion in the absence of specific instructions from the shareholders;
- (3) any member of the administrative, management or supervisory body, in accordance with relevant national legislation, or of the senior management of the target undertaking;
- (4) the target undertaking itself and its group;
- (g) information on any other interests or activities of the proposed acquirer that may be in conflict with those of the target undertaking and possible solutions for managing those conflicts of interest.
2. With regard to point (f) of paragraph 1, financial interests may include interests such as credit operations, guarantees and pledges. Non-financial interests may include interests such as family or close relationships.

## **Section 5**

### ***Additional information relating to the proposed acquirer that is a legal person***

1. The proposed acquirer that is a legal person should provide the target supervisor with the following additional information:
- (a) information regarding the proposed acquirer, any person who effectively directs the business of the proposed acquirer, any undertaking under the proposed acquirer's control, and any shareholder exerting significant influence on the proposed acquirer as identified in point (e). That information shall include the following:
    - (1) criminal records, criminal investigations or proceedings, relevant civil and administrative cases, and disciplinary actions (including disqualification as a company director or bankruptcy, insolvency or similar procedures), notably through an official certificate (if and in so far as it is available within the

- relevant Member State or third country), or through another equivalent document. For ongoing investigations information could be provided through a declaration of honour;
- (2) open investigations, enforcement proceedings, sanctions, or other enforcement decisions against the proposed acquirer;
  - (3) refusal of registration, authorisation, membership, or licence to carry out a trade, business or profession; or the withdrawal, revocation or termination of such a registration, authorisation, membership or licence; or expulsion by a regulatory or government body or by a professional body or association;
  - (4) dismissal from employment or a position of trust, fiduciary relationship, or similar situation (in relation to any person who effectively directs the business of the proposed acquirer and any shareholder exerting significant influence on the proposed acquirer);
- (b) information as to whether an assessment of reputation of the proposed acquirer or of the person who directs the business of the proposed acquirer has already been conducted by another supervisory authority, the identity of that authority and evidence of the outcome of the assessment;
- (c) a description of financial interests and non-financial interests or relationships of the proposed acquirer or, where applicable, the group to which the proposed acquirer belongs, as well as the persons who effectively direct its business with:
- (1) any other current shareholders of the target undertaking;
  - (2) any person entitled to exercise voting rights of the target undertaking in any of the following cases or a combination of them:
    - voting rights held by a third party with whom that person or entity has concluded an agreement, which obliges them to adopt, by concerted exercise of the voting rights they hold, a lasting common policy towards the management of the issuer in question;
    - voting rights held by a third party under an agreement concluded with that person or entity providing for the temporary transfer for consideration of the voting rights in question;
    - voting rights attaching to shares which are lodged as collateral with that person or entity, provided the person or entity controls the voting rights and declares its intention of exercising them;
    - voting rights attaching to shares in which that person or entity has the life interest;
    - voting rights which are held, or may be exercised within the meaning of the first four items of this sub-paragraph (2), by an undertaking controlled by that person or entity;
    - voting rights attaching to shares deposited with that person or entity which the person or entity can exercise at its discretion in the absence of specific instructions from the shareholders;
    - voting rights held by a third party in its own name on behalf of that person or entity;

- voting rights which that person or entity may exercise as a proxy where the person or entity can exercise the voting rights at its discretion in the absence of specific instructions from the shareholders;
  - (3) any member of the administrative, management or supervisory body, in accordance with relevant national legislation, or of the senior management of the target undertaking;
  - (4) the target undertaking itself and the group to which it belongs;
  - (d) information on any other interests or activities of the proposed acquirer that may be in conflict with those of the target undertaking and possible solutions for managing those conflicts of interest;
  - (e) the shareholding structure of the proposed acquirer, with the identity of all shareholders exerting significant influence and their respective share of capital and voting rights including information on any shareholders agreements;
  - (f) if the proposed acquirer is part of a group, as a subsidiary or as the parent undertaking, a detailed organisational chart of the entire corporate structure and information on the share of capital and voting rights of shareholders with significant influence on the entities of the group and on the activities currently performed by the entities of the group;
  - (g) if the proposed acquirer is part of a group, as a subsidiary or as the parent company, information on the relationships between the financial entities of the group and other non-financial group entities;
  - (h) identification of any credit institution; assurance, insurance or reinsurance undertaking; or investment firm within the group, and the names of the relevant supervisory authorities;
  - (i) statutory financial statements, at an individual and, where applicable, at consolidated and sub-consolidated group levels, regardless of the size of the proposed acquirer, for the last three financial periods, approved, where the financial statements are audited, by the external auditor, including:
    - (1) the balance sheet;
    - (2) the profit and loss accounts or income statement;
    - (3) the annual reports and financial annexes and any other documents registered with the relevant registry or authority in the particular territory relevant to the proposed acquirer.
- Where the proposed acquirer is a newly established entity, instead of the information specified in the first sub-paragraph, the proposed acquirer shall provide to the target supervisor the forecast balance sheets and forecast profit and loss accounts or income statements for the first three business years, including planning assumptions used;
- (j) where available, information about the credit rating of the proposed acquirer and the overall rating of its group.
2. With regard to point (c) of paragraph 1, financial interests may include interests such as credit operations, guarantees and pledges. Non-financial interests may include interests such as family or close relationships.

3. Where the proposed acquirer is a legal person which has its head office registered in a third country, the proposed acquirer should provide to the target supervisor the following additional information:
  - (a) a certificate of good standing, or equivalent where not available, from foreign financial sector authorities in relation to the proposed acquirer;
  - (b) where available, a declaration by foreign financial sector authorities that there are no obstacles or limitations to the provision of information necessary for the supervision of the target undertaking;
  - (c) general information on the regulatory regime of that third country as applicable to the proposed acquirer.
4. Where the proposed acquirer is a sovereign wealth fund, the proposed acquirer should provide to the target supervisor the following additional information:
  - (a) the name of the ministry or government department in charge of defining the investment policy of the fund;
  - (b) details of the investment policy and any restrictions on investment;
  - (c) the name and position of the individuals responsible for making the investment decisions for the fund; and
  - (d) details of any influence exerted by the identified ministry or government department on the day-to-day operations of the fund and the target undertaking.
5. Where the proposed acquirer is a private equity fund or a hedge fund, the proposed acquirer should provide to the target supervisor the following additional information:
  - (a) a detailed description of the performance of previous acquisitions by the proposed acquirer of qualifying holdings in financial institutions;
  - (b) details of the proposed acquirer's investment policy and any restrictions on investment, including details on investment monitoring, factors serving the proposed acquirer as a basis for investment decisions related to the target undertaking and factors that would trigger changes to the proposed acquirer's exit strategy;
  - (c) the proposed acquirer's decision-making framework for investment decisions, including the name and position of the individuals responsible for making such decisions; and
  - (d) a detailed description of the proposed acquirer's anti-money laundering procedures and of the anti-money laundering legal framework applicable to it.

## **Section 6**

### ***Information on the persons that will effectively direct the business of the target undertaking***

1. The proposed acquirer should provide the competent authority with the following information relating to the reputation and experience of any person who will effectively direct the business of the target undertaking as a result of the proposed acquisition:
  - (a) personal details including the person's name, date and place of birth, personal national identification number (where available), address and contact details;
  - (b) the position to which the person is being or will be appointed;
  - (c) a detailed curriculum vitae stating relevant education and professional training, professional experience, including the names of all organisations for which the

person has worked and the nature and duration of the functions performed, in particular for any activities within the scope of the position sought, and documentation relating to the person's experience, such as a list of reference persons including contact information and letters of recommendation. For positions held in the last 10 years, when describing these activities, the person shall specify his or her delegated powers, internal decision-making powers and the areas of operations under his or her control. If the curriculum vitae includes other relevant experiences, including management body representation, this shall be stated;

- (d) criminal records, criminal investigations or proceedings, relevant civil and administrative cases, and disciplinary actions (including disqualification as a company director or bankruptcy, insolvency or similar procedures), through an official certificate (if and in so far as it is available within the relevant Member State or third country), or through another equivalent document. For ongoing investigations information could be provided through a declaration of honour;
  - (e) information on:
    - (1) open investigations, enforcement proceedings, sanctions or other enforcement decisions against the person;
    - (2) refusal of registration, authorisation, membership or licence to carry out a trade, business or profession; or the withdrawal, revocation or termination of such a registration, authorisation, membership or licence; or expulsion by a regulatory or government body or by a professional body or association; and
    - (3) dismissal from employment or a position of trust, fiduciary relationship, or similar situation;
  - (f) information as to whether an assessment of reputation as a person who directs the business has already been conducted by another supervisory authority, the identity of that authority and evidence of the outcome of this assessment;
  - (g) a description of financial interests and non-financial interests or relationships of the person and his or her close relatives to members of the management body and key function holders in the same institution, the parent institution and subsidiaries and shareholders;
  - (h) the minimum time that will be devoted to the performance of the person's functions within the firm (annual and monthly indications);
  - (i) the list of executive and non-executive directorships currently held by the person.
- (2) With regard to point (g) of paragraph 1, financial interests may include interests such as credit operations, shareholdings, guarantees and pledges. Non-financial interests may include interests such as family or close relationships.

