



**EUROPEAN CENTRAL BANK**  
BANKING SUPERVISION

## Template for comments

### ECB Guide on qualifying holding procedures

**Institution/Company**

Beiten Burkhardt Rechtsanwalts-gesellschaft mbH

**Contact person****Mr/Ms**

Mr

**First name**

Rainer

**Surname**

Süssmann

**Email address**

[rainer.suessmann@advant-beiten.com](mailto:rainer.suessmann@advant-beiten.com)

**Telephone number**

-756095454

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**General comments**

We appreciate the opportunity to comment on the proposed "Guide on qualifying procedures (Guide)".

The rules and procedures for the assessment of qualifying holdings in a banking institution are under German law finally set out in sec. 2c Banking Act and the "Inhaberkontrollverordnung". As far as German banking institutions are target the requirements in the procedure cannot go beyond the requirements of the Inhaberkontrollverordnung. The proposed requirements set out in the Guide go partly beyond those legal requirements and thus do not comply with the sole applicable German law.

Complying with the full procedure is time and cost assuming. Therefore, the Guide should in general more precise when an objection is more likely than a non-objection.

# Template for comments

## ECB Guide on qualifying holding procedures

Please enter all your feedback in this list.

When entering feedback, please make sure that:

- each comment deals with a single issue only;
- you indicate the relevant article/chapter/paragraph, where appropriate;
- you indicate whether your comment is a proposed amendment, clarification or deletion.

**Deadline:** 9 November 2022

| ID | Chapter  | Paragraph | Page | Type of comment | Detailed comment | Concise statement as to why your comment should be taken on board | Name of commenter | Personal data |
|----|--|-----------|------|-----------------|------------------|---|-------------------|---------------|
| 1  | Chapter 1: Foreword  |           |      |                 |                  |   | Süssmann, Rainer  | Publish       |
| 2  | Chapter 2: Framework for the assessment of acquisitions and increases of qualifying holdings in credit institutions by the SSM |           |      |                 |                  |   | Süssmann, Rainer  | Publish       |
| 3  | Section 2.1: The SSM Regulation and the SSM Framework Regulation   |           |      |                 |                  |   | Süssmann, Rainer  | Publish       |
| 4  | Section 2.2: Implementing/regulatory technical standards (ITSs/RTSs) on procedures and forms; the Joint Guidelines             |           |      |                 |                  |   | Süssmann, Rainer  | Publish       |
| 5  | Chapter 3: General principles for qualifying holdings  |           |      |                 |                  |   | Süssmann, Rainer  | Publish       |
| 6  | Section 3.1: Transparency  |           |      |                 |                  |   | Süssmann, Rainer  | Publish       |
| 7  | Section 3.2: Consistency   |           |      |                 |                  |   | Süssmann, Rainer  | Publish       |
| 8  | Section 3.3: Case-by-case assessment and proportionality   |           |      |                 |                  |   | Süssmann, Rainer  | Publish       |
| 9  | Chapter 4: Obligation to notify  |           |      |                 |                  |   | Süssmann, Rainer  | Publish       |
| 10 | Section 4.1: General   |           |      |                 |                  |   | Süssmann, Rainer  | Publish       |

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|----|--|------------------|---------|---------------|--|--|---------------------|---------|
| 11 | Section 4.2: What is a qualifying holding?   | 4.2.3<br>4.24    | 9<br>10 | Clarification | For the attribution of voting rights Art. 27 CRD refers to Art. 9 at seq. of the Transparency Directive. Thus, the multiplication criterion for calculating the percentages by indirect shareholdings has no legal grounds.<br><br>Acting in concert is also a concept of the Transparency Directive and thus part of various laws. The interpretation of Acting in Concert should therefore not differ from the interpretation for example in the German Securities Trading Act. "Concerted practices" cannot result in an Acting in concert. | Deletion of this interpretation required | Süssmann,<br>Rainer | Publish |
| 12 | Section 4.3: Decision to acquire   | 4.3.2            | 13      | Amendment     | When it is foreseeable that a threshold triggered the filing notification is falling below a few days later no obligations should exist at all.  | To avoid unnecessary actions             | Süssmann,<br>Rainer | Publish |
| 13 | Chapter 5: Assessment  |                  |         |               |  |  | Süssmann,<br>Rainer | Publish |
| 14 | Section 5.1: The principle of proportionality  |                  |         |               |  |  | Süssmann,<br>Rainer | Publish |
| 15 | Section 5.2: Assessment criteria   | 5.2.3<br>5.2.3.1 | 18      | Clarification | Existing shareholders have no obligation to provide additional financing to the banking institution, why should acquirers have this obligation?<br><br>Under the Inhaberkontrollverordnung banking institutions within the EU is an acquirer are not obliged to provide any financial documents.   |  | Süssmann,<br>Rainer | Publish |
| 16 | Chapter 6: Procedural aspects and documentation; information requirements                    |                  |         |               |  |  | Süssmann,<br>Rainer | Publish |
| 17 | Section 6.1: Pre-notification phase and synchronisation of procedures involving several NCAs |                  |         |               |  |  | Süssmann,<br>Rainer | Publish |
| 18 | Section 6.2: Acknowledgement of receipt and calculation of the procedural deadline           |                  |         |               |  |  | Süssmann,<br>Rainer | Publish |
| 19 | Section 6.3: Request for further information and suspension of the legal deadline            |                  |         |               |  |  | Süssmann,<br>Rainer | Publish |
| 20 | Section 6.4: Material changes during and after the assessment period                         |                  |         |               |  |  | Süssmann,<br>Rainer | Publish |
| 21 | Section 6.5: Ancillary provisions to the ECB's decision                                      | 6.5.             | 31      | Amendment     | In case of non-objection no formal decision will be taken. Thus, there is no legal possibility for conditions or obligations.  | Here is a non-compliance with German law | Süssmann,<br>Rainer | Publish |

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| 22 | Section 6.6: Procedural issues relating to the qualifying holding assessment |  |  |  |  |  | Süssmann,<br>Rainer | Publish |
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