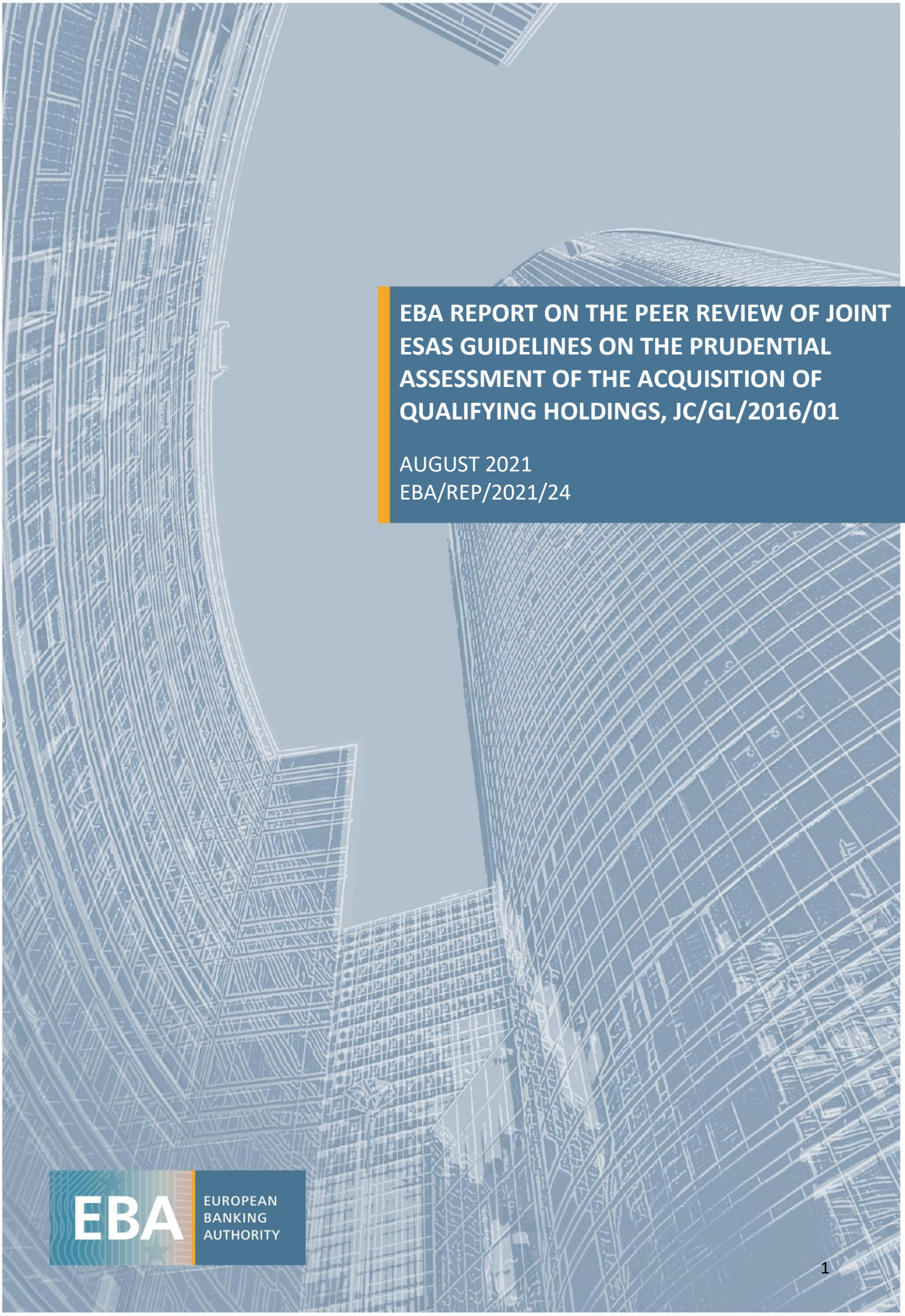

EBA REPORT ON THE PEER REVIEW OF JOINT ESAS GUIDELINES ON THE PRUDENTIAL ASSESSMENT OF THE ACQUISITION OF QUALIFYING HOLDINGS, JC/GL/2016/01

AUGUST 2021
EBA/REP/2021/24

EBA EUROPEAN BANKING AUTHORITY

Contents

Executive summary

1. The Joint ESAs Guidelines on the prudential assessment of the acquisition of qualifying holdings, JC/GL/2016/01, define common procedures based on the assessment criteria laid down in the EU legislative framework that establishes how acquisitions and increases of qualifying holdings by natural or legal persons in financial institutions should be assessed. They also further develop the assessment process defined in the EU legislative framework and aim to harmonise supervisory practices in the financial sector across the EU to provide more clarity to proposed acquirers on how they should notify the competent authorities.

2. This report presents the EBA's Ad hoc Peer Review Committee's conclusions of its peer review of competent authorities' self-assessment of how they apply a selection of the most critical areas of the Guidelines. The conclusions illustrated in this report are therefore based on the results of a self-assessment questionnaire addressed to the CAs, as challenged by the PRC, rather than of a full review of the CAs' application of the Guidelines.

3. Based on the peer reviewed findings, the report indicates areas where relevant CAs should improve their practices rather than request enforcement measures and the PRC reserves the right to request updates on implementation developments[1].

4. The report also provides early indications as to the areas in which the ESAs Guidelines could provide additional guidance to the CAs, with a view to fostering convergence of practices.

5. The PRC concluded that the Guidelines are generally largely or fully applied by CAs and that they have significantly contributed to the convergence of assessment practices of proposed acquisition or increase of qualifying holdings across the EU.

	Q1	Q2	Q3	Q4	Q5	Q6	Q7.1	Q7.2
	Application of Acting in concert	Application of Significant influence	Indirect acquisition of qualifying holdings	Notification & assessment of proposed acquisition	1st Assessment criterion - Reputation of proposed acquirer	3rd Assessment criterion - Financial soundness of proposed acquirer	5th Assessment criterion - Suspicion of ML/TF by proposed acquirer proposed acquirer	5th Assessment criterion - Suspicion of ML/TF by proposed acquirer source of funds
AT	FA	FA	FA	FA	FA	FA	FA	FA
BE	FA	FA	FA	FA	FA	FA	FA	FA
BG	LA	LA	FA	FA	FA	LA	FA	FA
CY	FA	LA	FA	FA	FA	FA	FA	FA

[1] Article 21 of EBA Decision on Peer Review Methodology EBA/DC/2020/327

CZ	FA	FA	PA	FA	FA	PA	FA	FA
DE	FA	FA	FA	FA	LA	PA	FA	FA
DK	LA	LA	FA	LA	PA	LA	LA	NA
ECB-SSM	FA	FA	FA	N/A	FA	FA	FA	FA
EE	FA	FA	PA	FA	FA	FA	FA	FA
ES	FA	FA	FA	FA	FA	FA	FA	FA
FI	FA	FA	FA	FA	FA	FA	LA	FA
FR	FA	FA	FA	LA	FA	FA	FA	FA
GR	FA	FA	FA	FA	FA	FA	FA	LA
HR	FA	FA	FA	FA	FA	FA	FA	FA
HU	FA	FA	FA	FA	FA	FA	FA	FA
IE	FA	FA	FA	FA	FA	FA	FA	FA
IS	FA	FA	FA	FA	FA	FA	FA	FA
IT	FA	FA	LA	FA	FA	FA	FA	FA
LIE	N/C	N/C	N/C	N/C	N/C	N/C	N/C	N/C
LT	FA	FA	FA	FA	FA	FA	FA	FA
LU	FA	FA	FA	FA	FA	FA	FA	LA
LV	FA	FA	FA	FA	FA	FA	FA	FA
MT	FA	FA	FA	FA	FA	FA	FA	FA
NL	LA	FA	FA	LA	FA	FA	LA	FA
NO	FA	FA	FA	FA	FA	FA	FA	FA
PL	FA	FA	PA	FA	FA	FA	FA	FA
PT	FA	FA	FA	FA	FA	LA	FA	FA
RO	PA	LA	PA	FA	LA	LA	LA	PA
SE	LA	FA	LA	FA	FA	PA	FA	FA
SI	FA	FA	FA	FA	FA	FA	FA	FA
SK	FA	PA	FA	FA	FA	FA	FA	FA

Green: fully applied (FA)
Yellow: largely applied (LA)
Orange: partially applied (PA)
Red: not applied (NA)
Pink: not applicable (N/A)
White: non-contributing (NC)

6. In particular, clarifications made in the Guidelines to notions of acting in concert, significant influence and indirect qualifying holdings, by the provisions of indicators and other elements to better identify the existence of one or more of those situations have materially improved the convergence of practices. The introduction of the multiplication criterion has proved useful to delimit the perimeter of direct and indirect acquirers in a uniform manner. Therefore, it is important that those CAs who have not yet implemented the multiplication criterion within their

supervisory practices promptly do so in order to further level the playing field. This is particularly important for cross-jurisdictional acquisitions where the same acquisition perimeter should be established across the EU.

7. With regard to the notion of acting in concert, it is noted that some divergences still remain as a consequence of the existence of national definitions of such notions and of other differences in approach, as regards, for example, the role to be attributed to the ultimate beneficial owner under the steer and control of how the group entities behave.

8. Based on findings and exchanges with the CAs, it has been brought to the fore that the Guidelines do not provide sufficient guidance for a proportionate and efficient assessment of complex transactions with numerous acquirers (direct, indirect, acting in concert) and in case of special acquirers, such as private equity funds, which may include several partners each to be assessed.

9. With regard to the regime on time limits, the findings illustrated in the Report show that the provision of a simple formal check of the documents and information submitted with the application has increased the prompt communication of CAs with the applicants. This, together with the encouragement of pre-notification contacts between CAs and the proposed acquirer, and/or their legal adviser, represents a significant leap in ensuring an effective case-management. The PRC notes that a large majority of CAs referred to sending the acknowledgment of receipt of a complete notification within 2 working days from its receipt. However, it is noted that challenges to the effective respect of the 60 working days assessment timeline set out in Article 22 CRD still remain, in particular for complex acquisitions, and that additional improvements need to be made. Based on the responses to the SAQ, the overall length of the procedure still varies between 2 months and 1 year in particular in case of complex transactions. Whilst the PRC supports the practice, followed by several CAs, to encourage pre-notification contacts with potential acquirers to make the overall process more effective and faster, it notes that when summing up the timeframe of the pre-notification phase with the actual assessment process, the overall procedure can last up to 1 year. It is the PRC's understanding that an increase of headcount in some CAs, and an increase in use of IT solutions could also be a remedy to shorten the overall timeframe for the assessment of the application. Still the PRC acknowledges that complex acquisitions, with numerous simultaneous notifications, raise specific challenges that may need to be separately addressed.