## **Section 7**

### ***Information relating to the proposed acquisition***

The following information relating to the proposed acquisition should be provided by the proposed acquirer to the target supervisor:

- (a) identification of the target undertaking;
- (b) details of the proposed acquirer's intentions with respect to the proposed acquisition, such as strategic investment or portfolio investment;
- (c) information on the shares of the target undertaking owned, or contemplated to be owned, by the proposed acquirer before and after the proposed acquisition, including:
  - (1) the number and type of shares – whether ordinary shares or other – of the target undertaking owned, or intended to be acquired, by the proposed acquirer before and after the proposed acquisition, along with the nominal value of such shares;
  - (2) the share of the overall capital of the target undertaking that the shares owned, or intended to be acquired, by the proposed acquirer represent before and after the proposed acquisition;
  - (3) the share of the overall voting rights of the target undertaking that the shares owned, or contemplated to be owned, by the proposed acquirer represent before and after the proposed acquisition, if different from the share of capital of the target undertaking;
  - (4) the market value, in euros and in local currency, of the shares of the target undertaking owned, or intended to be acquired, by the proposed acquirer before and after the proposed acquisition;
- (d) any action in concert with other parties which shall include, amongst other things, the following considerations: the contribution of other parties to the financing, the means of participation in the financial arrangements and future organisational arrangements;
- (e) the content of intended shareholder's agreements with other shareholders in relation to the target undertaking;
- (f) the proposed acquisition price and the criteria used when determining such price and, if there is a difference between the market value and the proposed acquisition price, an explanation as to why that is the case.

## **Section 8**

### ***Information on the new proposed group structure and its impact on supervision***

1. Where the proposed acquirer is a legal person, the proposed acquirer should provide the target supervisor with an analysis of the perimeter of consolidated supervision of the target undertaking and the group that it would belong to after the proposed acquisition. This should include information about which group entities would be included in the scope of consolidated supervision requirements after the proposed acquisition and at which levels within the group these requirements would apply on a full or sub-consolidated basis.
2. The proposed acquirer should also provide, to the target supervisor, an analysis as to whether the proposed acquisition will impact in any way, including as a result of close links

of the proposed acquirer with the target undertaking, on the ability of the target undertaking to continue to provide timely and accurate information to its supervisor.

### **Section 9**

#### ***Information relating to the financing of the proposed acquisition***

1. The proposed acquirer should provide a detailed explanation, as provided in paragraph 2, on the specific sources of funding for the proposed acquisition.
2. The explanation referred to in paragraph 1 shall include:
  - (a) details on the use of private financial resources and the origin and availability of the funds, including any relevant documentary support to provide evidence to the financial supervisor that no money laundering is attempted through the proposed acquisition;
  - (b) details on the means of payment of the intended acquisition and the network used to transfer funds;
  - (c) details on access to capital sources and financial markets including details of financial instruments to be issued;
  - (d) information on the use of borrowed funds including the name of relevant lenders and details of the facilities granted, including maturities, terms, pledges and guarantees, along with information on the source of revenue to be used to repay such borrowings and the origin of the borrowed funds where the lender is not a supervised financial institution;
  - (e) information on any financial arrangement with other shareholders of the target undertaking;
  - (f) information on assets of the proposed acquirer or the target undertaking which are to be sold in order to help finance the proposed acquisition, such as conditions of sale, price, appraisal, and details regarding their characteristics, including information on when and how the assets were acquired.

### **Section 10**

#### ***Additional information requirements where the proposed acquisition would result in a qualifying holding of up to 20%***

Where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target undertaking of up to 20%, the proposed acquirer should provide a document on strategy to the target supervisor containing, where relevant, the following information:

- (a) the strategy of the proposed acquirer regarding the proposed acquisition, including the period for which the proposed acquirer intends to hold its shareholding after the proposed acquisition and any intention of the proposed acquirer to increase, reduce or maintain the level of his shareholding in the foreseeable future;
- (b) an indication of the intentions of the proposed acquirer towards the target undertaking, and in particular whether or not it intends to act as an active minority shareholder, and the rationale for that action;
- (c) information on the financial position of the proposed acquirer and its willingness to support the target undertaking with additional own funds if needed for the development of its activities or in case of financial difficulties.

### **Section 11**

#### ***Additional information requirements where the proposed acquisition would result in a qualifying holding of 20% and up to 50%***

1. Where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target undertaking of 20% and up to 50%, the proposed acquirer should provide a document on strategy to the target supervisor containing, where relevant, the following information:
  - (a) all the information requested pursuant to Section 10 of this Annex;
  - (b) details on the influence that the proposed acquirer intends to exercise on the financial position including dividend policy, the strategic development, and the allocation of resources of the target undertaking;
  - (c) a description of the proposed acquirer's intentions and expectations towards the target undertaking in the medium term, covering all the elements referred to in Section 12(2) of this Annex.
2. Where, depending on the global structure of the shareholding of the target undertaking, the influence exercised by the shareholding of the proposed acquirer is considered to be equivalent to the influence exercised by shareholdings of 20% and up to 50%, the proposed acquirer should provide the information set out in paragraph 1.

### **Section 12**

#### ***Additional information requirements where the proposed acquisition would result in a qualifying holding of 50% or more, or where the target undertaking becomes a subsidiary of the proposed acquirer***

1. Where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target undertaking of 50% or more, or in the target undertaking becoming its subsidiary, the proposed acquirer should provide a business plan to the target supervisor which shall comprise a strategic development plan, estimated financial statements of the target undertaking, and the impact of the acquisition on the corporate governance and general organisational structure of the target undertaking.
2. The strategic development plan referred to in paragraph 1 should indicate, in general terms, the main goals of the proposed acquisition and the main ways for achieving them, including:
  - (a) the overall aim of the proposed acquisition;
  - (b) medium-term financial goals which may be stated in terms of return on equity, cost-benefit ratio, earnings per share, or in other terms as appropriate;
  - (c) the possible redirection of activities, products, targeted customers and the possible reallocation of funds or resources expected to impact on the target undertaking;
  - (d) general processes for including and integrating the target undertaking in the group structure of the proposed acquirer, including a description of the main interactions to be pursued with other companies in the group, as well as a description of the policies governing intra-group relations.

With regard to point (d), for institutions authorised and supervised in the Union, information about the particular departments within the group structure which are affected by the transaction shall be sufficient.

3. The estimated financial statements of the target undertaking referred to in paragraph 1 should, on both an individual and, where applicable, a consolidated basis, for a period of three years, include the following:
  - (a) a forecast balance sheet and income statement;
  - (b) forecast prudential capital requirements and solvency ratio;
  - (c) information on the level of risk exposures including credit, market and operational risks as well as other relevant risks;
  - (d) a forecast of provisional intra-group transactions.
4. The impact of the acquisition on the corporate governance and general organisational structure of the target undertaking referred to in paragraph 1 should include the impact on:
  - (a) the composition and duties of the administrative, management or supervisory body, and the main committees created by such decision-taking body including the management committee, risk committee, audit committee, remuneration committee and any other committees, including information concerning the persons who will be appointed to direct the business;
  - (b) administrative and accounting procedures and internal controls, including changes in procedures and systems relating to accounting, internal audit, compliance including anti-money laundering and risk management, and including the appointment of the key functions of internal auditor, compliance officer and risk manager;
  - (c) the overall IT architecture including any changes concerning the outsourcing policy, the data flowchart, the in-house and external software used and the essential data and systems security procedures and tools including back-up, continuity plans and audit trails;
  - (d) the policies governing outsourcing, including information on the areas concerned, on the selection of service providers, and on the respective rights and obligations of the principal parties as set out in contracts such as audit arrangements and the quality of service expected from the provider;
  - (e) any other relevant information pertaining to the impact of the acquisition on the corporate governance and general organisational structure of the target undertaking, including any modification regarding the voting rights of the shareholders.

### **Section 13**

#### ***Reduced information requirements***

1. Where the proposed acquirer is an entity authorised and supervised within the European Union and the target undertaking meets the criteria provided in paragraph 2 of this Section, the proposed acquirer should submit the following information to the target supervisor:
  - (a) Where the proposed acquirer is a natural person:
    - (1) the information set out in Section 3(1) of this Annex;
    - (2) the information set out in points (c) to (g) of paragraph 1 of Section 4 of this Annex;

- (3) the information set out in Sections 6, 7 and 9 of this Annex;
    - (4) the information set out in Section 8(1) of this Annex;
    - (5) where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target undertaking of up to 20%, a document on strategy as set out in Section 10 of this Annex;
    - (6) where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target undertaking of 20% or more, a document on strategy as set out in Section 11 of this Annex.
  - (b) Where the proposed acquirer is a legal person or where a trust exists or would result from the proposed acquisition:
    - (1) the information set out in Section 3(2) and, where relevant, Section 3(3) of this Annex;
    - (2) the information set out in points (c) to (j) of Section 5(1) of this Annex and, where relevant, the information set out in Section 5(4) of this Annex;
    - (3) the information set out in Sections 6, 7 and 9 of this Annex;
    - (4) the information set out in Section 8(1) of this Annex;
    - (5) where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target undertaking of up to 20%, a document on strategy as set out in Section 10 of this Annex; and
    - (6) where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target undertaking of 20% or more, a document on strategy as set out in Section 11 of this Annex.
- 2. The requirements provided in paragraph 1 should apply to acquisitions in investment firms that meet all of the following criteria:
  - (a) they do not hold client assets;
  - (b) they are not authorised for the investment services and activities ‘Dealing on own account’ or ‘Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis’ referred to in points (3) and (6) of Section A of Annex I of Directive 2004/39/EC;
  - (c) in case they are authorised for the investment service of ‘Portfolio management’ as referred to in point (4) of Section A of Annex 1 of Directive 2004/39/EC, the assets under management by the firm are below EUR 500 million.
- 3. If the proposed acquirer has been assessed by the target supervisor within the previous two years, regarding the information already held by the target supervisor, that proposed acquirer should only provide those pieces of information that have changed since the previous assessment.

