EUROPEAN CENTRAL BANK

BANKING SUPERVISION

Template for comments

ECB Guide on qualifying holding procedures

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General comments

We welcome that ECB gave us the opportunity to comment such practical guide on the assessment of acquisitions and increases of qualifying holdings in credit institutions. On such respect, whitin the praragraph below we have pointed out our concernings in particular on aggregation duties of asset managers as well as our proposal regarding the pre-notification phase as being the room for conducting a pre-assessment of the need of filing a clearance/formal notification to the relevant Supervisory Authority by the asset manager which acquires qualifying holdings in credit institution or as the occasion to propose different solutions in place of the clearance under directive 2013/36/EU.

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						Grippo, Emanuele	Publish
2	Chapter 2: Framework for the assessment of acquisitions and increases of qualifying holdings in credit institutions by the SSM						Grippo, Emanuele	Publish
3	Section 2.1: The SSM Regulation and the SSM Framework Regulation						Grippo, Emanuele	Publish
4	Section 2.2: Implementing/regulatory technical standards (ITSs/RTSs) on procedures and forms; the Joint Guidelines						Grippo, Emanuele	Publish
5	Chapter 3: General principles for qualifying holdings						Grippo, Emanuele	Publish
6	Section 3.1: Transparency	3.1	6	Clarification	We have summrized our comment on pre-notification phase at paragraph 6.1 below.		Grippo, Emanuele	Publish
7	Section 3.2: Consistency						Grippo, Emanuele	Publish
8	Section 3.3: Case-by-case assessment and proportionality						Grippo, Emanuele	Publish
9	Chapter 4: Obligation to notify						Grippo, Emanuele	Publish
10	Section 4.1: General						Grippo, Emanuele	Publish
11	Section 4.2: What is a qualifying holding?	4.2.1	8	Clarification	We would like to take this opportunity to express some general comments on the paragrapgh 4.2.1 "*How to determine the thresholds for "voting rights"" of this Guide on qualifying holding procedures (the "Guide"*), regarding the application of the directive 2004/109/EC (so called Transparency Directive) when it should be assessed if a relevant threshold has been crossed to require clearance under directive 2013/36/EU (so called Bank Directive) nonetheless we are aware of the provision set forth at the article 27 of the Bank Directive. We believe that when article 27 of the Bank Directive (and the paragraph 4.2.1 of this *Guide*) cross-refers to the Transparency Directive one would need to consider that the disclosure requirements provided therein are much different from the pre-transaction clearances required under the Bank Directive. In fact, the rationales for the duties triggered by each of such set of provisions are deeply different. The Bank Directive clearances aim to assess - prior to the clearance for the acquisition of a qualifying holding in a credit institution - the suitability, reputation and financial soundness of the proposed acquirer, while the Transparency Directive disclosure duties aim at ensuring appropriate transparency for investors of listed companies through a regular flow of information. On such ground the Bank Directive provides for pre-transactions clearances, while the Transparency Directive disclosures provides for post-trade communications. Starting from the clear understanding of such core difference, one would probably understand that it is simply undoable to apply the Transparency Directive criteria to the Bank Directive. In fact, while it is easy requiring an aggregation post-transaction (thus, once a given transaction has actually been done) and thus with respect to the Transparency Directive disclosures duties, it is far more complex (and require very sophisticated reporting flows) requiring the aggregation before a given transaction occurs, as it would be the case under the Bank Directive to get the due pre-transaction clearances. This is even more true whenever the aggregation is required to groups of large dimensions and, even more so, to regulated intermediaries that should act in the best interest of their underlying clients and cannot share at a group level information that are to be segregated. Not to mention that, in case of asset managers any aggregate holding will not remain static but would actually change, on a continuous basis, in light of the discretional activities (buy and sell) carried out independently by each asset managers belonging to the group. The consequence of this being that any clearance eventually received under teh Bank Directive by a significant asset manager on day one (whereby a communication was actually made illustrating a certain number of asset managers holding alone and in aggregate a given percentage) would need to be required again (and again, and again) in light of the buy and sell orders performed by each asset manager belonging to the group. Therefore, aggregating holdings for the purpose of a Bank Directive clearance (each time an asset manager changes its position) not only will be quite impracticable but would also imply massive costs. In fact, the Transparency Directive provides post-trade notification, thus asset managers might introduce procedures to make sure that if a threshold on an aggregated basis is triggered then – thereafter – a disclosure is made; this is actually undoable for pre-transaction clearances under the Bank Directive.		Grippo, Emanuele	Publish