10. The PRC acknowledges that all CAs assess the fifth assessment criterion on ML/TF risk, however, given the high-level guidance laid down in the Guidelines, the scope and intensity of the assessment varies amongst CAs. There is uncertainty as to the notion of suspicion of money laundering and terrorist financing and the trigger for such increased risk. With regard to the sources of funds, both the activity giving rise to the funds to be used in the acquisition and the checks of the uninterrupted paper trail through which the funds, are assessed by a large majority of CAs, but to different degrees and intensity. The existence of an interrupted paper trail is not thoroughly checked by a number of CAs. In this regard, lack of clarity about the modality and intensity of assessment, including the lack of common understanding about the triggers of

increased ML/TF risk requiring more in depth assessment, have been raised by some CAs. Whilst the Guidelines do provide some guidance on the assessment of the fifth criterion on suspicion of money laundering and terrorist financing, the PRC acknowledges that additional guidance is needed to provide a common understanding of the assessment methodology and achieve homogeneous practices. Furthermore, an enhanced proactive exchange of information between involved prudential CAs and AML supervisors could achieve a more effective cooperation and assessment of specific cases. In this regard, the upcoming EBA Guidelines on cooperation and information exchange between prudential supervisors, AML/CFT supervisors and financial intelligence units will be an important tool to be used in the assessment process[2]. The PRC also acknowledges that, as already pointed out by the EBA in the Report on the future AML/CFT framework in the EU, amendments to the Level-1 text are opportune to ensure actual harmonisation of EU law and effectiveness of supervisory practices in the application of the fifth assessment criterion[3].

11. Also, as a general observation, it should be noted that against an overall low opposition rate for failure to meet one or more assessment criteria, CAs prefer to encourage proposed acquirers to withdraw the application.

12. Further, the PRC takes note of the positive role played by the ECB Single Supervisory Mechanism (ECB-SSM), in its capacity as the competent authority exclusively competent for the approval of proposed acquisitions or increase of qualifying holdings for the whole Banking Union, in furthering the consistency of the application of the Guidelines across participating MS, thus strengthening supervisory convergence of the application of the Guidelines for credit institutions subject to the CRD.

13. It is noted that one CA implemented the Guidelines in its supervisory practices by adoption of a national regulation in 2020, thus starting their application from 24 December 2020, hence whilst performing the prudential assessment as required by the CRD, this CA did not apply the Guidelines during the period under review. Another CA, whilst performing the prudential assessment of the acquisition of qualifying holdings, relies on an internal manual which is a concise and simplified version of the Guidelines, which does not provide for as thorough an assessment of the acquirer as the Guidelines (e.g. failure to include indicators for identification of factual situations; request of fewer pieces of information).

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[2] Consultation Paper on draft Guidelines on cooperation and information exchange between prudential supervisors, AML/CFT supervisors and financial intelligence units under Directive 2013/36/EU, EBA/CP/2021/21 of 27 May 2021, available at https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Consultations/2021/Guidelines%20on%20cooperation%20and%20information%20exchange%20between%20prudential%20supervisors%2C%20AML-CFT%20supervisors%20and%20financial%20intelligence%20units/1012943/Consultation%20Paper%20on%20draft%20AML-CFT%20Cooperation%20Guidelines.pdf

[3] EBA/REP/2020/25, Page 45, recommendations are laid down on three aspects: i) the need to have common understanding of 'reasonable grounds' to suspect that ML/TF may be committed or that the risk thereof could be increased; ii) on the power to refuse an application; and iii) on the need for flexibility on the time periods to complete the assessment. The Report is available at https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Reports/2020/931093/EBA%20Report%20on%20the%20future%20of%20AML%20CFT%20framework%20in%20the%20EU.pdf

14. In light of the above, the EBA PRC suggests that the following improvements could be included in the Guidelines:

- Review and enhancement of guidance on the fifth assessment criterion relating to ML/TF risk;
- Additional guidance on the assessment of large and complex acquisitions, including by – but not limited to – special acquirers like private equity funds, with multiple direct and indirect acquirers or acquirers acting in concert, in order to achieve a more proportionate and efficient assessment. It is also acknowledged that complex transactions with numerous direct and indirect acquirers raise specific challenges for CAs, in particular as to the compliance with the strict time limit of 2 working days set out by Article 22(2) CRD for the assessment of the completeness of the notification;
- Review of the guidance on the application of the principle of proportionality;
- Review and improvement of the guidance on the content of documents and information to be provided with an application, in order to speed up the pre-application phase, e.g. in respect of the expectations of the content and assessment of the business plan.

List of abbreviations

AML/CFT	Anti-money laundering and countering the financing of terrorism
AoR	Acknowledgement of Receipt
CA	Competent Authority
CI	Credit Institution
CRD	Capital Requirements Directive (Directive 2013/36/EU)
EBA	European Banking Authority
ECB	European Central Bank
EEA	European Economic Area
EIOPA	European Insurance and Occupational Pensions Authority
ESA	European Supervisory Authority
ESMA	European Security and Markets Authority
FAQ	Frequently Asked Questions
FTE	Full time equivalent
ML/TF	Money laundering and terrorist financing
MS	Member State
N/A	Not applicable
PRC	Ad hoc Peer Review Committee
SAQ	Self-Assessment Questionnaire
UBO	Ultimate Beneficial Owner

List of tables

1. Background and rationale

1.1 Introduction

15. As set out in Article 30 of the EBA Regulation, the EBA shall periodically conduct peer reviews of some or all of the activities of competent authorities within its remit, to further strengthen consistency and effectiveness in supervisory outcomes. This peer review has been carried out with a view to focussing on an assessment of how competent authorities apply a selection of the most critical areas of the Joint ESAs Guidelines on the prudential assessment of the acquisition of qualifying holdings.

1.2 Joint ESAs Guidelines on the prudential assessment of the acquisition of qualifying holdings

16. 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 led to the adoption of Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007[4] (the 'Directive') laying down a maximum harmonisation 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.

17. With regard to the banking sector, the relevant provisions of the Directive are set out in Articles 22-27 of the Capital Requirements Directive (CRD)- See Annex 5.

18. In 2008 the former three Level-3 Committees (CEBS, CESR and CEIOPS) developed non-binding guidelines for the prudential assessment of acquisitions and increases in holdings in the financial sector required by Directive 2007/44/EC (the '3L3 Guidelines')[5].

19. In 2013 the Commission submitted a Report to the European Parliament, the Council, the European Social and Economic Committee and the Committee of the Regions, on 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 increase of holdings in the financial sector[6]. In that Report, the Commission highlighted the existence of inconsistent applications by Member States of various concepts, namely, 'indirect qualifying holdings'; 'persons acting in concert';

[4] 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)

[5] https://www.eba.europa.eu/sites/default/documents/files/documents/10180/16094/312d7717-4213-439b-9d3d-d31b560de851/2008%2018%2012_M%26A%20Guidelines.pdf

[6] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52013DC0064&from=EN

'decision to acquire' and of the regime on 'time limits'. The Commission noted also that further action was needed to ensure consistent application of the principle of proportionality and that the assessment criteria relating to the financial soundness and also to the ML/TF risk should be further clarified.

20. In 2016 the EBA, together with ESMA and EIOPA, known as the European Supervisory Authorities, 'the ESAs', jointly reviewed the 3L3 Guidelines, which they updated by publishing the Joint ESAs Guidelines on the prudential assessment of the acquisition of qualifying holdings, JC/GL/2016, ('The Guidelines')[7]. These Guidelines aim to provide the necessary legal certainty, clarity, and predictability with regard to the assessment methodology and 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 report 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.

21. The aim of these Guidelines is to achieve a common understanding on the five assessment criteria laid down by the Directive, as a prerequisite for convergent supervisory practices; and to provide a harmonised list of information that proposed acquirers should include in their notifications to the competent supervisory authorities.

22. 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.

1.3 Competent Authorities notification of Comply and Explain

23. Regulation (EU) No 1093/2010 establishing the EBA requires that competent authorities and financial institutions make every effort to comply with the EBA guidelines and recommendations (Article 16).

24. EBA Guidelines and recommendations are formally issued only once published in all relevant EU official languages on the EBA website. Within 2 months, competent authorities across the EU must inform the EBA whether they comply or intend to comply with the guidelines or

[7] https://esas-joint-committee.europa.eu/Publications/Guidelines/JC_QH_GLs_EN.pdf

recommendations. If a competent authority does not comply or does not intend to comply, it must inform the EBA of this and state reasons for non-compliance, as prescribed by the 'comply or explain' principle. If specified in the guidelines or recommendations, financial institutions might also have to report whether or not they comply.

25. The EBA publishes for each guideline a table that summarises the compliance status and lists the feedback received from each competent authority across the EU. This information is also published in the EBA Annual Report so that the European Parliament, Council and Commission can be informed of what guidelines and recommendations were published over the course of the year, as well as which EU competent authorities are complying or intend to comply.

26. The EBA published the compliance table of the Joint ESAs Guidelines on the prudential assessment of the acquisition of qualifying holdings, based on feedback received from CAs – see Annex 4.

1.4 EBA's Peer Review of Competent Authorities

27. This peer review was performed by following the process outlined in Article 30 of the amended EBA Regulation and EBA peer review methodology, requiring first a self-assessment of the application of the relevant regulatory act to be performed by the competent authorities, to be followed by a review by peers.

28. In terms of scope, the peer review only covers selected areas of critical importance identified in the SAQ, notably the notion of acting in concert, significant influence, indirect qualifying holdings, assessment of completeness of the notification and time limits, financial soundness, reputation of the acquirer, and selected aspects relating to the fifth assessment criterion on ML/TF risk. The matters governed by the Guidelines but not specifically addressed by the SAQ (e.g. the second assessment criterion, proportionality) are outside the scope of this peer review.

29. Furthermore, this peer review only covers CAs supervising credit institutions authorised under the CRD in respect of which a notification has to be submitted to the CA of the target credit institution, pursuant to Article 22 CRD, in case of proposed acquisition or increase of qualifying holdings by a natural or legal person.

30. The reference period of the peer review was from 1 January 2019 to 31 December 2020; in light of the total number of applications received by CAs subject to the peer review, this 2-year timeframe is considered to be representative of the CAs' supervisory practices.

31. In response to the launch of the SAQ in total, the EBA received responses from CAs from 27 EU Member States, ECB-SSM and 2 European Economic Area (EEA) countries. One EEA country's CA did not contribute to the SAQ. The results of the SAQ have been analysed and reviewed by the PRC, including following up with the CAs for further clarifications and explanations of their practices. The findings illustrated in this report follow the EBA PRC engagement and challenge of the results of the SAQ with CAs and do not represent a full review of the Guidelines.

2. Methodology

32. The peer review is conducted in line with the EBA peer review methodology outlined in the Decision of the EBA of 28 April 2020 adopting a methodology for the conduct of peer reviews (which also includes the four aspects specified by Article 30(3) of the EBA regulation).