Where there have been no changes, the proposed acquirer should sign a declaration informing the target supervisor that there is no need to update such information, since it remains unchanged from the previous assessment.

## Annex II – Practical examples of the determination of acquisitions of indirect holdings

This Annex sets out four examples of how the criteria for determining whether an indirect qualifying holding is acquired and the size of such indirect acquisition should be applied. For the sake of simplifying the examples, it is assumed that control is gained only if the size of the holding being acquired is in excess of 50% (although control could also be acquired with a smaller participation). Furthermore, it is assumed that no significant influence is acquired, which might also be unlikely in practice in the examples given.

In the first three examples, 'T' is the target undertaking and the entity sitting uppermost in the chain depicted in the figures, being respectively 'C' in Figures 1 and 2 and 'D' in Figure 3, is the proposed acquirer. Persons holding control over the proposed indirect acquirer are not shown in the figures but are considered in the examples. The fourth scenario sets out a worked example of the calculation of indirect holdings in a more complex structure.

Figure 1

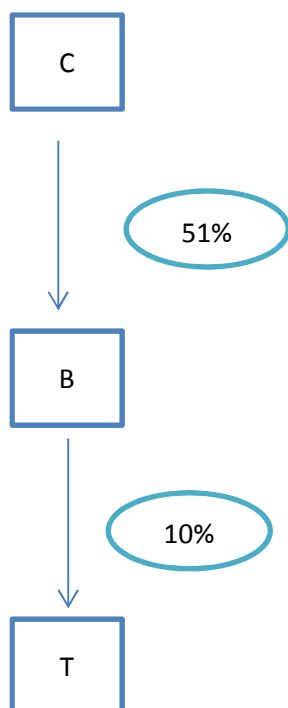


Figure 2

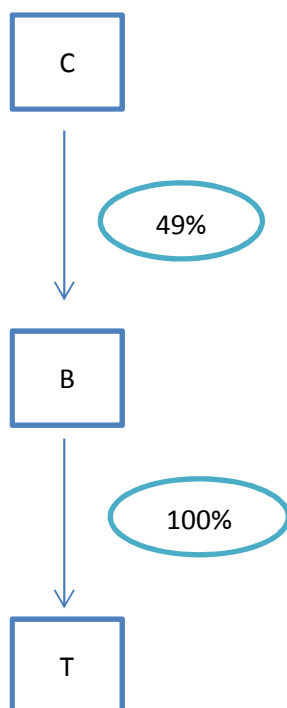
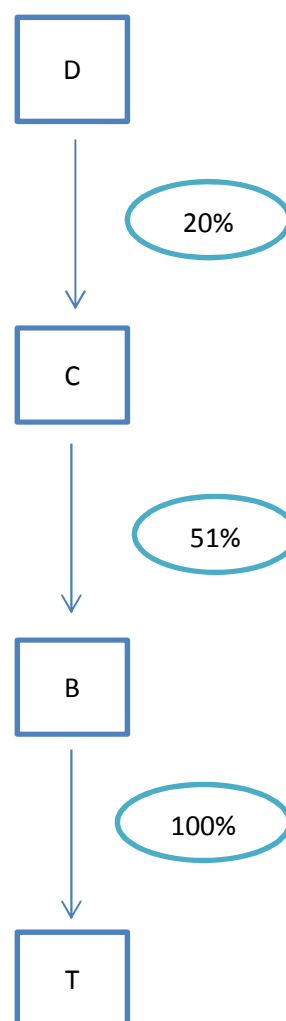


Figure 3



### **First example**

In Figure 1, following C's acquisition of control over B, C would, in accordance with the control criterion as set out in paragraph 6.3 of the Guidelines, be deemed to acquire indirectly a qualifying holding in the target undertaking, given that the controlled entity, B, holds a qualifying holding in T which is equal to 10%. All other persons holding, directly or indirectly, control over C would, in accordance with the control criterion as set out in paragraph 6.3 of the Guidelines, also be deemed to acquire indirectly a qualifying holding in the target undertaking, and the size of the holding acquired by C and by each such person should be deemed to be equal to 10%.

There is no need to apply the multiplication criterion, as described in paragraph 6.6 of the Guidelines.

### **Second example**

In Figure 2, C does not acquire control over B and, therefore, no qualifying holding is deemed to be acquired in accordance with the application of the control criterion as laid down in paragraph 6.3 of the Guidelines.

In order to assess if any qualifying holding is acquired indirectly, the multiplication criterion has to be tested. This requires the percentage of the holding acquired by C in B to be multiplied with the percentage of B's holding in T ( $49\% \times 100\%$ ). Since the result is 49%, a qualifying holding will be deemed to have been acquired indirectly by C. In light of the application of paragraph 6.6 of the Guidelines, C and each person or persons holding, directly or indirectly, control over C should be considered to acquire indirectly a qualifying holding equal to 49%. The multiplication criterion should be applied to the shareholders in C who do not hold control over C, starting from the bottom of the corporate chain, being the direct participation in the target undertaking.

### **Third example**

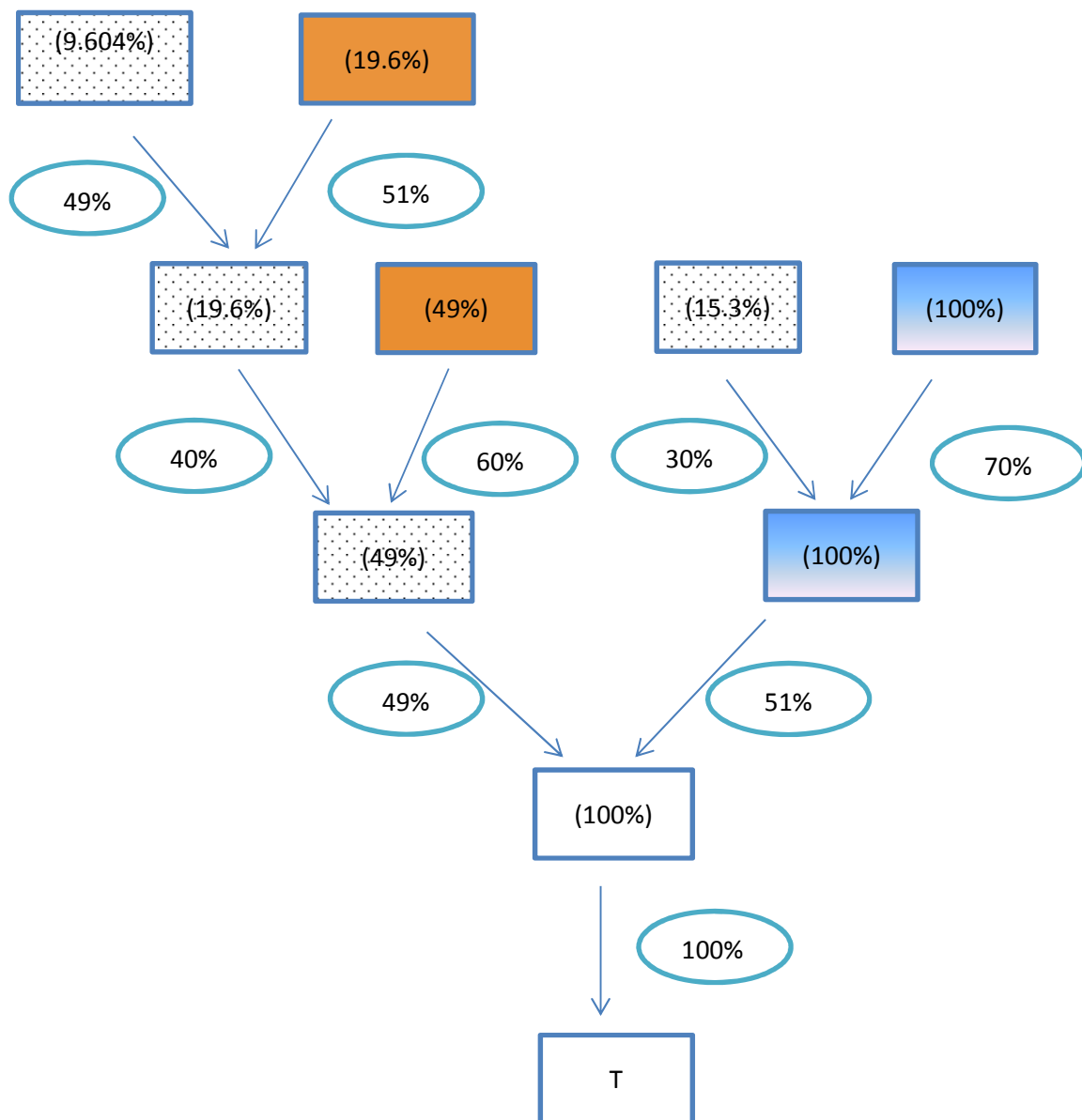
In Figure 3, D does not acquire control over C; therefore, there would be no indirect acquisition of a qualifying holding in accordance with the control criterion. In order to assess whether D should be considered an indirect acquirer of a qualifying holding in T, the multiplication criterion should be applied. This entails the multiplication of the percentages of the holdings across the corporate chain (being D's holding in C, C's holding in B and B's holding in T). Since the resulting percentage is 10.2%, D should be deemed to acquire indirectly a qualifying holding in T. In light of the application of paragraph 6.6 of the Guidelines, each person or persons holding, directly or indirectly, control over D should also be considered to acquire indirectly a qualifying holding equal to 10.2%.