12	Section 4.3: Decision to acquire	4.3.2	13	Clarification	We welcome that the ECB takes into account the relevance of temporary acquisitions and the possibility of refraining from a formal clearance process. This could be the case for significant asset managers who acquire holdings in credit entities with different group entities and are required to aggregate all holdings held, triggering the notification process. In fact, we believe that at the pre-notification phase referred to in Section 6.1 below, an asset manager could be exempted from the authorization requirement if it specifically commits to holding the position only on a temporary basis for investment purposes (with an explicit commitment that if, and to the extent that, a certain threshold is exceeded, the position will be disposed of within a specified time frame).		Grippo, Emanuele	Publish
13	Chapter 5: Assessment						Grippo, Emanuele	Publish
14	Section 5.1: The principle of proportionality						Grippo, Emanuele	Publish
15	Section 5.2: Assessment criteria						Grippo, Emanuele	Publish
16	Chapter 6: Procedural aspects and documentation; information requirements						Grippo, Emanuele	Publish
17	Section 6.1: Pre-notification phase and synchronisation of procedures involving several NCAs	6.1	14	Amendment	We welcome the ECB aim to introducing a pre-notification phase to clarify the required information and timing for clearance. We believe that pre-notification phase can also provide an important opportunity to conduct a pre-assessment on the need to submit or not to submit an application to acquire qualifying holdings by an asset manager. In particular, if there is an actual need to aggregate holdings held through several entities belonging to a large asset manager group that may be lead to the decision to file an application clearance to the relevant NCA. In fact, typically a large asset manager is usually charaterized by a complex organization composed by different legal structures, including stand-alone asset management entities, segregated asset managers (with or without legal personality), funds represented by corporate entities with legal personality with management company, contractual funds with independent external management companies, segregated accounts/segregated mandates, etc., which requires a proper assessment on the actual need to aggregate when acquire qualifying holding. They avoid the traditional logic of acquiring a qualifying holdings in a credit institution for industry purposes: the purchase or sale of securities is normally done for investment purposes and can be done by different structural entities belonging to the asset manager's group in the course of their management activities. In addition, the pre-notification phase would be useful for the manager to explicate its policy on the exercise of voting rights which are typically exercised on behalf of its clients and carried out solely in their interest, weighing the client's best long-term interest. In light of such business model, the aggregate holdings does not remain static (i.e., it is held in custody and remains unchanged until it is scheduled to leave the supervised entity in question), but actually changes, on an ongoing basis, in light of the discretionary activities (buying and selling) carried out independently by each asset manager entity belonging to the group. Therefore, it is essential that ECB evaluate when actually requires a clearance or when release an exception: we believe that this pre-notification phase may be the room to issue an exemption order to the asset manager's obligation to aggregate holdings if the following conditions are met: (i)the purpose of the acquisition of a qualifying holding is for financial or investment reasons during the management activity and not for acquiring control of the target or of appointing its own representative in the administrative body; (ii)the position of each management company is already an aggregation of holdings held by managed funds and by clients (and the funds or clients remain the owners of the investment and the manager of the group is entrusted with the discretion over investments and the exercise of voting rights); (iii)information is exchanged for the sole purpose of improving the quality of the services delivered to the client and pursuing the best interest of the client and, therefore, the independence of the asset manager exercising the right is not affected; (iv)when general guidelines are issued by the asset management HoldCo only to ensure a coherent and thorough analysis of possible investments and for the sole purpose to allow the different group's entities to benefit from a homogeneous and consistent approach. Furtheremore, this may be the room also to evaluate alternative options to the traditional clearance, e.g. permitting a group of asset managers to receive a pre-clearance on an aggregate basis for the aggregate holdings held at the outset and remaining valid for a certain period of time it no other threshold is triggered individually or on an aggregate basis notwithstanding the single positions determining the aggregated positions might change in light of the activities carried out individually by the single asset managers belonging to the group.		Grippo, Emanuele	Publish
18	Section 6.2: Acknowledgement of receipt and calculation of the procedural deadline						Grippo, Emanuele	Publish
19	Section 6.3: Request for further information and suspension of the legal deadline						Grippo, Emanuele	Publish
20	Section 6.4: Material changes during and after the assessment period						Grippo, Emanuele	Publish

21	Section 6.5: Ancillary provisions to the ECB's decision						Grippo, Emanuele	Publish
22	Section 6.6: Procedural issues relating to the qualifying holding assessment						Grippo, Emanuele	Publish