2.1 EBA peer review methodology

33. The four aspects of peer reviews specified by Article 30(3) of the EBA Regulation are reflected in this peer review report.

34. Firstly, the EBA Regulation requires EBA peer reviews to include an assessment of, but not be limited to:

(a) the adequacy of resources, the degree of independence, and governance arrangements of the competent authority, with particular regard to the effective application of the legislative acts referred to in Article 1(2) and the capacity to respond to market developments;

(b) the effectiveness and the degree of convergence reached in the application of Union law and in supervisory practice, including regulatory technical standards and implementing technical standards, guidelines and recommendations adopted pursuant to Articles 10 to 16, and the extent to which the supervisory practice achieves the objectives set out in Union law;

(c) the application of best practices developed by competent authorities whose adoption might be of benefit to other competent authorities;

(d) the effectiveness and the degree of convergence reached with regard to the enforcement of the provisions adopted in the implementation of Union law, including the administrative sanctions and other administrative measures imposed against persons responsible where those provisions have not been complied with.

35. The EBA established an Ad hoc Peer Review Committee to perform this work, comprising three representatives from CAs and three EBA staff members. The PRC developed a SAQ, with its associated benchmarks, to be completed by CAs, which are competent for supervising credit institutions authorised in accordance with the Capital Requirements Directive (Directive 2013/36/EU (CRD)) and for performing the prudential assessment of the acquisition or increase of qualifying holdings in accordance with Article 22, 23 and following of the CRD and in accordance with the Guidelines.

36. The Peer Review and the SAQ exclusively cover situations where the Guidelines are applied by CAs upon receipt of notification pursuant to Article 22 of the CRD and not in the context of the assessment of holders of qualifying holdings performed for granting authorisation. In terms of

substantive scope, the Peer Review only covers a selection of critical areas of the Guidelines, which correspond to the questions included in the SAQ.

37. Responses to the questions in this SAQ were assessed against the cited benchmarks devised to assess the supervisory practice followed by each competent authority, in accordance with Article 19 of the EBA Peer Review Methodology Decision (EBA DC 2020 327):

38. For benchmarking purposes, the following grade-scales were used:

- **Fully Applied**: A provision is considered to be 'fully applied' when all assessment criteria as specified in the benchmarks are met without any significant deficiencies.

- **Largely Applied**: A provision is considered to be 'largely applied' when some of the assessment criteria are met with some deficiencies, which do not raise any concerns about the overall effectiveness of the competent authority, and no material risks are left unaddressed.

- **Partially Applied**: A provision is considered to be 'partially applied' when some of the assessment criteria are met with deficiencies affecting the overall effectiveness of the competent authority, resulting in a situation where some material risks are left unaddressed.

- **Not Applied**: A provision is considered to be 'not applied' when the assessment criteria are not met at all or to an important degree, resulting in a significant deficiency in the application of the provision.

- **Non-contributing:** A competent authority shall be classified by the PRC as 'non-contributing' if it has not provided its contribution within the prescribed deadline**.**

39. The EBA's Ad hoc Peer Review Committee agreed on detailed benchmarking to be followed for the individual questions in the SAQ. Details are contained in Chapter 3 of this report.

40. The relevant findings are presented in Chapter 4 of this report and summarised in Chapter 5.

41. The EBA peer review methodology[8] describes the process of conducting peer reviews and states that a peer review exercise normally comprises a self-assessment conducted by competent authorities followed by a review by peers. The complete process can be broadly classified into six phases.

42. However, the peer review on Joint ESAs Guidelines on the prudential assessment of the acquisition of qualifying holdings, JC/GL/2016/01, takes into account that the Guidelines apply across the financial sector and are the joint product of the three ESAs. Hence any follow-up measure and any follow-up to the report should be agreed upon with ESMA and EIOPA.

43. Therefore, the six phases of EBA peer reviews are applied as follows:

[8] Decision on peer review methodology, revised as a result of the ESAs review, adopted by EBA Board of Supervisors on 28 April 2020.

- **the establishment phase**: the establishment of an Ad hoc Peer Review Committee on Qualified Holdings for this particular peer review (November – December 2020), and the adoption of the Terms of Reference (November–December 2020);

- **the preparatory phase**: the development and approval of a self-assessment questionnaire, including definition of assessment and benchmark criteria, including its testing (December 2020–February 2021);

- **the self-assessment phase**: the launch and completion of SAQs by competent authorities (CAs), consistency check of its answers (February–May 2021);

- **the review-by-peers phase**: discussion of the findings in the draft summary report by the PRC, the review by peers is conducted, the finalisation (May–June 2021);

- **final peer review report**: approval of the final report by the PRC, consultation with the Management Board (MB), consultation with CAs subject to the review; approval of report by Board of Supervisors (BoS) (July 2021);

- **the follow-up measures phase**: to be determined;

- **the follow-up report phase**: the PRC shall submit a follow-up report after 2 years from the approval of this peer review.

3. Summary of CA's responses to the Self-Assessment Questionnaire

44. The SAQ was launched on 19 February 2021 and was closed on 19 March 2021. The EBA received responses to its Self-Assessment Questionnaire from the CAs of all of the 27 EU Member States, ECB-SSM and 2 EEA countries. One[9] EEA country's CA did not contribute to the SAQ.

45. Overall, these CAs participating in the peer review exercise confirmed their application of the Guidelines. In a few instances, some CAs deemed that the requirements were 'largely' or 'partially' applied, and in the case of one aspect, not applied.

46. The ECB/SSM is not competent to receive notifications by proposed acquirers, who are requested to submit them to the competent authority of the MS where the target credit institution is established. For this reason it did not respond to Question 4 of the SAQ. In addition, it does not have competence nor investigatory powers as regards AML/CFT, but is empowered to perform the prudential assessment for purposes of Article 23(e) CRD. For this reason it responded to Question 7 of the SAQ.

47. Chapter 4 of the report provides a detailed description of all self-assessments across all respondents.

48. Below is a summary of all the answers to the SAQ received from CAs, before they were subject to a 'review by peers'.

Table 1: Overall Summary Table of assessment of benchmarked questions based on CAs' self-assessment

	Application of Acting in concert	Application of Significant influence	Indirect acquisition of qualifying holdings	Notification & assessment of proposed acquisition	1st Assessment criterion - Reputation of proposed acquirer	3rd Assessment criterion - financial soundness of proposed acquirer	5th Assessment criterion - suspicion of ML/TF by proposed acquirer	5th Assessment criterion - suspicion of ML/TF by proposed acquirer source of funds
	Q1	Q2	Q3	Q4	Q5	Q6	Q7.1	Q7.2
AT	FA	FA	FA	FA	FA	FA	FA	FA
BE	FA	FA	FA	FA	FA	FA	FA	FA
BG	PA	NA	FA	FA	FA	LA	FA	FA

[9] LIE

CY	LA	PA	FA	FA	FA	FA	FA	FA
CZ	FA	FA	PA	FA	FA	PA	FA	FA
DE	FA	FA	FA	FA	LA	PA	FA	FA
DK	LA	LA	FA	LA	PA	FA	LA	NA
ECB-SSM	FA	FA	FA	N/A	FA	FA	FA	FA
EE	FA	FA	PA	FA	FA	FA	FA	FA
ES	FA	FA	FA	FA	FA	FA	FA	FA
FI	FA	FA	FA	FA	FA	FA	LA	FA
FR	FA	FA	F/A	NA	FA	FA	FA	FA
GR	FA	FA	FA	FA	FA	FA	FA	LA
HR	FA	FA	FA	FA	FA	FA	FA	FA
HU	FA	FA	FA	FA	FA	FA	FA	FA
IS	FA	FA	FA	FA	FA	FA	FA	LA
IE	FA	FA	FA	FA	FA	FA	LA	LA
IT	F/A	F/A	LA	FA	FA	FA	FA	FA
LIE	N/C	N/C	N/C	N/C	N/C	N/C	N/C	N/C
LT	FA	FA	FA	FA	FA	FA	FA	FA
LU	FA	FA	FA	FA	FA	FA	FA	LA
LV	FA	FA	FA	FA	FA	FA	FA	FA
MT	FA	FA	FA	FA	FA	FA	FA	FA
NL	PA	FA	FA	NA	FA	FA	LA	FA
NO	FA	FA	FA	FA	FA	FA	FA	FA
PL	FA	FA	PA	FA	FA	FA	FA	FA
PT	FA	FA	FA	FA	FA	LA	FA	FA
RO	FA	FA	FA	FA	FA	FA	FA	FA
SE	LA	FA	LA	FA	FA	PA	FA	LA
SI	FA	FA	FA	FA	FA	FA	FA	FA
SK	FA	PA	FA	FA	FA	FA	FA	FA

Green: fully applied (FA)
Yellow: largely applied (LA)
Orange: partially applied (PA)
Red: not applied (NA).
Pink: not applicable (N/A)
White: non-contributing (NC)

4. Review of the Self-Assessment

49. The PRC reviewed the CAs' responses to the self-assessment questionnaire with a view to ensuring consistency of the responses and benchmarks, in assessing the CAs' application of the Guidelines.

50. For some CAs this involved the PRC reverting to the CAs to seek clarifications in their responses to the SAQ, including for 11 CAs, following up by conducting one-to-one meetings, which were held by video conference.

51. It is noted that all euro area countries participate automatically in the ECB-SSM. Further, Bulgaria and Croatia joined the ECB-SSM through its 'close cooperation' supervisory mechanism in October 2020, and for the purposes of this peer review, the application of these Guidelines, during the 2-year reference period, was assessed without the involvement of the ECB-SSM.

52. For 1 CA, the PRC noted from its follow-up meeting with the CA, that this CA only implemented the Guidelines in their national supervisory practices following the publication of a national regulation on 24 December 2020. Accordingly the PRC downgraded their assessments noting that during the reference period they had not fully applied the Guidelines.

53. The PRC also had regard to the compliance notification the CAs submitted to the EBA following the adoption of these Guidelines in 2016.

4.1 Application of Acting in Concert

54. With regard to the Acting in concert, dealt with in Section 4 of the Guidelines, the peer review aimed to assess CAs' application of the existence of 'acting in concert' in a process of acquisition of, or an increase in qualifying holdings.

55. The 2013 Commission Report on the application of Directive 2007/44/EC[10] concluded that the former three 3Level3 Guidelines. In particular, the Report observed that in the absence of a common notion of an '*acting in concert*' in Directive 2007/44/EC, CAs' practices largely relied on different concepts and methodologies resulting in different interpretations as to the existence of acting in concert. To remedy such divergence in approach and foster convergence of supervisory practice, the Guidelines focused on, among other things, clarifying the notion of 'acting in concert' by introducing non-exhaustive 'white' and 'black' lists of factors and circumstances to support the factual analysis of the existence of a concerted acquisition or increase. CAs were requested to self-assess the application of the notion 'acting in concert' answering the following sub questions:

[10] Available at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52013DC0064&from=EN

Q1.1 Do you assess whether the acquisition of, or an increase in qualifying holding, is the result of acting in concert?