#### Fourth example

The figure below sets out a full corporate structure, showing for each shareholder the size of its indirect holding in the target undertaking (T).

In the case of each shareholder, the size of its holding in the entity immediately below it is shown next to the arrow depicting the participation. The size of the direct or indirect holding in the target undertaking is shown between brackets in the box depicting the shareholder.

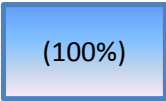
The chart should be taken to show the shareholding structure following the completion of an acquisition. If the size of the direct or indirect holding in the target undertaking of the entity having carried out the actual acquisition is at least 10%, that entity would be deemed to have acquired a qualifying holding. A qualifying holding would also be considered to have been acquired by those of its direct or indirect shareholders, who will be deemed to have acquired an indirect holding in the target undertaking of at least 10%.



Legend:



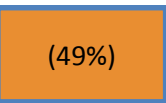
The size of the participation of a shareholder in the entity immediately below it



An indirect holding of 100% obtained using the control criterion



An indirect holding of 49% obtained using the multiplication criterion



In accordance with paragraph 6.6(b) of the Guidelines, an indirect holding of 49% of a person holding control over a holder of an indirect holding of 49%, the size of the indirect holding of the latter shareholder having been determined pursuant to the multiplication criterion

## 6. Accompanying documents

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### 6.1 Cost-benefit analysis/impact assessment

#### Introduction

1. The impact assessment section evaluates the impact of the proposals of the guidelines, which were developed by the Joint Committee of the ESAs in accordance with Articles 16 and 56, subparagraph 1, of the ESAs' Regulations. The guidelines aim to achieve convergence of supervisory practices relating to the prudential assessment of acquisitions and increases of holdings in the financial sector (see paragraph 2).

#### Scope and objectives

2. The report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions regarding the application of Directive 2007/44/EC amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increases of holdings in the financial sector showed that there are several issues to be revised and/or clarified in the new version of these guidelines. The issues identified in the report are summarised in the background and rationale section.
3. The guidelines, developed by the ESAs, aim to harmonise the provisions applicable to all EU Member States as to the process of approving a qualifying holding and the notion of 'acting in concert'. Likewise, the guidelines would assist the Member States in meeting the objectives of Directive 2007/44/EC of creating a more level playing field in the financial market, reducing administrative burdens for credit and financial institutions and supervisory authorities, strengthening the cooperation amongst supervisors as well as ensuring the convergence of supervisory practices.
4. A preliminary **screening** impact assessment has shown that the impact of the implementation of any of the proposed options on indirect qualifying holdings and the identification of circumstances when parties are acting in concert would not have any material impact on the credit and financial institutions and/or the competent authorities. Therefore, respecting the principle of proportionality when conducting impact assessments, the scope of the current impact assessment is not to extensively assess the impact of individual operational decisions that simply clarify the procedures, but rather to provide a high-level qualitative assessment of the strategic options considered for the drafting of the current guidelines.
5. Accordingly, the impact assessment has not involved an in-depth quantitative evaluation of the costs and benefits of the implementation of the proposed guidelines (i.e. only the impact of

implementing the preferred option has been assessed), since any positive or negative net impact (benefits minus costs) is not expected to be significant.

6. The impact assessment has assessed, in qualitative terms, the magnitude of the impact assuming **full implementation of the guidelines by all Member States**. Thus, the impact of the actual implementation of the guidelines could be lower than that estimated in the analysis below. Therefore, the estimated net impact of the preferred option should be interpreted as the 'maximum impact of the implementation of the existing guidelines'.
7. The set of strategic options examined is split into two different parts according to the strategic decision that has been taken, i.e. indirect acquisitions of qualifying holdings and the clarification of the notion of 'acting in concert'.

## Part 1 – Clarification of the notion of indirect acquisitions of qualifying holdings

### Baseline of the current practices

8. The sectoral Directives and Regulations do not define what constitutes an indirect acquisition of 10% or more of the capital or of the voting rights in a target undertaking. Although the 3L3 Guidelines provide some clarification on what constitutes an indirect holding, according to the EC review report, the Member States largely rely on the concepts in their respective national laws to assess acquisitions carried out through cascading holdings, i.e. corporate chains in which each member of the chain holds a stake in, or otherwise controls, another member of the chain (for example, entity A acquires a stake in entity B, which holds a stake in financial institution C). The survey showed that competent authorities use different methods to form an opinion as to whether an indirect acquisition of a qualifying holding is taking place and consequently whether notification needs to be given of the proposed acquisition or not. This leads to inconsistent treatment of similar situations rendering the framework for indirect acquisition in the EU quite diverse amongst Member States.

### Options considered

**Policy option 1:** use of the control criterion.

9. This policy option would entail considering as proposed indirect acquirers all natural or legal persons (i) acquiring, directly or indirectly, control over an existing holder of a qualifying holding in a target undertaking, whether such existing holding is direct or indirect, or (ii) who, directly or indirectly, control the proposed direct acquirer of a qualifying holding in a target undertaking (including the natural person or persons at the top of the corporate control chain).

**Policy option 2:** use of both the control criterion and the multiplication criterion.

10. Pursuant to the multiplication criterion, target supervisors should multiply the percentages of the holdings across the corporate chain and, if the result is 10% or more in respect of one or several persons, a qualifying holding will be deemed to be acquired indirectly by each of those persons. The multiplication criterion is deemed to be unsuitable for use on a standalone basis, as it would focus only on the size of the holdings and would disregard the control of voting rights and the ability to influence the management of the supervised entity. This would be problematic for assessing the indirect acquisition of voting rights. However, it could be useful when used in conjunction with the control criterion. As such, policy option 2 involves applying the control test and the multiplication test in parallel and, if either test is satisfied, an indirect acquisition of a qualifying holding would be deemed to have taken place.

## Cost-benefit analysis

### a. Policy option 1

#### Benefits

11. The control criterion has been adopted by the 3L3 Guidelines, albeit not expressly. The criterion takes into account multiple references in the sectoral Directives and Regulations to Articles 9 and 10 of Directive 2004/109/EC and is particularly effective in assessing the actual control of voting rights, as the person holding control over an intermediary holder could exercise the entirety of the voting rights held by such intermediary holder.

#### Costs

12. **Costs for the national supervisory authorities** – The main direct cost for supervisory authorities consists of establishing processes for compliance with these Guidelines and is expected to be low in relation to their current operational cost, as many supervisory authorities have already incurred the majority of such costs to implement the Directive. There may be an additional cost arising from the adjustment of the processes for coordination, communication and information exchange with other competent authorities. Further costs might arise from adapting the national legislation, in whichever jurisdiction is needed.

13. **Costs for institutions** – No significant costs for institutions are expected. There may be some additional costs in certain jurisdictions should certain situations not have been previously considered.

### b. Policy option 2

#### Benefits

14. The second policy option would have the advantage of enlarging the scope of assessment, in particular in respect of indirect acquisitions of capital. Whilst the acquirer of a significant participation in the holding company may be unable to exercise control over the holding company and hence over the target undertaking, it could be argued that the economic reality is that the proposed acquirer has, in fact, acquired indirectly a stake in the capital of the target undertaking<sup>19</sup>.

#### Costs

15. **Costs for the national supervisory authorities** – The main direct cost for supervisory authorities would be that this policy option would increase the number of assessments of notifications and would include potential acquirers who might not be able to exercise any influence over the management of the target undertaking. There may be an additional cost arising from the adjustment of the processes for coordination, communication and information exchange with

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<sup>19</sup> By way of example, the acquisition of 10% of the capital of the parent company holding 100% of the capital of the target undertaking constitutes commercially the indirect acquisition of 10% of the capital of the target undertaking.

other competent authorities. Further costs might arise from adapting the national legislation, in whichever jurisdiction is needed.

16. **Costs for institutions** – There may be additional costs for institutions in certain jurisdictions, should certain situations not have been previously considered.

## Preferred policy option

17. On the basis of the cost-benefit analysis, there are no grounds that would render one policy option preferable to another, on a standalone basis.

