



Template for comments

ECB Guide on qualifying holding procedures

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General comments

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
1	Chapter 1: Foreword					
2	Chapter 2: Framework for the assessment of acquisitions and increases of qualifying holdings in credit institutions by the SSM					
3	Section 2.1: The SSM Regulation and the SSM Framework Regulation					
4	Section 2.2: Implementing/regulatory technical standards (ITSs/RTSs) on procedures and forms; the Joint Guidelines					
5	Chapter 3: General principles for qualifying holdings					
6	Section 3.1: Transparency					
7	Section 3.2: Consistency					
8	Section 3.3: Case-by-case assessment and proportionality					
9	Chapter 4: Obligation to notify	4.1. & 4.2	7		Eliminate requirement to notify for intragroup operations involving a higher level entity which is restructured or disappears.	It is not of the same nature as other type of operations to acquire qualifying stakes
10	Section 4.1: General					
11	Section 4.2: What is a qualifying holding?					

12	Section 4.3: Decision to acquire				<p>According to section 4.3 the obligation to notify is triggered as soon as the proposed acquirer has taken the decision to acquire a qualifying holding in the target. It is also stated that the submission of a final bid to the seller by the proposed acquirer is therefore the latest point in which the decision to acquire materializes and triggers the obligation to notify.</p> <p>In our view, the obligation to notify an acquisition of a qualifying holding should be triggered only once there is absolute certainty that the acquisition will be carried out, subject, of course, to obtaining the corresponding regulatory authorizations (and not at the time a final bid is posted because there is still possibility that the seller does not accept it). Then the most reasonable time to make the notification is upon execution of a legally binding agreement between the potential acquirer and the seller. In fact, it is market practice for SPA agreements to contain a series of conditions precedent consisting, among others, of obtaining the corresponding regulatory authorizations and to include certain provisions with the obligations of the parties in relation with the submission of relevant notifications and follow-up of such regulatory processes. Relevant to mention that binding offers are not strictly "binding", they are always subject to negotiation.</p>	
13	Chapter 5: Assessment					
14	Section 5.1: The principle of proportionality	5.1			Some of the requirements (prudential, AML) are divergent across non-EU jurisdictions and this should be taken into account.	Supervisory requirements diverge across non-EU jurisdictions
15	Section 5.2: Assessment criteria	5.2			.in relation with the assessment of compliance with the fit & proper requirements for the members of the management body and where multiple related qualifying holding procedures are involved (i.e. several NCAs and ECB working in the assessment of the same transaction), we identify a lack of an harmonized and synchronized process that allows NCAs directors fit & proper processes to rely on the existing ECB fit & proper. In our view, to the extent there is an ECB fit & proper in place, NCAs should not request any additional integrity testing, criminal records or other director's suitability related documentation to perform their fit & proper assessment at the national level.	
16	Section 5.2: Assessment criteria	5.2.1.1 and slide note	15		The fact that the certificate of absence of criminal records is notoriously more difficult and time consuming to get in non-EU jurisdictions should be taken into account	Principles and procedures for criminal records evidence are significantly different in non-EU jurisdictions and this has proved challenging in previous procedures

17	Section 5.2: Assessment criteria	5.2.4.2		Amendment	In relation with the detail of the business plan, for supervisory purposes, we find unnecessary the level of details that is being required under this document. General understanding of financial estimates and its impact on the solvency position of the acquirer are reasonable but the level of detail they are envisioning on the individual and detailed assumptions being required in order to carry out the "supervisory challenge scenario" is something that we consider excessive. For instance: information discussed during a Board of Directors session is more than enough.	
18	Chapter 6: Procedural aspects and documentation; information requirements	6	28		For intra-group operations, avoid the need to present again information and documents already filed with the ECB	The information has already been filed with the ECB
19	Section 6.1: Pre-notification phase and synchronisation of procedures involving several NCAs	6.1.		Amendment	We do believe that a synchronization effort should be made in relation with the information requirements from different NCAs (together with ECB) where multiple related qualifying holding procedures are involved. In our view, information requirements from ECB and NCAs involved in related qualifying holding procedures should be harmonized as much as possible. In line with this, it is not reasonable and goes against the proportionality principle mentioned throughout the guide that in certain cases, the information requirements of NCAs qualifying holding procedures - which are related to (and arise as a consequence of) the main transaction that is being analyzed by ECB - are completely disproportionate (and much more demanding) in comparison to the file being analyzed by ECB as part of the main transaction.	
20	Section 6.1: Pre-notification phase and synchronisation of procedures involving several NCAs	6.1	28		Having to notify at the binding offer stage is too early, some M&A operations are complicated and this might affect the success of the operation	The notification at a too early stage might interfere with the success of the transaction, particularly when there is a bidding process in place.
21	Section 6.2: Acknowledgement of receipt and calculation of the procedural deadline	6.2.3	29		Avoid the need to file other notifications if the IMAS portal has been used	Avoid duplicate notification processes
22	Section 6.3: Request for further information and suspension of the legal deadline	6.3	29		Keep procedures simple, group requirements and avoid interrupting the procedure if a non-essential item is missing.	Need to keep procedural aspects running smoothly
23	Section 6.4: Material changes during and after the assessment period					
24	Section 6.5: Ancillary provisions to the ECB's decision					
25	Section 6.6: Procedural issues relating to the qualifying holding assessment					