Q1.2 Do you apply the notion of 'acting in concert' to entities that belong to the same group where the target undertaking does not belong to the group?

Q1.3 If you answered 'yes' to question 1.2, please provide details as to how you assess group entities acting in concert, in particular any case where you deem that the notion of acting in concert does not apply to entities belonging to the same group.

Q1.4 Do you apply the notion of acting in concert in cases where one of the involved parties owns or intends to acquire capital qualifying holding without voting rights?

Q1.5 Do you apply the notion of acting in concert in cases to existing shareholders of the target, irrespective of an actual transaction for the acquisition or increase in qualifying holding, where such existing shareholders agree to vote jointly in the upcoming general assembly for the appointment of members of the management body where the shareholder agreement gives rise to a qualifying holding?

56. The Benchmarking for this question was set as follows:

Fully applied: Answers to (1.1), (1.4) and (1.5) are 'Yes'.

Largely applied: Answers to (1.1) is 'Yes' and either two of any of the responses to (1.2), (1.4), (1.5) are 'Yes'.

Partially applied: Answer to (1.1) is 'Yes' and one of the responses to (1.2), (1.4), (1.5) is 'Yes', or (1.2) is 'No' but comment is referenced to Para. 4.6(b)(3) of the Guidelines.

Not applied: Answer to (1.1) is 'No'.

57. As a general overview, based on the responses provided, 25 CAs considered that they 'fully applied' this part of the Guidelines, whilst 3 CAs assessed to 'largely apply' this Section of the Guidelines and 2 CAs to 'partially apply' it. No CA deemed this question not applicable to them. The breakdown of responses provided by CAs is indicated in the table below. Twenty-six out of 30 respondent CAs provided comments to one or more questions.

58. With specific regard to question 1.2, relating to whether CAs apply the notion of 'acting in concert' to entities that belong to the same group where the target undertaking does not belong to the group, all CAs but 1 responded positively, only 21 CAs provided requested comments. In general, such comments are supportive of the positive response that the notion of 'acting in concert' is applied to entities that belong to the same group where the target undertaking does not belong to the group. Several CAs clarified that acting in concert by group entities is assessed on the basis of the same factors and criteria set out in the Guidelines for all other cases (e.g. shareholders' agreements, voting rights patterns, ties between the participants in the concert). One CA provided an example of clauses of the shareholders' agreement on the basis of which

the existence of acting in concert has been established, namely agreement on the structuring of the target and provision of managerial expertise, reserved matter and appointment of the members of the board of directors. Two CAs reported that entities under the steer and control by the same UBO are assumed to be acting in concert. In this latter regard, others made some distinction, notably 1 CA reported that the circumstance that all group entities act under the steer and control by the same UBO is a strong indicator of acting in concert, the existence of which however is subject to a case-by-case assessment; similarly another CA clarified that no default decision is taken but a case-by-case analysis based on the factors listed in the Guidelines is always conducted;. similarly, another CA specified it assessed group entities as acting in concert where investment decisions are taken by the parent for the subsidiaries which actually hold individual shareholdings.

59. Several CAs took the opportunity to clarify that the notion of 'acting in concert' is set out in national law. Similarly, 1 CA reported that group entities are considered to be acting in concert only when they are bound by an agreement for the exercise of concerted rights. Such CA clarified that the entity at the top of the control chain of the group entities is always assessed as indirect acquirer of a qualifying holding when the sum of holdings acquired/held by group's entities exceeds the relevant thresholds. It is noted that since the national law definitions usually do not go into the details of the actual situations that can give rise to acting in concert, it is important that CAs' assessment practices complement existing legal definitions with the indications set out in the Guidelines.

60. One CA expressly specified that, consistent with Article 27 CRD, they do not apply the notion of acting in concert, in case of undertakings of the same group which satisfy the independence criteria set out in paragraph 4 or 5 of Article 12 of Directive 2004/109/EC (Transparency Directive). One CA specified that no exemption applies to the notion acting in concert by group entities. One CA specified that it did not come across any case where the notion of acting in concert does not apply to entities belonging to the same group.

61. Question 1.4 specifically dealt with the application of the notion of acting in concert where one of the involved parties owns or intends to acquire capital qualifying holding without voting rights. All CAs but one responded to also apply the notion of acting in concert to cases when one of the involved parties owns or intends to acquire capital qualifying holding without voting rights and that a case-by-case analysis is required; two CAs clarified that, absent voting rights, the existence of the concert may for instance depend on funding arrangements among the parties involved. The CA which responded negatively motivated that acting in concert has to rely on the possibility to jointly influence the institution (e.g. voting rights or equivalent influence). In separate optional Question 8, another CA indicated that it is very challenging to apply the notion of acting in concert in case of the acquisition of capital rights only. Some CAs specified that they did not come across any such case in the reference period covered by the Peer Review.

62. With regard to Question 1.5, which aimed to understand whether CAs apply the notion of acting in concert to existing shareholders of the target, irrespective of an actual transaction for the acquisition or increase in qualifying holding, where such existing shareholders agree to vote

jointly in the upcoming general assembly for the appointment of members of the management body where the shareholder agreement gives rise to a qualifying holding, the majority of CAs responded positively. Some CAs that responded 'Yes' as well as some CAs that responded 'No' clarified that the application of the notion of acting in concert in such cases would depend on a factual case-by-case analysis, pointing also to the distinction between continuous influence (integrating acting in concert) and 'shareholders activism' (not falling within acting in concert). Along these lines, some CAs indicated that a transaction of acquisition and increase is a pre-requisite for the existence of acting in concert. One CA specified that acting in concert can only be envisaged when the shareholder agreement is concluded within 1 year from the conclusion of the transaction.

63. The PRC followed up with some CAs on their responses to this question, including conducting follow-up meetings, held by video conference due to COVID-19 restrictions, with several CAs. For 1 CA the PRC noted that this CA only implemented the Guidelines in their national supervisory practices following the publication of a national regulation on 24 December 2020. Despite the fact that this CA did assess whether potential acquirers act in concert as required by the Level 1 text, their responses make reference to Level 1 text and do not take into account the more specific guidance set out in the Guidelines. Accordingly the PRC is of the view that during the reference period under review, this CA should be downgraded from **Fully applied** to **Partially applied**. For 1 CA, based on its comments provided to Q1.2 and 1.3, the PRC is of the view that the CA's self-assessment of **Partially applied** should be changed to **Largely applied**. For another CA, based on its response to request for clarifications on its response to this question, the PRC is of the view that the CA's self-assessment of **Largely applied** should be changed to **Fully applied.** For another CA, based on its response to request for clarifications on its response to this question, the PRC is of the view that the CA's self-assessment of **Partially applied** should be changed to **Largely applied.**

64. Based on the above findings, it may be concluded that the notion of acting in concert is applied by all CAs when relevant circumstances so require, and that the list of factors set out in the Guidelines are predominantly applied by CAs to carry out the case-by-case analysis required to establish the existence of acting in concert and are supportive of such analysis. Notwithstanding this, the examination of the factual situation and the existence of definitions of the notion of acting in concert in the national law of some MS may still contribute to some degree of divergence of practices. In addition, based on the findings, CAs generally apply the notion of 'acting in concert' to group entities where the relevant circumstances envisaged by the Guidelines so indicate. However, some divergences have emerged as regards the relevance of the steer and control of the UBO to trigger the assumption that group entities down the chain of control act in concert. Finally two CAs have raised issues relating to the application of the notion of acting in concert in case of acquisition of capital without voting rights.

4.2 Application of Significant Influence

65. With regard to the notion of Significant Influence, dealt with in Section 5 of the Guidelines, the peer review aimed to assess how CAs applied the requirements relating to the existence of a significant influence over the management of the target undertaking.

66. CAs were requested to self-assess if they apply the Guidelines when determining the existence of a significant influence over the management of the target undertaking, and specifically:

> Q2.1: Do you apply the provisions laid down in Section 5 of the Guidelines to assess whether the holding would enable the proposed acquirer to exercise a significant influence over the management of the target undertaking?
>
> Q2.2: 'Do you apply the provisions laid down in Section 5 to assess whether the holding would enable the proposed acquirer to exercise a significant influence over the management of the target undertaking, also when a significant influence will *not* be exercised?'
>
> The benchmarking for this question was set as follows:
>
> **Fully applied**: Answers to Q2.1) and Q2.2 are 'Yes'.
>
> **Largely applied**: Answers to Q2.1 and Q2.2 are 'Yes' but depending on specific comments it is not '**Fully applied**'.
>
> **Partially applied**: Answer to Q2.1 is 'Yes' and to Q2.2 is 'No'
>
> **Not applied**: Answers to Q2.1 and Q2.2 are 'No'

67. 26 CAs considered that they 'Fully applied' this part of the Guidelines, whilst 1 CA viewed their application as 'Largely applied', 2 CAs and 1 CA assessed their application as 'Partially applied' and 'Not applied' respectively. Not one CA deemed that this question was not applicable to them and 1 CA did not contribute to the peer review exercise.

68. No specific aspects or concerns regarding application of the relevant part of the Guidelines were raised. The breakdown of responses provided by CAs is indicated in the table below.

69. Eleven of 30 contributing CAs provided some comments. Most of them are of a rather general nature: some comments confirmed the application of the relevant provisions of the Guidelines when assessing the issue of significant influence over management of the target undertaking, whether it exists or not; others made reference or quoted specific, relevant provisions of the respective local laws and regulations. Some CAs referred to have come across no such case in the reference period. Only 1 CA responded negatively, notably that it does not carry out the assessment where the 10% threshold is not crossed and significant influence is not exercised.

70. One CA, whilst it reported that it assessed situations where the acquisition or increase in qualifying holdings may result in significant influence, it also specified that the internal supervisory manual used for such assessment is less specific than the guidance provided by the

Guidelines. For instance it does not specify the factors included in the Guidelines that may indicate whether the proposed acquirer can exercise significant influence over the management of the target undertaking. Although the manual contains a link to the online version of the Guidelines, the responses to the questionnaire and the supervisory practice mainly rely on the application of the internal manual than on the Guidelines.