## Part 2 – Establishing a more precise definition of ‘acting in concert’

### Baseline of the current practices

18. The definitions of ‘persons acting in concert’, accompanied by examples provided by Member States, may be similar in wording across sectoral legislation<sup>20</sup> but in practice there is no generally accepted definition of the notion of ‘acting in concert’.
19. Based on the information collected by the European Commission and the ESAs, it is possible to identify a variety of approaches. Certain authorities apply the guidance in the current Guidelines directly by way of interpretation or pursuant to provisions of national law.
20. Other jurisdictions set out definitions in national law based on either exhaustive lists or presumptions of circumstances where persons are deemed to be acting in concert, such as in respect of family members or persons holding specific occupational positions of relevance (e.g. being a member of the financial institution’s board of directors).
21. Furthermore, other jurisdictions provide examples of persons in specific situations (e.g. holders of voting rights, parties to an agreement or parties in control of the target undertaking), while others focus on the intentions of the potential acquirer and look at each situation on its own merits.
22. Finally, only few jurisdictions have published additional guidance to assist in clarifying what they perceive to be covered by this concept. However, practices show that, while most supervisory authorities agree that each situation is unique and should be assessed on the basis of its own merits in order to ascertain the actual link between the proposed acquirers, it is possible to identify commonalities which could be transposed to the existing guidelines and could potentially reduce the cost compared with proposing a test which is not based on existing practices.

### Options considered

- a. **Policy option 1: setting up exhaustive lists of circumstances**
- establishing (i) an exhaustive list of circumstances in which persons are deemed to act in concert and (ii) a list of circumstances in which persons are presumed to act in concert.
- b. **Policy option 2: setting up a non-exhaustive, indicative, list of factors**
- setting out a non-exhaustive list of factors which the supervisors could examine to determine whether certain persons are acting in concert.
23. This policy option would entail setting out an indicative list of factors which may highlight reasons for further investigation by a competent authority. This is particularly relevant when no notification has been provided to the target supervisor. However, it is important to note that the

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<sup>20</sup> Such as Takeover Bids Directive Article 2.1(d), the Transparency Directive, e.g. Article 10(1)(a), and the Glossary in the current Guidelines.

presence of such factors would not, in and of itself, lead to the conclusion that the parties are acting in concert.

c. **Policy option 3: identification of activities which, by themselves, will not lead to a finding of persons acting in concert**

- identifying activities where cooperation among shareholders will not, by itself, lead to a conclusion that such persons are acting in concert.

24. This policy option sets out activities in which shareholders may wish to engage without seeking to acquire control or exercise significant influence over the target undertaking, provided such activity is available to the shareholders under national law. When shareholders cooperate to engage in any of the activities in question, such cooperation will not, by itself, lead to a conclusion that such persons are acting in concert. Moreover, the fact that an activity is not included in the list does not mean that such activities or facts lead to a conclusion that the parties are acting in concert. Each case will be determined on its own merits.

## Cost-benefit analysis

a. **Policy option 1**

### Benefits

25. An exhaustive list of situations in which persons are deemed to act in concert would ensure that similar cases are treated in a uniform manner, would enhance supervisory convergence and consistency of supervisory practices, and would help expedite the supervision of acquisitions and increases of qualifying holdings. Moreover, a list of such situations would provide competent authorities with the ability to take into account the specific circumstances of cases in which the potential acquirer could rebut a presumption that it is acting in concert with another person.

### Costs

26. **Costs for the national supervisory authorities** – The main direct cost for competent authorities would be the lack of flexibility, which could result in various acquisitions not being subject to prudential assessment. The wide range of possible actions or behaviour patterns would render an exhaustive list obsolete.

27. The additional direct cost for supervisory authorities, which arises from the need to establish processes for complying with a pre-set list of circumstances in which persons are deemed or presumed to act in concert, is expected to be low, as the proposals would be based on existing practices and little or no adjustments would be expected. Additional costs would be driven mainly by the need to communicate and exchange information with other competent authorities and to monitor compliance with these Guidelines.

28. **Costs for institutions** – No significant costs for institutions are expected. There may be some additional costs in certain jurisdictions should certain situations not have been previously considered to lead to a determination that persons are acting in concert, as the institutions would

have to set up processes for notifying the competent authorities, and costs would result from requests for information made by competent authorities. However, in other jurisdictions the number of notifications may be reduced.

## **b. Policy option 2**

### **Benefits**

29. This policy option would allow competent authorities to assess each situation on its own merits. It would continue to be possible to take into account all relevant circumstances, which would ensure that persons which should be subject to the prudential assessment are not exempted.

30. A non-exhaustive list of indicators will enhance supervisory convergence and consistency of supervisory practices. The additional clarity on common situations that are likely to be further examined by the relevant competent authorities will help make the supervision of acquisitions and increases of qualifying holdings in the EU more effective.

### **Costs**

31. **Costs for the national supervisory authorities** – The main direct cost for supervisory authorities consists of establishing processes for compliance with these Guidelines and is expected to be low, as the national competent authorities have already incurred the majority of such costs when implementing the Directive. There may be a need to adjust the existing processes for coordination, communication and information exchange with other competent authorities. Further costs might arise from adapting national legislation if the Member State sets out such indicators in law.

32. **Costs for institutions** – No significant costs for institutions are expected, as the current practice is also based on an individual assessment of the relevant parties.

## **c. Policy option 3**

### **Benefits**

33. This policy option will enhance the transparency of the assessment of cooperation between shareholders. Furthermore, using a similar approach as that in the area of takeover bids will enhance supervisory cooperation, convergence and practices across sectoral legislation.

### **Costs**

34. **Costs for the national supervisory authorities** – The direct cost for supervisory authorities is expected to be very low to negligible, as the proposal is based on existing practices identified in nine Member States. Such costs will be driven mainly by the need to adapt existing processes, to implement new processes for coordination, communication and information exchange with other competent authorities and to monitor compliance with these Guidelines.

35. **Costs for institutions** – The costs for institutions are expected to be negligible.

## Preferred policy option

36. On the basis of the cost-benefit analysis, there are no grounds that would render one policy option preferable to another, on a standalone basis. However, the qualitative assessment shows that the preferred option to be included in the guidelines would be a combination of policy options 2 and 3. This would consist of:

- (i) providing further guidance regarding the factors which might indicate that persons are acting in concert, enhancing supervisory convergence; and
- (ii) the national supervisory authorities would have the flexibility to deal with specific circumstances, which could have been curtailed by policy option 1. In addition, it would enable the supervisors to judge each case on its own merits.

## 6.2 Views of the stakeholder groups

No comments were received from the Banking Stakeholder Group.

## 6.3 Feedback on the public consultation

The ESAs conducted a public consultation on the draft proposal for Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector.

The consultation period lasted for three months and ended on 2 October 2015. Twelve responses were received during the consultation period. Nine responses were published on the website of the EBA.

This paper presents a summary of the key points and other comments arising from the consultation.

In certain cases several respondents made similar comments or the same respondent repeated comments in the response to different questions. In such cases, the comments and the analysis of the ESAs are included in the section of this paper where the ESAs consider them most appropriate.

Changes to the draft guidelines have been incorporated as a result of the responses received during the public consultation.

### Summary of key issues

The key issues highlighted in the responses to the consultation included the scope of application of the guidelines, the tests applicable to indirect acquisitions of qualifying holdings, the application of the assessment criteria, the issues of whether significant influence may be exercised and of whether parties are acting in concert, as well as the list of information required to be provided for the assessment of acquisitions of qualifying holdings.

## Summary of responses to the consultation and the ESAs' analysis

| Comments                                                           | Summary of responses received                                                                                                                                                                                                                                                      | EBA, EIOPA and ESMA analysis                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Amendments to the proposals |
|--------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|
| <b>Responses to questions in Consultation Paper JC/CP/2015/003</b> |                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                             |
| Question 1.                                                        |                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                             |
| Scope of guidelines, terminology                                   |                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                             |
|                                                                    | Regarding the acquisition of a cross-border operating group, only one supervisory authority should be competent to consider and permit such acquisition, i.e. the group supervisor of the target group. Other involved supervisory authorities should be bound by their decisions. | The guidelines cannot purport to amend the relevant Directives. However, please refer to amended paragraph 9.3, which provides that, where possible, competent supervisory authorities should coordinate in the prudential assessment of acquisitions and increases in holdings.                                                                                                                                                                                                                                               | No change.                  |
|                                                                    | The prudential control of the reputation of a proposed acquirer is redundant and should not be performed if such acquirer is supervised as a regulated entity in the financial sector within the EU/EEA.                                                                           | As stated under paragraph 8.2 of the guidelines, the principle of proportionality requires the target supervisor to take into account that the proposed acquirer is a supervised financial institution when calibrating the type and breadth of the required information. However, the mere fact that the proposed acquirer is a supervised financial institution will not preclude an assessment of the acquirer's reputation. For example, the information of the supervisor on the proposed acquirer may not be up to date. | No change.                  |
|                                                                    | The supervisory authority should have the                                                                                                                                                                                                                                          | The Guidelines cannot purport to amend the relevant Directives, which do not constitute a legal                                                                                                                                                                                                                                                                                                                                                                                                                                | Please refer to the revised |