71. The PRC followed up with some CAs on their responses to this question, including conducting follow-up meetings, held by video conference due to COVID-19 restrictions, with several CAs. For 1 CA, the PRC noted that this CA only implemented the Guidelines in their national supervisory practices following the publication of a national regulation on 24 December 2020. Despite the fact that this CA assesses whether the acquisition of the qualifying holding would enable the proposed acquirer to exercise a significant influence over the management of the target undertakings, their responses make reference to Level 1 text and does not take into account the more specific guidance set out in the Guidelines. Accordingly, the PRC is of the view that this CA's self-assessment should be downgraded from **Fully applied** to **Largely applied**. For another CA, the PRC noted that this CA referred to the CA's internal handbook when applying the Guidelines, and that this Handbook appeared to be a shortened and simplified version of the Guidelines, however in respect of this aspect of the Guideline, the PRC is of the view that the CA's self-assessment of **Largely applied** remained appropriate**.** For 1 CA, based on its clarifications provided to the PRC following comments provided to Q2, the PRC is of the view that the CA's self-assessment of **Not applied** should be changed to **Largely applied**. For another CA, based on their response to request for clarifications on their response to this question, the PRC is of the view that the CA's self-assessment of **Partially applied** should be changed to **Largely applied.**

72. Based on the findings and the comments provided by the CAs, the Guidelines are generally applied in a uniform manner to the assessment where the acquisition or increase in qualifying holdings would enable the proposed acquirer to exercise a significant influence over the management of the target undertaking. Given the case-by-case assessment and the relevance of specific circumstances, and the reference to definitions set out in national laws, the existence of divergent practices may not be completely excluded.

4.3 Indirect acquisition of qualifying holdings

73. Regarding Title II, Chapter 1, Section 6 (indirect acquisitions of qualifying holdings), the peer review evaluated how CAs complied with the requirements when assessing indirect acquisitions of qualifying holdings.

74. The 2013 Commission Report on the application of Directive 2007/44/EC[11] concluded that the former 3L3 Guidelines for the prudential assessment of acquisitions did not support the identification in all cases of the indirect acquirer of qualifying holdings.

75. In particular, the Report observed that in the absence of a common notion of an 'indirect qualifying holding' in Directive 2007/44/EC, CAs' practices largely relied on different concepts and methodologies laid down in their respective national laws and regulations, ultimately resulting in different interpretations as to whether a proposed acquisition met the requirements of an indirect qualifying holding to be notified or not. To remedy such divergence in approach and foster convergence of supervisory practice, the Guidelines focused on, among other things, clarifying the notion of 'indirect qualifying holdings'. This was coupled with the introduction of a combined methodology envisaging the application of the 'control' and then the 'multiplication' criteria.

76. Specifically, the Guidelines envisage that the control criterion 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, should be subsequently applied in respect of that person. The control and the multiplication criteria should be applied along each branch of the corporate chain and are to be considered complimentary.

77. CAs were requested to self-assess whether they assess indirect acquisitions of qualifying holdings under Section 6 of the Guidelines, via the staged application of the control criterion and, supplementary to that, of the multiplication criterion. Namely:

> Q3.1 Do you assess indirect acquisitions of qualifying holdings under Section 6, by application of the control criterion?
>
> Q3.2: The multiplication criterion (paragraph 6.6 of the Guidelines) applies where the application of the control criterion does not determine that a qualifying holding was acquired indirectly by the person to which the control criterion is applied.
> Do you apply the multiplication criterion supplementary to the application of the control criterion to identify the indirect acquirer?
>
> Q3.3: If you answered 'yes' to question 3.2 do you:
> - Always apply both criteria
> - Not in all cases

[11] Available at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52013DC0064&from=EN

Q3.4 Have you ever opposed the proposed acquisition on grounds that the indirect proposed acquirer identified by the multiplication criterion did not meet any of the five assessment criteria?

Q3.5: If you answered 'Yes' to question 3.4 please explain the advantages of the application of the multiplication criterion.

Questions (3.1)-(3.3) are benchmarked as the following:

Fully applied: Answers to (3.1) and (3.2) are 'Yes' and answer to (3.3) is 'Always apply both criteria'.

Largely applied: Answers to (3.1) and (3.2) are 'Yes' and answer to (3.3) is 'Not in all cases'.

Partially applied: Answer to (3.1) is 'Yes' and to (3.2) is 'No'.

Not applied: Answer to (3.1) is 'No'.

78. Overall, 25 CAs considered that they 'fully applied' this part of the Guidelines. Two CAs concluded their assessment as largely applied. Three CAs showed results of the assessment as partially applied, meaning that they do not apply the multiplication criterion complimentary to the control criterion as a rule. These results are largely in line with the notifications about compliance with the Guidelines submitted by CAs after the issuance of the Guidelines.

79. The application of the multiplication criterion was further discussed in follow-up meetings to the self-assessment questionnaire with 9 CAs. Seven of these CAs confirmed that they always apply the multiplication criterion complimentary to the control criterion to identify indirect qualifying holders.

80. The PRC followed up with some CAs on their responses to this question, including conducting follow-up meetings, held by video conference due to COVID-19 restrictions, with several CAs. For 1 CA, the PRC noted that this CA only implemented the Guidelines in their national supervisory practices following the publication of a national regulation on 24 December 2020, therefore the multiplication criterion had not yet been implemented into supervisory practices at the reference period. Accordingly, the PRC is of the view that during the reference period under review, this CA should be downgraded from **Fully applied** to **Partially applied**.

81. One CA confirmed that the multiplication criterion has not been implemented yet in its legal framework, but that institutional steps in its jurisdiction are being taken in order to amend the national law and implement the multiplication criterion so as to be fully compliant with the Guidelines. The same CA also clarified that it applied the multiplication criterion on some occasions, based on a specific request by the ECB. Another CA clarified that it applies the multiplication criterion only where the control criterion has not shown a positive result.

82. In conclusion, the results of the SAQ show the positive reception of the multiplication criterion by CAs which proves to be an effective means of determining the perimeter of the proposed

acquisition. It provides an easy-to-apply method to identify who is an indirect acquirer of qualifying holdings subject to the obligation to notify a proposed acquisition; in so doing the multiplication criterion brings consistency and convergence of practices across the EU. In the context of follow-up meetings with some CAs, the PRC noted, however, that the multiplication criterion has not yet been applied by all CAs, in particular by those who initially notified their non-compliance with the Guidelines or their intention to comply. This still gives rise to inconsistent supervisory practices.

83. Therefore, it is recommended that those four CAs who have not fully applied the multiplication criterion should incorporate this criterion within their practices.

84. No CA has opposed an acquisition based on its assessment of the application of the multiplication criterion, however it is noted that the overall opposition rate is very small.

85. The findings of the peer review show that the Guidelines have marked a significant improvement in the convergence of practices as to the identification of the indirect qualifying holdings and that there is a strong level of convergence in the way the Guidelines are applied in respect of the identification of indirect qualifying holdings. This represents a significant improvement from the previous 3L3 Guidelines, mentioned above.

4.4 Notification and assessment of proposed acquisition

86. Regarding Chapter 2, Notification and assessment of proposed acquisition, the peer review evaluated how CAs complied with the requirements when receiving an application file.

87. CAs were requested to self-assess how they process when they receive an application file, namely, whether:

> Q4.1: the acquirers are encouraged to engage in pre-notification contacts with the target supervisor for all transactions, or for significant or complex transactions;
>
> Q4.2: if the CAs answered 'Yes, but only in specific cases', they were asked to detail those cases;
>
> Q4.3 the CAs provide acknowledgement of receipt of a notification within 2 working days upon checking its formal completeness;
>
> Q4.4 if the notification is incomplete, the CAs indicate the missing information in either the acknowledgement of receipt or in a separate letter within a reasonable time;
>
> Q4.5 if the CAs send a separate letter, how many days from the acknowledgement of receipt of the incomplete notification do they send such a letter;
>
> Q4.6 where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target undertaking of 20% up to 50%, do the CAs check whether a strategic development plan is included in the notification;
>
> Q4.7 where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target undertaking of 50% or more, or where the target undertaking becomes a subsidiary of the proposed acquirer, do the CAs check whether a business plan is included in the notification.
>
> The guidelines were benchmarked as follows:
>
> '**fully applied**' if the CA answered 'Yes' to questions 4.3, 4.4, 4.6 and 4.7;
>
> '**largely applied**' if the CA answered 'Yes' to question 4.3 and 'No' to one of any of questions 4.4, 4.6 and 4.7;
>
> '**partially applied**' if the CA answered 'Yes' to question 4.3 and 'No' to two of any of questions 4.4, 4.6 and 4.7; and
>
> '**not applied**' if the CA answered 'No' to question 4.3.

88. Twenty-six CAs considered that they 'fully applied' this part of the Guidelines, whilst 1 CA assessed to have 'largely applied' it, and 2 CAs assessed their practice as 'Not applied'. One CA

deemed that this question was not applicable to them, given that in accordance with Article 15 of Regulation 1024/2013[12] , it is the national competent authority to receive the application by the proposed acquirer. The breakdown of responses provided by the CAs is indicated in the table below.

89. The Commission's report on the application of Directive 2007/44/EC of 11 February 2013 noted that there was not a common understanding among CAs of the review of the completeness of the application to be carried out upon its receipt for purposes of sending a positive or negative AoR and of starting the 60 working days timeframe for the prudential assessment of the proposed acquisition. As a consequence, the Commission Report pointed out that the length of the assessment procedure overall significantly exceeded the 60 working days period envisaged by Directive 2007/44/EC. For this reason, the Guidelines have clarified the process with a view to creating a system to ensure prompt communication with the applicant and the completion of the assessment within the envisaged timeframe.

90. To this end, paragraph 9.1 of the Guidelines provide that upon receipt of the notification, CAs are requested to do a mere formal review of the completeness of the application for the purposes of sending to the applicant an acknowledgement of receipt promptly and in any event within 2 working days. The Guidelines also clarify that in case of completeness, the positive AoR has 'the effect of starting the 60 working days period for the prudential assessment', however 'without any effect on the substantive review by the target supervisor of the documentation provided' or on the possibility to request additional information in the assessment period or to oppose the application. In addition, paragraph 9.2 of the Guidelines clarifies that, whilst the AoR has to be sent to the proposed acquirer within 2 workings days also in case of incomplete notification, 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'.

91. To make this procedural approach effective, the Guidelines encourage CAs to hold pre-notification contacts with the proposed acquirers and have also included a detailed list of information to clarify the target supervisor's expectation as to the content of the application and requested documents. This was intended to support convergence of practice for purposes of compliance with Article 23(4) CRD, requiring MS to publish 'a list specifying the information that is necessary to carry out the assessment and which must be provided to the competent authorities at the time of notification'. It is in light of this background information that the findings illustrated herein are framed.

92. Questions (4.1) and (4.2): 24 CAs always encourage the acquirers to engage in pre-notification contacts with the target supervisor for all transactions; 4 CAs encourage to do so only in specific cases. They welcome pre-notification contacts, in particular in the case of significant or complex acquisitions, but it is not mandatory; 1 CA does not encourage pre-notification contacts.

[12] Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions

93. Questions (4.3), (4.4) and (4.5): based on responses to the SAQ, 27 CAs provide an AoR of the notification within 2 working days upon checking its formal completeness. One CA reported that it sent an automatic confirmation of receipt through its digital portal, however, it clarified that the assessment of the formal completeness/incompleteness usually takes more than 2 working days. However, in order to respect the 2 working-days deadline, the AoR will retroactively acknowledge the effect of the start of the 60 working days period for the prudential assessment as of the third working day following assessment of completeness.

94. In case of incomplete notifications, 20 CAs reported that they sent a negative AoR within 2 working days. In such a case CAs clarified that they sent a separate letter listing the missing documents within a period which varies between 0 and 5 working days for 7 CAs, 6 to 10 working days for 8 CAs, 11 to 15 working days for 2 CAs, and 16 working days or longer for 4 CAs.

95. Some CAs reported that they sent the list with missing information together with the (negative) AoR: 4 CAs reported that they sent the letter with the missing information together with the (negative) AoR within 2 working days from receipt of the application; and 3 CAs clarified that the compilation of the list of missing information generally takes more than 2 working days. They however did not indicate how many days are usually needed to complete the review of the missing information and send such a comprehensive communication package, including the negative AoR to the applicant. In order to clarify the elements to be submitted with the application and reduce the cases where a negative AoR has to be sent, 2 CAs encourage pre-notification contacts. One CA reported that it did not limit the check of completeness to a formal control, but also that it carried out a substantive assessment of the documents (or at least some of them) and it sent negative AoRs so long as the file is not formally and substantially complete, so that the positive AoR is sent to the proposed acquirer when the application may be positively assessed.

96. One CA considers that the 60 working days period to review an application always starts upon receipt of the application, irrespective of the performance of the check as to its formal completeness. It should be noted, however, that such CA reported that it held extensive pre-notification contacts with the applicant, in order to limit the amount of missing information and documents from the application, so that when the application is submitted by the proposed acquirer to the CA, it is very likely complete.

97. Based on the findings of the SAQ and subsequent follow-up interactions, it is noted that in case of multiple transactions within the Banking Union, the involved CAs coordinate with each other and with the ECB/SSM in order to send a positive AoR all at the same time, to mark the same parallel start of the 60 working days deadline.

98. Question (4.6): 28 CAs check whether a strategic development plan is included in the notification where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target undertaking of 20% up to 50%. One CA reported that it followed the internal supervisory manual requiring fewer information in this regard and it required a strategic

development plan only if the proposed acquirer intends to acquire the control of the target undertaking (i.e. 50% or more).

99. Question (4.7): All the CAs check whether a business plan is included in the notification where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target undertaking of 50% or more, or where the target undertaking becomes a subsidiary of the proposed acquirer. One CA in particular observed that the business plan often lacks the necessary content to gain a satisfactory understanding of the envisaged programme of activities and relating financial forecasts, thus affecting the smooth assessment process once it has started.

100. One CA, whilst applying the Guidelines in their supervisory practice, has recently undertaken the process to issue a regulatory act containing the list of information annexed to the Guidelines and other relevant information (a public consultation was conducted in Q1 2021).

101. The PRC followed up with some CAs on their responses to this question, including conducting follow-up meetings, held by video conference due to COVID-19 restrictions, with several CAs. For 1 CA the PRC noted that this CA only implemented the Guidelines in their national supervisory practices following the publication of a national regulation on 24 December 2020. This notwithstanding, the CA reported that it complied with the process relating to the assessment of the completeness or incompleteness of the notification and to sending the AoR within 2 working days. It also responded positively to the other relevant questions. Accordingly, the PRC is of the view that this CA's self-assessment should be maintained as **Fully applied**. For another CA, the PRC noted that this CA referred to the CA's internal handbook when applying the Guidelines, and that this Handbook appeared to be an abridged and simplified version of the Guidelines, however in respect of this aspect of the Guideline the PRC is of the view that the CA's self-assessment of **Largely applied** should remain as **Largely applied.** For 2 CAs, based on their clarifications provided to the PRC following comments provided to Q4.3, the PRC is of the view that the CAs' self-assessment of **not applied** should be changed to **Largely applied**.

102. Based on the findings above, it is the PRC's view that the procedure set out in the Guidelines specifying that the AoR has to be sent to the applicant subject to a simple formal check, has improved the provision of prompt communication to prospective acquirers as to the completeness or incompleteness of their application. In addition, based on the SAQ findings, the majority of CAs usually take between 0 and 10 working days to send the list of missing information in case of receipt of an incomplete notification. At the same, it noted that some CAs take 16 days or longer and that others did not provide details, as this part of the question was optional.

103. Further, the encouragement of pre-notification contacts coupled with the indication of the list of information to be submitted with the application has enhanced the transparency of the expectations of the target supervisors in respect of the content of the application and contributed to shortening the length of the overall assessment.

104. Challenges, however, still remain. Based on the responses to the SAQ, the overall length of the procedure still varies between 2 months and 1 year in particular in case of complex transactions.

105. The PRC supports the practice followed by several CAs to encourage pre-notification contacts with potential acquirers to make the overall process more effective and faster. Pre-notification contacts and the knowledge of the file is also one of the reasons enabling CAs to send an AoR within 2 working days from the acknowledgement of a complete notification, but that difficulties with the time limits still remain with regard to an incomplete notification. However, it is also noted, that by summing up the timeframe of the pre-notification phase with the actual assessment process, the overall procedure can last up to 1 year, therefore, far more than the 60 working days time period envisaged by the CRD. The PRC also acknowledges that complex transactions with a high number of simultaneous notifications raise special challenges as to the respect of the time limit to send a positive or negative AoR within 2 working days from receipt of the notification.

106. To minimise the need to revert to the applicant for additional information, CAs could enhance the disclosure and transparency of the list of information that is required from proposed acquirers, as well as raise potential issues about the required information in any pre-notification contacts with applicants. A good practice could also be to bring to the applicants' attention the time needed to access criminal record history if the potential acquirer is based overseas. It is the PRC's understanding that an increased headcount in some CAs could also be the remedy to shorten the overall timeframe for the assessment.

107. As a way forward, consideration may also be given to better specify in the Guidelines CAs' expectations as to the quality and content of the required information, in particular of the business plan so to facilitate the submission of complete applications and speed up the assessment process. It is also acknowledged that additional guidance on the assessment of complex transactions, including with regard to the application of the principle of proportionality and coordination among relevant CAs, may also be needed to improve the overall efficiency of the assessment.

4.5 First assessment criterion – Reputation of proposed acquirer

108. Regarding Chapter 3, Paragraph 10. Reputation of the proposed acquirer – first assessment criterion, the peer review evaluated how CAs complied with the requirements when assessing the reputation of the proposed acquirer.

109. CAs were requested to self-assess how they evaluate the reputation of the proposed acquirers, namely, whether:

> Q5.1 they always assess the integrity of the ultimate beneficial owner of the proposed acquirer;
>
> Q5.2: whether they always require official certificates issued by a public authority (if and to the extent it is available in the Member State or in the third country) to assess criminal records;
>
> Q5.4 whether they assess the collective material impact (if any) of more minor incidents and
>
> Q5.6 the professional competence of the proposed acquirers.
>
> CAs were also asked (Q5.3) to explain the circumstances where they check sources alternative to public authorities to assess criminal records. Q5.5 related to the evidence CAs have used to demonstrate that the proposed acquirer lacks integrity, and Q5.7 what sources they have used to assess that the proposed acquirer lacks professional competence and in which situations.
>
> The Guidelines are considered as
>
> '**fully applied**' if the CA answered 'Yes' to questions 5.1, 5.2, 5.4 and 5.6;
>
> '**largely applied**' if the CA answered 'Yes' to questions 5.1 and 5.6 and to either of the questions 5.2 or 5.4, depending on the situations described in answers to the rest of the questions;
>
> '**partially applied**' if the CA answered 'Yes' to questions 5.1 and 5.6 and 'No' to both questions 5.2 and 5.4, depending on the situations described in answers to the rest of the questions; and
>
> '**not applied**' if the CA answered 'No' to both questions 5.1 and 5.6.

110. Twenty-eight CAs considered that they 'fully applied' this part of the Guidelines, 1 CA considered that it 'largely applied' this part of the Guidelines, and 1 CA considered that it 'partially applied' this part of the Guidelines. The CA that considered it 'largely applied' this part of the Guidelines did not assess professional competence; another CA did not always require official certificates issued by a public authority. One CA that considered it 'partially applied' this

part of the Guidelines because it neither assessed professional competence nor required official certificates issued by a public authority. The breakdown of responses provided by CAs is indicated in the table below.

111. All CAs but two reported that they always require official certificates issued by a public authority to check criminal records and to resort to alternative sources in cases where it is not legally possible to obtain criminal record certificates at all or to share them with a third party. Some CAs check all publicly available information as a rule, others in addition also require a personal questionnaire and / or self-declaration.

112. Based on CAs' responses, evidence used in the past or to be used in the future to demonstrate that the proposed acquirer lacks integrity include actual criminal records, convictions and investigations (e.g. an AML conviction, a settlement with an administrative body whereby the proposed acquirer agreed to pay a settlement fee because of a violation), information provided in the proposed acquirer's personal questionnaire and/or self-declaration, negative information from a previous assessment by the same CA or other CAs or other public institutions (e.g. regulatory sanctions), removal from the office due to improper behaviour, negative information from credible sources (e.g. databases, reliable media sources), the cumulative effect of several minor incidents and non-transparent behaviour in the course of the assessment.

113. Based on the CAs' responses, sources used in the past or to be used in the future to assess that the proposed acquirer lacks professional competence include information on their past business performance and financial soundness provided in CVs, personal questionnaires, self-declarations, also assessments previously conducted by other CAs and communication with former employers.

114. The PRC followed up with some CAs on their responses to this question, including conducting follow-up meetings, held by video conference due to COVID-19 restrictions, with several CAs. For 1 CA the PRC noted that this CA only implemented the Guidelines in their national supervisory practices, following the publication of a national regulation on 24 December 2020. Accordingly, the PRC is of the view that this CA's self-assessment should be downgraded from **Fully applied** to **Largely applied**. For another CA, the PRC noted that this CA referred to the CA's internal handbook when applying the Guidelines, and that this Handbook appeared to be an abridged and simplified version of the Guidelines; in addition, given they do not appear to assess professional competence, the PRC's view is that the CA's self-assessment of **Largely applied** should be downgraded to **Partially applied**. Another CA also reported that it does not assess professional competence, in light of the other responses to Q5 and comments provided, the PRC is of the view that the self-assessment of this CA should not be downgraded.

115. From follow-up meetings with some CAs the PRC noted that a few CAs observed that preclusion to apply proportionality to the assessment of integrity may be particularly cumbersome in complex acquisitions where there is a need to obtain and assess criminal records for all of the acquirers involved, including for partners of private equity funds.