| Comments                         | Summary of responses received                                                                                                                                                 | EBA, EIOPA and ESMA analysis                                                                                                                                                                                                                                                                                                           | Amendments to the proposals                           |
|----------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------|
|                                  | option of pre-authorisation of an acquisition.                                                                                                                                | basis for requiring competent authorities to issue 'pre-authorisations'. However, pre-notification guidance has been provided in paragraph 9.3.                                                                                                                                                                                        | wording of paragraph 9.3.                             |
|                                  | References to relevant provisions should also include references to the Solvency II Directive.                                                                                | The relevant provisions were amended.                                                                                                                                                                                                                                                                                                  | Please refer to the revised wording.                  |
| Acknowledgement of notifications |                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                        |                                                       |
|                                  | To avoid delays, supervisory authorities should always inform the proposed acquirers within two working days on whether the notification is considered to be complete or not. | Should an incomplete notification be received, the target supervisor is not obliged to specify the missing information in the acknowledgment of receipt, but may detail such information in a separate letter to be submitted subsequently within a reasonable period of time. This has been rendered more precisely in paragraph 9.2. | Please refer to the revised wording of paragraph 9.2. |
|                                  | A uniform notification form that proposed acquirers can use when filing a request should be designed.                                                                         | Such a uniform notification form is not contemplated in the sectoral Directives and Regulations and there is a possibility that requirements may vary across sectors and jurisdictions. As such, a uniform notification form would not be appropriate.                                                                                 | No change.                                            |
| Assessment criteria              |                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                        |                                                       |
|                                  | The Qualifying Holdings Directive should be amended to introduce a financial stability criterion and a resolvability criterion.                                               | The Guidelines cannot add new assessment criteria to those set out in the relevant Directives. Furthermore, the ESAs are of the view that the issuance of the new Guidelines should not be postponed until a decision is taken on whether the                                                                                          | No change.                                            |

| Comments | Summary of responses received                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | EBA, EIOPA and ESMA analysis                                                                                                                                                                                                                                                                                                                                                                            | Amendments to the proposals |
|----------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|
|          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | relevant Directives should be amended, as any new criterion would apply in any event.                                                                                                                                                                                                                                                                                                                   |                             |
|          | Assessing the professional competence of a proposed acquirer is a new requirement which was not incorporated in the Qualifying Holdings Directive, which should not be introduced by way of guidelines. It is unclear how this requirement relates to the suitability (or fit) requirement for policy makers of financial institutions as already incorporated in existing law. If the proposed acquirer is a regulated undertaking, the professional competence of its policy makers should already be deemed to have been assessed.                                                                                                                                                              | Assessing the professional competence of a proposed acquirer is not a new requirement, it flows from the reputation criterion. Please refer to the original guidelines, which state the following: 'Thus the assessment of the reputation of the proposed acquirer covers two elements: <ul style="list-style-type: none"> <li>• his integrity, and</li> <li>• his professional competence.'</li> </ul> | No change.                  |
|          | Paragraph 11 of the Guidelines states that, if the proposed acquirer intends to appoint a person who is not fit and proper, the target supervisor should oppose the proposed acquisition. The Qualifying Holding Directive only applies in cases of qualifying holdings in regulated financial undertakings. All policy makers of these undertakings are subject to a fit and proper test. If a proposed acquirer intends to appoint a person who is not fit and proper, the target supervisor already has the power to prevent nomination of that person by declaring that person not fit or proper. It is not clear why the target supervisor should in this case oppose the entire acquisition. | The Guidelines cannot purport to amend the relevant Directives. One of the assessment criteria is to assess the reputation, knowledge, skills and experience of any member of the management body or of senior management who will direct the business of the target undertaking as a result of the proposed acquisition.                                                                               | No change.                  |

| Comments          | Summary of responses received                                                                                                                                                                                                                                                                                                                        | EBA, EIOPA and ESMA analysis                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Amendments to the proposals |
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|                   | The requirement that the group of which the target undertaking will become a part should be adequately capitalised is vague. Legal persons that are regulated and supervised by a competent authority must be deemed to be 'adequately capitalised' when the legal person complies with the relevant EU prudential capital or solvency requirements. | As stated in paragraph 13.1 of the Guidelines, the fourth assessment criterion requires that the proposed acquisition will not adversely affect the target undertaking's compliance with prudential requirements. Therefore, the assessment of the fourth criterion includes, amongst other matters, an assessment of the strategy and the business plan (please refer to paragraph 13.3), constituting a forward-looking assessment. Reference is also made to paragraph 13.4 of the Guidelines. Therefore, the group of which the target undertaking will become a part will not be automatically deemed to be 'adequately capitalised' solely because such group complies with the applicable prudential capital or solvency requirements immediately after the closing of the transaction. | No change.                  |
|                   | The guidelines should specify under which circumstances competent authorities should oppose a proposed acquisition on account of reasonable grounds to suspect that there will be an increased risk of money laundering or terrorist financing.                                                                                                      | Whether there are reasonable grounds to suspect that there will be an increased risk of money laundering or terrorist financing has to be analysed by way of a case-by-case assessment.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | No change.                  |
| Acting in concert |                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                             |
|                   | It should be clarified that asset management firms' staff do not act in concert with their employer.                                                                                                                                                                                                                                                 | The sectoral Directives and Regulations do not foresee a basis for such exemption. This will be subject to a case-by-case assessment.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | No change.                  |
|                   | Achieving the desired level of uniform application and interpretation would be best                                                                                                                                                                                                                                                                  | Until such time as the sectoral Directives and Regulations are amended, the ESAs believe that, in                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | No change.                  |

| Comments | Summary of responses received                                                                                                                                                                                                                                                         | EBA, EIOPA and ESMA analysis                                                                                                                                                                                                                                                                                                                                             | Amendments to the proposals                           |
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|          | served by incorporating a clear definition in the relevant sectoral Directives and Regulations.                                                                                                                                                                                       | the interests of ensuring a harmonised application of the sectoral Directives and Regulations, it is important to provide guidance on this point by way of the Guidelines.                                                                                                                                                                                               |                                                       |
|          | The definitions of 'acting in concert' in the Takeover Bids Directive and the Transparency Directive should be used.                                                                                                                                                                  | The Takeover Bids Directive and the Transparency Directive are mainly focused on voting rights, whereas the aim of the CRD IV is to also have transparency regarding the capital stakes in the target institution.                                                                                                                                                       | No change.                                            |
|          | The wording in paragraph 4.1 of the Guidelines regarding inaction should be clarified.                                                                                                                                                                                                | The wording was clarified.                                                                                                                                                                                                                                                                                                                                               | Please refer to the revised wording of paragraph 4.1. |
|          | Relevant persons should only be deemed to act in concert if they have a sustained joint voting policy with a view to determining the policy of the financial undertaking after the acquisition.<br><br>Coordinating buying behaviour and standstill agreements should not be covered. | There are many factors that target supervisors will assess when considering whether certain persons are acting in concert, which is not limited to only a sustained joint voting policy (please refer to paragraphs 4.2 to 4.12 of the Guidelines). The first sentence of paragraph 4.1 has been amended to better reflect the status of pure share purchase agreements. | Please refer to the revised wording of paragraph 4.1. |
|          | In the event of a finding that certain parties are acting in concert, only their voting interests should be aggregated, as only if they vote in the same manner can they jointly determine the policy of the target undertaking.                                                      | The relevant Directives refer to voting rights or capital. As such, holdings of capital should be considered as well.                                                                                                                                                                                                                                                    | No change.                                            |
|          | Various additional examples of cooperation which should not, on its own, lead to a                                                                                                                                                                                                    | As indicated in paragraphs 4.9 and 4.10, the list set out in the Guidelines is non-exhaustive. It is                                                                                                                                                                                                                                                                     | No change.                                            |

| Comments              | Summary of responses received                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | EBA, EIOPA and ESMA analysis                                                                                                                                                                                                                                                                                                                                                     | Amendments to the proposals |
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|                       | <p>conclusion that the parties are acting in concert should be added, as follows:</p> <ul style="list-style-type: none"> <li>• an agreement to vote with other shareholders on a specific issue, rather than on an ongoing or sustained basis;</li> <li>• an agreement to require particular management actions to be put to a vote of shareholders, such as the issue of new shares, or major acquisitions;</li> <li>• an agreement to require the company to provide certain information to its shareholders;</li> <li>• an agreement pursuant to which the shareholders agree that the company will act 'stand alone' and therefore no shareholder will at any time be obliged to provide additional financing to the company;</li> <li>• an agreement to vote with other shareholders in favour of the appointment of representatives of certain shareholders on the (management or supervisory) board of the financial undertaking.</li> </ul> | <p>therefore clear to market participants that there are other situations, not expressly set out in the Guidelines, under which cooperating shareholders will not be considered as acting in concert. As such, it does not appear necessary to further expand the list. Furthermore, certain proposed examples were expressly considered and deemed unsuitable for the list.</p> |                             |
| Significant influence |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                  |                             |
|                       | <p>The Qualifying Holdings Directive does not extend the prior notifications of assessment regime to acquisitions of less than 10% of the capital or voting rights but merely requires</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | <p>As stated under paragraph (6) of Directive 2007/44/EC, competent authorities shall not be prevented from providing general guidance as to when holdings below 10% would be deemed to</p>                                                                                                                                                                                      | <p>No change.</p>           |