116. The observed good practices include complementary public searches, collection of self-declarations, assessment of financial soundness when assessing professional competence of the proposed acquirer (i.e. previous business failures/bankruptcies may be an indication of lack of professional competence), setting specific standards which, if applied, do not trigger the assessment (e.g. the proposed acquirer has already been assessed in the recent past by that or other CA and no material changes have occurred in the meantime).

4.6 Third assessment criterion – financial soundness of proposed acquirer

117. Regarding Chapter 3, Paragraph 12. Financial soundness of the proposed acquirer – third assessment criterion, the peer review evaluated how CAs complied with the requirements when assessing the financial soundness of the proposed acquirer.

118. CAs were requested to self-assess how they evaluate the financial soundness of the proposed acquirers, namely, whether:

> Q6.1: they assess the financial soundness of the proposed acquirer;
>
> Q6.2: they oppose the proposed acquisition if, based on the analysis of the information received, they conclude that the proposed acquirer is likely to face financial difficulties during the acquisition process or in the foreseeable future;
>
> Q6.3: they calibrate the intensity of the assessment of the financial soundness in relation to the magnitude of the likely influence of the proposed acquirer on the target undertaking. CAs were also asked:
>
> Q6.4 whether they request specific (financial) commitments from the proposed acquirer where the acquisition results in the control of the target undertaking or the target becoming a subsidiary, and, if yes;
>
> 6.5 what evidence that would satisfactorily demonstrate the proposed acquirer's willingness to provide additional own funds.
>
> The guidelines are considered as:
>
> '**fully applied**' if the CA answered 'Yes' to questions 6.1 and 6.2 and 'Yes, always' to question 6.3;
>
> '**largely applied**' if the CA answered 'Yes' to questions 6.1 and 6.2 and 'Yes, but not in all cases' to question 6.3;
>
> '**partially applied**' if the CA answered 'Yes' to questions 6.1 and 6.2 and 'No, the financial soundness is always assessed in the same manner' to question 6.3;
>
> '**not applied**' if the CA answered 'No' to question 6.1.

119. Twenty-five CAs considered that they 'fully applied' this part of the Guidelines, 2 CAs considered that they 'largely applied' this part of the Guidelines, 3 CAs considered that they 'partially applied' this part of the Guidelines. The 2 CAs that self-assessed to have 'largely applied' this part of the Guidelines, indicated that they calibrate the intensity of the assessment of the financial soundness based on the likely influence of the proposed acquirer on the target undertaking only in some cases whilst the 3 CAs that self-assessed to have 'partially applied' this

part of the Guidelines do not calibrate this assessment at all. Seven CAs provided that they do not request specific (financial) commitments from the proposed acquirer where the acquisition results in the control of the target undertaking or the target becoming a subsidiary. The breakdown of responses provided by CAs is indicated in the table below.

120. One of the CAs that does not always calibrate the intensity of the assessment of the financial soundness in relation to the magnitude of the likely influence of the proposed acquirer on the target undertaking reported that the influence of the proposed acquirer is not in itself a decisive factor but is nevertheless taken into account.

121. The PRC followed up with some CAs on their responses to this question, including conducting follow-up meetings, held by video conference due to COVID-19 restrictions, with several CAs. For 1 CA the PRC noted that this CA only implemented the Guidelines in their national supervisory practices following the publication of a national regulation on 24 December 2020. The PRC therefore notes that whilst the CA assesses the financial soundness, it follows a less specific guidance than that set out in the Guidelines. Accordingly, the PRC is of the view that this CA's self-assessment should be downgraded from **Fully applied** to **Largely applied**. For another CA, the PRC noted that this CA referred to the CA's internal handbook when applying the Guidelines, and that this Handbook appeared to be an abridged and simplified version of the Guidelines. In respect of this aspect of the Guideline, given that they ask for less financial information than indicated in the GL, the PRC's view is that the CA's self-assessment of **Fully applied** should be downgraded to **Largely applied.**

122. Evidence that the CAs are satisfied would be demonstrated by the proposed acquirer's willingness to provide additional own funds; some CAs referred to the strategic aim of the proposed acquirers as an indicator, e.g. the strategic development plan, general statements or specific statements of the proposed acquirers in their notifications, as well as specific and detailed commitments such as declarations / comfort letters / written commitments to maintain / inject (lend) additional capital or if needed, a commitment that the target will always comply with the prudential requirements. One CA also reported that willingness to provide additional own funds can also be deducted from documents such as multi-year capital and funding plans, including dividend distribution policy; or certain circumstances such as the proposed acquirer's intention to maintain their holding for a substantial period of time; or where the acquisition is part of a long-term strategic investment move which involves additional investment in the target by the proposed acquirer. In a case where the business plan shows an acute need, an injection of additional capital may be required to confirm the proposed acquirer's willingness to support the target.

123. The observed good practices include attentive scrutiny and identification of risks which may suggest that the proposed acquirer is not willing to support the target if needed. Circumstances that may be evidence of such risks are, e.g., an aggressive dividend distribution policy of the target, past cases where the proposed acquirer did not fulfil their obligations, reluctance of the proposed acquirer to provide additional funding commitments; calibration of the evidence to be provided based on the circumstances of the specific case, i.e. a general statement, a

commitment letter or an immediate capital injection; more precise commitments indicating, e.g. the exact amount to be injected if needed, the time frame for the injection, the source of funds and financial instruments to be used as well as the confirmation of no legal restrictions potentially preventing the additional capital injection.

124. One CA noted that the Guidelines lack guidance in respect of the so-called 'specific acquirers' (e.g. private equity funds), namely, that these acquirers are usually concerned with making a profit in the short-medium term horizon and may easily drain the target financially. The CA suggested that certain tools could be included in the Guidelines to prevent these situations, e.g. the so-called 'cash boxes', a written statement of a credit line that is available to the target should the need arise, a commitment not to pay any dividend / sell assets out of the target, or a combination of those methods. The CA suggested that more clarity could be added in the Guidelines about how to require a firm commitment to the proposed acquirer. The CA also suggested to add a question to Annex I of the Guidelines about the possibility of the proposed acquirer that is a fund to support the target financially should the need arise.

4.7 Fifth assessment criterion – Suspicion of money laundering or terrorist financing by the proposed acquirer

125. Regarding Chapter 3, Paragraph 14, Suspicion of money laundering or terrorist financing by the proposed acquirer – fifth assessment criterion, the peer review evaluated how CAs complied with the requirements when assessing the suspicion of ML/TF by the proposed acquirer. The questionnaire included two sets of questions: i) ML/TF risk assessment and ii) sources of the funds that will be used for the proposed acquisition.

126. In the first part (ML/TF risk in proposed acquisition), the CAs were asked to self-assess how they evaluate the proposed acquirers as to whether (7.1.1) they always assess ML/TF risk when assessing a proposed acquisition, and (7.1.2) they always assess the ML/TF risk associated with persons with close personal or business links to the proposed acquirer, including the legal and beneficial owners of the proposed acquirers. In case they do not always carry out this assessment, they were asked if they use any criteria as to when they decide to assess or not assess ML/TF risk (7.1.3). The remaining questions on ML/TF risk concerned whether CAs can oppose the proposed acquirer only where there are criminal records or conversely, whether they can oppose the acquisition solely on the grounds of ML/TF risk, including in situations where the applicant does not have a criminal record (7.1.4), and if they can object on the basis of ML/TF risk alone, whether they can oppose the proposed acquisition if they have 'reasonable grounds' to suspect that ML/TF risk is being committed or attempted (7.1.5) and also if they can oppose the proposed acquisition if they have reasonable grounds to suspect that it would give rise to an increased risk of ML/TF (7.1.6).

127. The guidelines are considered as '**fully applied**' if the CA answered 'Yes' to questions 7.1.1, 7.1.2 , 7.1.4, 7.1.5 and 7.1.6; '**largely applied**' if the CA answered 'Yes' to questions 7.1.1 and 7.1.2 and 'No' to one of any responses to questions 7.1.4, 7.1.5 or 7.1.6. In addition, answer 'No' to 7.1.2 would be considered separately depending on the criteria given by the CA. '**Partially applied**' would be the cases where the CA answered 'Yes' to questions 7.1.1 and 'No' to 7.1.5 and 7.1.6. Again, answer 'No' to 7.1.2 would be considered separately depending on the criteria given by the CA. '**Not applied**' if the CA answered 'No' to question 7.1.1. The breakdown of responses provided by CAs is indicated in the table below.

128. Based on the Self-Assessment Questionnaires, 26 CAs considered that they 'fully applied' this part of the Guidelines, 4 CAs considered that they 'largely applied' them. Among the 4 CAs that 'largely applied' them, 1 CA reported that the associated persons with close personal links are only assessed in terms of ML/TF risk where the supervisor finds reasons for suspicion; another CA reported that it only assesses persons with close links where such persons may exercise (significant) influence or act in concert. One CA that initially answered 'no' to SAQ question 7.1.4 (they cannot oppose the proposed acquisition solely on the ML/TF risk grounds where there are no criminal records) asked for their response to Question 7.1.4 to be corrected to 'yes' in the follow-up clarifications with the PRC where they confirmed that they do oppose an acquisition if they have reasonable grounds to suspect that ML/TF is being committed or attempted or there is an increased risk of ML/TF. This clarification means that they also 'fully

apply' this part of the GL. One CA did not provide an answer to question 7.1.6 (can they oppose the proposed acquisition if they have reasonable grounds to suspect that it would give rise to an increased risk of ML/TF) in the SAQ, indicating that they 'largely apply' this part of the Guidelines. For 1 CA the PRC noted that this CA only implemented the Guidelines in their national supervisory practices following the publication of a national regulation on 24 December 2020. Accordingly, the PRC is of the view that this CA's self-assessment should be downgraded from **fully applied** to **largely applied**.

129. CAs responded that the checks on ML/TF risk are performed in the assessment of proposed acquisitions and that they are empowered to oppose the acquisition should the acquisition lead to an increase in ML/TF risks or if there is a suspicion of it. In the reference period, only 1 CA had opposed an application due to ML/TF risk. One CA reported that it conducted only a general (basic) assessment of whether there are any indications of possible ML/TF risk, raising the issue of the lack of resources. Another CA mentioned in the follow-up questions to the PRC that they do not have a methodology in place for the assessment of ML/TF risk to be able to oppose the proposed acquisition. A similar view was provided to the PRC in a follow-up meeting with another CA which reported that whilst they conduct checks and have good internal cooperation with their national AML colleagues, they find the Guidelines too vague and they do not provide sufficient guidance to conduct the AML assessment, including having regard to the different types of acquirers. This latter CA observed that the guidance provided in respect of the fifth criterion is much less detailed and is not given equal relevance compared to the other criteria in these Guidelines. Accordingly this CA would welcome additional guidance to better set objectives of their assessment.