| Comments | Summary of responses received                                                                                                                                                                                                                                                                                                                                                                                                                  | EBA, EIOPA and ESMA analysis                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Amendments to the proposals |
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|          | that competent authorities be informed of such acquisitions.                                                                                                                                                                                                                                                                                                                                                                                   | result in significant influence. Furthermore, qualifying holdings are defined in Regulation 575/2013 as ‘a direct or indirect holding in an undertaking which represents 10 % or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of that undertaking’. As such, a holding which makes it possible to exercise a significant influence over the management of a target undertaking constitutes a qualifying holding and its acquisition should be notified and assessed, regardless of the size of such holding. This is in line with Article 22 of Directive 2013/36/EU and the corresponding provisions of the other relevant Directives. |                             |
|          | The definition of ‘significant influence’ should follow the IFRS definition and be tied to the power to participate in the operating and financial policy decisions of an entity as evidenced by board of directors representation, management personnel swapping or sharing, material transactions with the investee, policy-making participation and technical information exchanges, instead of providing a non-exhaustive list of factors. | The list provided in the Guidelines is not meant to be exhaustive. Whether significant influence can be exercised over the management of an undertaking will be assessed on a case-by-case basis.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | No change.                  |
|          | It should be made clear that the granting of a call option to a continuity foundation, as foreseen under Dutch law, would also be captured under paragraph 5.2(c) of the Guidelines.                                                                                                                                                                                                                                                           | The list of factors under paragraphs 5.2 and 7.1 of the Guidelines is meant to be non-exhaustive. Accordingly, the competent supervisor should assess on a case-by-case basis if the relevant conditions are met. Furthermore, the Guidelines are not meant to deal with issues specific to a                                                                                                                                                                                                                                                                                                                                                                                                                             | No change.                  |

| Comments            | Summary of responses received                                                                                                                                                                                                                                                                                                                                                                                                        | EBA, EIOPA and ESMA analysis                                                                                                                                                                                                                                                                                                                                                       | Amendments to the proposals |
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|                     |                                                                                                                                                                                                                                                                                                                                                                                                                                      | single jurisdiction.                                                                                                                                                                                                                                                                                                                                                               |                             |
|                     | In the case of significant influence, an initial (small) holding of capital or voting rights in the target company should not be captured by the definition of 'qualifying holding'.                                                                                                                                                                                                                                                 | There is no such presumption. Accordingly, the competent supervisor should assess on a case-by-case basis if significant influence can be exercised.                                                                                                                                                                                                                               | No change.                  |
|                     | The list of factors that must be taken into account when assessing whether significant influence exists is extremely general. In particular, points 5.2(a), (b), (c), (e), (f) and (g) should be restricted in scope.                                                                                                                                                                                                                | The list of factors under paragraph 5.2 of the Guidelines is meant to be non-exhaustive. Accordingly, the competent supervisor should assess on a case-by-case basis if significant influence can be exercised.                                                                                                                                                                    | No change.                  |
| Control             | The ESAs should start a reflection on the concept of control, as no definition of the notion exists at the EU level.                                                                                                                                                                                                                                                                                                                 | The notion of control is defined in paragraph 3 of the Guidelines by reference to the definition set out in Article 22 of Directive 2013/34/EU.                                                                                                                                                                                                                                    | No change.                  |
| Decision to acquire |                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                    |                             |
|                     | A clarification of the latest point in time at which a notification obligation is triggered would be desirable. Such point in time should not be before a governing body of the undertaking or another responsible body (e.g. a committee) to which senior management has delegated such a decision has also resolved this with internally binding effect. Concrete contractual negotiations do not constitute a suitable criterion. | The notification obligation is triggered as soon as the decision either to acquire or to further increase a qualifying holding has been taken. Whether such decision has an internally binding effect is generally not relevant from the perspective of the competent authorities, nor can competent authorities be expected to check the internal authorities of various parties. | No change.                  |
|                     | The concept of 'decision to acquire' should not apply to asset management acquirers who cross a threshold without taking the                                                                                                                                                                                                                                                                                                         | The sectoral Directives and Regulations do not foresee a basis for such exemption.                                                                                                                                                                                                                                                                                                 | No change.                  |

| Comments                            | Summary of responses received                                                                                                                                                                                                                                                                                              | EBA, EIOPA and ESMA analysis                                                                                                                                                                        | Amendments to the proposals |
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|                                     | deliberate decision to do so.                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                     |                             |
|                                     | A notification regime allowing permission for acquisitions by asset management firms for an extended period of time should be introduced.                                                                                                                                                                                  | The sectoral Directives and Regulations do not foresee a basis for such exemption.                                                                                                                  | No change.                  |
| Proportionality principle           | A change in a qualifying holding from a direct to an indirect holding, or vice versa, does not have to be notified. Notification obligations only arise where thresholds are crossed in either direction. The words 'if applicable' should be inserted in paragraph 8.5, third bullet point.                               | The sectoral Directives and Regulations do not foresee a basis for such exemption. Notification obligations are triggered if the legal criteria of the sectoral Directives and Regulations are met. | No change.                  |
| Assessment period                   |                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                     |                             |
|                                     | The 60-day prudential assessment period does not start running until the supervisor acknowledges formal completeness. If only a few, immaterial, pieces of information are missing, the supervisory authorities should begin the assessment. The 60-day period is too long by comparison with other national requirements. | The Guidelines cannot purport to amend the relevant Directives.                                                                                                                                     | No change.                  |
|                                     | The extended assessment period is not suitable for asset management firms.                                                                                                                                                                                                                                                 | The sectoral Directives and Regulations do not foresee a basis for such exemption.                                                                                                                  | No change.                  |
| Reputation of the proposed acquirer |                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                     |                             |
|                                     | The consideration of factors that may cast                                                                                                                                                                                                                                                                                 | The factors mentioned in paragraph 10.13 of the                                                                                                                                                     | No change.                  |

| Comments | Summary of responses received                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | EBA, EIOPA and ESMA analysis                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Amendments to the proposals |
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|          | doubt on a member's good reputation (paragraph 10.13) should be limited to a specified period.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Guidelines should be taken into account by the competent supervisor on a case-by-case assessment.                                                                                                                                                                                                                                                                                                                                                                                      |                             |
|          | The extension of the assessment to 'any entities owned or directed by the proposed acquirer or in which the proposed acquirer has or had significant share' in paragraph 10.30(b) goes too far.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | The factor is subject to a case-by-case assessment.                                                                                                                                                                                                                                                                                                                                                                                                                                    | No change.                  |
|          | The information should only cover personal sanctions and sanctions imposed on undertakings that a relevant natural person is or was managing. Mere control functions should not be covered.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | The sectoral Directives and Regulations do not foresee a basis for exempting control functions. The information provided will be assessed on a case-by-case basis.                                                                                                                                                                                                                                                                                                                     | No change.                  |
|          | <p>A distinction should be made between:</p> <ul style="list-style-type: none"> <li>• a proposed acquirer supervised by the same competent authority; or</li> <li>• a proposed acquirer supervised by another competent authority in the same country; or</li> <li>• a proposed acquirer supervised by a competent authority in another Member State.</li> </ul> <p>When a proposed acquirer is already considered to be of 'good reputation' by the target supervisor (either in his capacity as a holder of a qualifying holding or as a board member/supervisory board member), it would be unnecessary to carry out an integrity check with respect to the proposed acquirer. It is also expected that the target</p> | Proposed acquirers are subject to a case-by-case assessment. The onus is on the proposed acquirer to provide the information to the target supervisor. Even where the same competent authority supervises the proposed acquirer, as the information held by the supervisor may no longer be up to date, the proposed acquirer generally remains obliged to submit the relevant evidence regarding his integrity. Reference is also made to paragraphs 10.4 and 10.5 of the Guidelines. | No change.                  |

| Comments                                                         | Summary of responses received                                                                                                                                                                                                                                                                 | EBA, EIOPA and ESMA analysis                                                                                                                                           | Amendments to the proposals                                                    |
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|                                                                  | supervisor be aware of all developments since carrying out its previous assessment. The proposed acquirer should not be obliged to submit a written statement on his integrity in these cases.                                                                                                |                                                                                                                                                                        |                                                                                |
| Required information for the assessment of proposed acquisitions |                                                                                                                                                                                                                                                                                               |                                                                                                                                                                        |                                                                                |
|                                                                  | The information requirements should be reduced for asset management firms.                                                                                                                                                                                                                    | The sectoral Directives and Regulations do not set out different treatment for asset management firms. However, please refer to paragraph 8.2 of the Guidelines.       | No change.                                                                     |
|                                                                  | There is no need to set out the list of required information as it would pre-empt the EIOPA mandate in Article 58(8) of the Solvency II Directive.                                                                                                                                            | The list of information requirements in Annex I is a recommendation. The wording of paragraph 9.4 and of Section 1 of Annex I has been clarified.                      | Please refer to the revised wording of paragraph 9.4 and Section 1 of Annex I. |
|                                                                  | It should be specified that the information should be submitted in English.                                                                                                                                                                                                                   | The sectoral Directives and Regulations do not set out a basis for such requirement.                                                                                   | No change.                                                                     |
|                                                                  | It should be clarified that information contained in other documents, such as annual reports, regular supervisory reports (RSR), quantitative reporting templates (QRT) or solvency and financial condition reports (SFCR), do not have to be submitted again to the supervisory authorities. | The list of information requirements in Annex I is a recommendation. Furthermore, the information already available to target supervisors may no longer be up to date. | Please refer to the revised wording of paragraph 9.4 and Section 1 of Annex I. |
|                                                                  | The list of persons in Annex I, Section 5(1)(c), items (1) and (2), is extremely broad. A                                                                                                                                                                                                     | The list of information requirements in Annex I is a recommendation.                                                                                                   | Please refer to the revised wording of paragraph 9.4 and                       |

| Comments | Summary of responses received                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | EBA, EIOPA and ESMA analysis                                         | Amendments to the proposals                                                    |
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|          | materiality qualifier should be introduced.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                      | Section 1 of Annex I.                                                          |
|          | The requirement in Annex I, Section 6(1)(c), regarding reference persons, including contact information and letters of recommendation, goes too far.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | The list of information requirements in Annex I is a recommendation. | Please refer to the revised wording of paragraph 9.4 and Section 1 of Annex I. |
|          | Documents that have been submitted to the target supervisor within the past 12 months should not have to be resubmitted, unless there has been a material change.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Provision is made in Section 8(3) of Annex I.                        | Please refer to the amended wording of Annex I, Section 8(3).                  |
|          | <p>In respect of the reduced information requirements in Annex I, Section 13, a different system of exemptions is proposed, as follows:</p> <ul style="list-style-type: none"> <li>• maximum relief regarding documents and evidence to be provided in those cases in which the person subject to the notification obligation and the target undertaking are supervised by the same – generally national – supervisor. Documents such as the financial statements for the last three financial periods, information on whether the acquirer belongs to a group, or on the senior management or shareholders would not need to be submitted;</li> <li>• a comparable approach where the person subject to the notification obligation and the target</li> </ul> | The list of information requirements in Annex I is a recommendation. | Please refer to the revised wording of paragraph 9.4 and Section 1 of Annex I. |

| Comments | Summary of responses received                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | EBA, EIOPA and ESMA analysis                                                                                                                                                                                                                                                                                                                                   | Amendments to the proposals                                                    |
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|          | <p>undertaking are supervised by the ECB in two different states belonging to the SSM;</p> <ul style="list-style-type: none"> <li>potentially less extensive, but still considerable, exemptions regarding the documents and evidence should apply if an entity in another state belonging to the EEA that is supervised by the national supervisor there is to be acquired;</li> <li>in addition to the provisions in paragraph 6.6 of the Guidelines, it should also be considered whether certain evidentiary exemptions can be applied to the direct acquirer, e.g. if it is the subsidiary of a bank that is supervised.</li> </ul> |                                                                                                                                                                                                                                                                                                                                                                |                                                                                |
|          | A general clarification should be included that documents do not need to be submitted if the relevant information can be obtained from the home country supervisor.                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | The onus is on the proposed acquirer to provide the information and the target supervisor must be able to rely on such information. Furthermore, the information held by the supervisor on the proposed acquirer may no longer be up to date. Thus, information obtained from other supervisors supplements the information provided by the proposed acquirer. | No change.                                                                     |
|          | Proposed acquirers which are financial sector regulated entities in the EU/EEA should not have to provide the information set out in Annex I, Sections 3-5.                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | The list of information requirements in Annex I is a recommendation.                                                                                                                                                                                                                                                                                           | Please refer to the revised wording of paragraph 9.4 and Section 1 of Annex I. |
|          | The relevance of the information contemplated in Annex I, Section 3(2)(e), is                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | The list of information requirements in Annex I is a                                                                                                                                                                                                                                                                                                           | Please refer to the revised wording of paragraph 9.4 and                       |

| Comments                 | Summary of responses received                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | EBA, EIOPA and ESMA analysis                                                                                                                                  | Amendments to the proposals |
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|                          | questioned for non-EU/-EEA listed companies. Annex I, Section 5(1)(e) and (f), should suffice.                                                                                                                                                                                                                                                                                                                                                                                                                      | recommendation.                                                                                                                                               | Section 1 of Annex I.       |
| Intra-group transactions |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                               |                             |
|                          | There should be provision for group-declaration of no objection resulting in undertakings only having to notify intra-group structural changes once a year. No additional assessments as a result of intra-group changes would be necessary.                                                                                                                                                                                                                                                                        | The sectoral Directives and Regulations do not set out a basis for such exemption.                                                                            | No change.                  |
|                          | Pursuant to paragraph 8.5 of the Guidelines, in the case of intra-group transactions, the full assessment procedure should only be necessary for the new persons/entities in the group and the new group structure. Such an assessment of the new entities in the group is inconsistent with the requirements set out in Article 57(1) of the Solvency II Directive, where notification of new persons/entities is only required if the acquisition/disposal thresholds of 20%, 30% or 50% are reached or exceeded. | The obligation to notify the competent authority is triggered by satisfaction of the relevant legal criteria, such as the relevant thresholds being exceeded. | No change.                  |
|                          | An assessment should not be required where a holder of a qualifying interest is authorised to hold participations between certain ranges in accordance with the Acquisitions Directive, or where a holder of a qualifying holding has previously obtained an authorisation on behalf of itself and of any of its subsidiaries                                                                                                                                                                                       | The terms of the specific authorisation would apply.                                                                                                          | No change.                  |

| Comments                    | Summary of responses received                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | EBA, EIOPA and ESMA analysis                                                                                                                                                                                                                                          | Amendments to the proposals                                  |
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|                             | (existing or newly incorporated).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                       |                                                              |
| Passive threshold crossings | <p>The guidelines should give concrete examples of cases where there is no decision triggering a notification by the holder of the qualifying holding. For example, a notification duty triggered by the knowledge of the increase or decrease of shares by the relevant shareholder could be stipulated.</p> <p>Examples should include:</p> <ul style="list-style-type: none"> <li>a reduction of holdings below any relevant threshold occurs if the target company increases its capital and the relevant holder is either excluded or decides not to participate in the increase. In the first case, there is no decision to be taken by the relevant holder;</li> <li>an increase of holdings reaching or exceeding any relevant threshold occurs if the target company repurchases and redeems its own shares.</li> </ul> | <p>The example relating to share buybacks was inserted in paragraph 7.3. Considering the fact that the Guidelines deal with acquisitions and increases of qualifying holdings (as opposed to divestments), the references to capital increases were not included.</p> | <p>Please refer to the revised wording of paragraph 7.3.</p> |
| Question 2.                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                       |                                                              |
|                             | <p>Certain respondents viewed the level of detail to be appropriate, subject to limited comments, whilst other respondents did not always consider the level of detail to be appropriate.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | <p>Specific comments were addressed above.</p>                                                                                                                                                                                                                        |                                                              |

| Comments              | Summary of responses received                                                                                                                                                                                                                                                                                                                                                                | EBA, EIOPA and ESMA analysis                                                                                                                                                                                                                                                 | Amendments to the proposals                                                    |
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|                       | The list of required information should be limited.                                                                                                                                                                                                                                                                                                                                          | The list of information requirements in Annex I is a recommendation.                                                                                                                                                                                                         | Please refer to the revised wording of paragraph 9.4 and Section 1 of Annex I. |
| Question 3.           |                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                              |                                                                                |
| Indirect acquisitions | Conflicting responses were received. Certain respondents supported option A, based on a teleological interpretation of the legal framework focusing on the potential influence over the target undertaking and potentially distinguishing between passive and active investors, whilst other respondents favoured option B. Further proposals were made pursuant to responses to Question 4. | The ESAs consider that using the control criterion in conjunction with the multiplication criterion is the most suitable option from a supervisory point of view and is consistent with the sectoral Directives and Regulations.                                             | Please refer to the revised wording of Section 6 of the guidelines.            |
|                       | Newly created voting rights, shares and/or capital contributions of any legal form in already 100% held (target) undertakings should not constitute an increase of a qualifying holding and should not, therefore, require prudential assessment by the competent authorities.                                                                                                               | Notification of increases of qualifying holdings need only be given if the thresholds identified in the sectoral Directives are crossed or if the target undertaking becomes a subsidiary of the proposed acquirer. As such, the scenarios identified would not be relevant. | No change.                                                                     |
| Question 4.           |                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                              |                                                                                |
| Indirect acquisitions |                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                              |                                                                                |
|                       | The multiplication criterion should be applied on its own, as it is clear and easily applied.                                                                                                                                                                                                                                                                                                | The ESAs consider that using the control criterion in conjunction with the multiplication criterion is the most suitable option from a supervisory point of view and is consistent with the sectoral                                                                         | Please refer to the revised wording of Section 6 of the guidelines.            |

| Comments | Summary of responses received                                                                                                                                                                                                                                                                                                            | EBA, EIOPA and ESMA analysis                                                                                                                                                                                                            | Amendments to the proposals                                                |
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|          |                                                                                                                                                                                                                                                                                                                                          | Directives and Regulations.                                                                                                                                                                                                             |                                                                            |
|          | <p>A person ('X') should be considered, in relation to a target undertaking ('T'), to have indirectly acquired a qualifying holding if:</p> <p>i) X holds 10% or more of the capital or voting rights in a person ('Y') that controls T; or</p> <p>ii) X controls a person that holds 10% or more of the voting rights in T or in Y.</p> | <p>The ESAs consider that using the control criterion in conjunction with the multiplication criterion is the most suitable option from a supervisory point of view and is consistent with the sectoral Directives and Regulations.</p> | <p>Please refer to the revised wording of Section 6 of the guidelines.</p> |