130. Regarding the second part of this question asking how CAs assess the sources of the funds that would be used to finance the proposed acquisition, CAs were requested to respond whether they assess the submitted information from a ML/TF perspective (7.2.1) and if yes, whether they assess that the funds are channelled through chains of financial institutions (7.2.2) and that all financial institutions through which the funds are channelled are subject to effective AML/CFT supervision by AML/CFT supervisors in EU MS and non-EU jurisdictions with AML/CFT provisions and oversight similar to those applicable in the EU (7.2.3). Those CAs that answered positively regarding the information on sources of funds, were asked to respond whether they also assess the activity that generated the funds, including the credibility and consistency with the business activity of the proposed acquirers (7.2.4), to describe their answer to this question, and to indicate if they always asses that there is an 'uninterrupted paper trail' between the activity that generated the funds and the funds to be used for the acquisition (7.2.5) and if so, to also describe the evidence they seek about the sources of funds.

131. In this part, the guidelines are considered as '**fully applied**' if the CA answered 'Yes' to all questions: 7.2.1, 7.2.2, 7.2.3, 7.2.4 and 7.2.5; **'largely applied**' if answers to questions 7.2.1, 7.2.2, 7.2.4 and 7.2.5 were 'Yes' and 'No' to 7.2.3; '**partially applied**' in case the answer to 7.2.1 was 'Yes', to 7.2.2 'No', and one of 7.2.4 or 7.2.5 was answered 'Yes', but 7.2.3 could be answered 'Yes' or 'No'. Finally, the guidelines would be considered as '**not applied**' if the CA answered 'No' to 7.2.1 and neither 7.2.4 nor 7.2.5 were 'Yes'.

132. Twenty-four CAs considered that they 'fully applied' this part of the Guidelines, five CAs considered that they 'largely applied' and 1 CA considered that they did not apply this part of the guidelines (no assessment on sources of funds) due to lack of resources. Among those who resulted in having 'largely applied' the GL, 2 CAs did not provide any further information on how they assess the activity that generated the funds, including its credibility and consistency with the business activity of the proposed acquirer. Two CAs answered 'No' to question 7.2.3 (they do not assess that all financial institutions through which the funds were channelled are subject to effective AML/CFT supervision by AML/CFT supervisors in EU MS and non-EU jurisdictions with AML/CFT provisions and oversight similar to those applicable in the EU). For 1 CA the PRC noted that this CA only implemented the Guidelines in their national supervisory practices following the publication of a national regulation on 24 December 2020. Accordingly, the PRC is of the view that this CA's self-assessment should be downgraded from **fully applied** to **partially applied**.

133. Twenty-eight of the 29 CAs who reported to assessing sources of funds also assess that the activity matches the funds via financial statements, tax returns or other official documents. However, only 22 CAs *always* assess that there is an uninterrupted paper trail between the generating activity and the funds. The reason for not always checking differs across CAs. Several CAs made reference to the application of proportionality, pursuant to which they first try to find out if there is a risk or suspicion of ML/TF, and only in that case they check the whole chain. One CA mentioned that a lack of resources does not allow them to do this part of the assessment at all.

134. The PRC was informed in the context of follow-up meetings with some CAs, that such CAs require official proof of the sources of funds and that they also cooperate with relevant non-financial national authorities (i.e. national tax offices, FIUs). The proposed acquirers need to prove that all sources of funds to be used to finance the acquisition are of legitimate origin and that the funds match the declared activities. Two CAs responded in the SAQ that they do not assess that all financial institutions through which the funds were channelled are subject to effective AML/CFT supervision by AML/CFT supervisors in EU and equivalent non-EU jurisdictions. One of them explained in the follow-up questions that this answer was motivated by the fact that they have had only cases where the funds were channelled through institutions that are under the AML/CFT supervision of EU countries (and had no experience with cases of third countries). However, they reported that should such a case be submitted to their attention, they would assess having regard to the adequacy of the AML/CFT supervision in that country. The other CA explained that its supervisory practice is in compliance with the provisions of paragraph 14.5(b) of the Guidelines but depends on other competent authorities' contribution.

135. Regarding the checks on the uninterrupted paper trail of the proposed acquisitions, based on the SAQ results, 23 CAs perform such checks, but the practices vary across the EU in terms of intensity and detail. Some CAs check the full paper trail only in special cases (i.e. when there are reasonable grounds to suspect ML/TF). Conversely 7 CAs do not always assess if there is a full paper trail. Some CAs reported that they routinely involve AML/CFT experts and that these experts pass on relevant information on their own initiative, while other CAs clarified that they

turn to the AML/CFT colleagues only when they consider it necessary. Based on the answers provided, however, it is not clear the level or risk or potential risk triggering the need for the involvement of AML experts.

136. With specific regard to the ECB-SSM's assessment of the fifth assessment criterion, the following should be observed. Whilst the ECB-SSM is only competent for the prudential and not for the AML/CFT supervision, they are empowered to conduct a prudential assessment of the fifth criterion. The PRC observed that in addition to drawing the attention to the aspects considered by the Guidelines to perform the assessment of the fifth criterion, the ECB-SSM Handbook on the prudential assessment of the acquisition or increase of qualifying holdings, includes additional aspects, requiring for instance to pay attention to any change of the business model that may have the effect of increasing ML/TF risks. Furthermore, the ECB-SSM confirmed that it reviewed the information and reports submitted by the CAs on the assessment of the fifth criterion and that they have challenged them in the past. However, based on the PRC's bilateral visit with the ECB, it emerged also that the ECB-SSM's qualitative and quantitative level of engagement in respect of the assessment of the fifth criterion is different from the other four assessment criteria set out in Article 23 CRD, also due to the limitations linked to the ECB-SSM's absence of a specific mandate on AML/CFT matters with the ECB. For example, some CAs have observed that whilst experience about the assessment of specific complex applications relating to the other four assessment criteria envisaged by Article 23 CRD is regularly shared within the ECB – NCAs network, such attention is not dedicated to the assessment of the ML/TF risk criterion.

137. To conclude, while all CAs suggested that they applied the fifth assessment criterion when assessing the proposed acquisition of qualifying holdings, practices vary when it comes to checking the sources of funds and the paper trail of the funds to be used for the acquisition.

138. CAs cooperate internally with other relevant national authorities and, as regards the ECB-SSM, provide input to the ECB-SSM but the exchange of information between authorities at the national level and between authorities and the ECB-SSM could be enhanced and approached more systematically to facilitate the assessment of this criterion.

139. While all CAs indicated that they assessed the fifth criterion, some of the practices vary as to the intensity and scope of the assessment. The PRC notes that while all CAs noted that they conduct a general assessment, there are cases where the assessment is conducted only when the CA has reasonable grounds to suspect ML/TF activities. It is therefore the PRC's view that all CAs should engage further in the assessment of the fifth criterion. However, there seems to be a lack of common understanding of what is 'reasonable grounds' to suspect ML/TF risk. Therefore, the Guidelines would benefit from greater detail to facilitate the consistent interpretation and application of this assessment criterion and to have a more harmonised approach across the MS when assessing ML/TF risk in proposed acquisitions.

140. Regarding the uninterrupted paper trail, a number of CAs do not always assess it or limit their assessment to the last account from where the funds used for the proposed acquisition

come. Furthermore, there is no common understanding amongst the CAs on the definition of 'uninterrupted paper trail' (which is not defined in the CRD) nor on how far down the chain these checks should go. Therefore, the Guidelines would benefit from enhanced clarity as to what constitutes an uninterrupted paper trail, including the legitimacy of it, and also more specific guidance on the depth and scope of this assessment.

4.8 CAs' challenges in applying the Guidelines

141. CAs were asked an optional question on the application of the Guidelines. Specifically, they were requested to self-assess (Q8.1) the challenges that they have faced when applying these Guidelines (including the feedback they may have received from the industry, if any)? This question is not benchmarked.

142. Twenty CAs provided a response to this optional question, whereas 10 CAs did not. The breakdown of responses provided by the CAs is indicated in the table below.

143. The main comments received can be summarised as follows:

- **Notification process and check of completeness of the application**:
  - The 2-working-day deadline for sending an AoR is very short.
  - A pre-notification phase contributes to the increased quality of applications, but not all acquirers opt for this possibility, as it is non-obligatory.
- The **assessment deadlines** are short in the case of complex cases**.**
- **Significant influence.** The Guidelines could give better guidance, both for CAs and market participants in order to assess when an acquirer can exercise **significant influence**. They should cover:
  - The significance of the proposed acquirer being an active investor.
  - Whether the establishment of nomination committees lessens the influence of the proposed acquirer.
  - Whether you can have a significant influence without holding a single share (e.g. if creditors can exercise significant influence).
  - If the information requirements are the same etc.
- Notion of **acting in concert**:
  - It is hard to characterise 'acting in concert' when it comes only to the acquisition of capital rights.
  - It is difficult to attribute shares to the shareholder of a proposed acquirer that acquirers a qualifying holding due to acting in concert.
  - In the case of a group of corporate acquirers acting in concert, the Guidelines should explicitly specify that it is sufficient to assess the entity(ies) in control of the acquiring group (case where the future bank is part of a wider financial, industrial, private equity group, where acting in concert between the various intermediate layers and the parent is often presumed).
  - The Guidelines could use some practical examples of 'acting in concert' (e.g. funds that are co-investors). A discussion of the implication of one investor failing the assessment would also be welcomed.
- Concerning the **principle of proportionality**:
  - It is difficult to apply due to the specificities of each case.
  - It should be more easily possible for small entities.

- In the case of tender/public offers (when the proposed acquirer only has access to public information on the target), the Guidelines allow for reduced information, but it is not clear which information can be skipped.

- Concerning the **financial soundness of the acquirers**, it is difficult to obtain:
  - Their complete number of participation / interest in other undertakings.
  - Particularly in the case of indirect proposed acquirers and ultimate beneficiary owners, who often claim that the scrutiny and scope of documentation to be submitted is too extensive and disproportionate (i.e. financial details, details about their corporate structure, governance, shareholder agreements).
- In the case of '**Specific acquirers'** (e.g. hedge funds or private equity funds), the GL provide limited guidance, and no questions are specific to this case in Annex I. CAs have different approaches in order to be sure that these acquirers will undertake to support the credit institution financially, should the need arise. Guidelines could be modified to:
  - establish greater convergence when it comes to funds as acquirers.
  - add a question to Annex I on the members of the fund (e.g. ask for the five largest members; for all the members holding more than 0.5% in the target). Indeed, the information is sometimes hard to retrieve, as the lawyers tend to consider that CAs can only investigate what is explicitly requested in the GL. There is a need to clarify the depth of the assessment required between private equity funds and its investors, the Guidelines do not distinguish between both.
  - add a general question about the possibility of the fund in question to support the credit institution financially, should the need arise. One CA suggests various solutions:
    - 'cash boxes', where dividends paid by the credit institution are put into a specific company, and this cash is supposed to be made available to the institution if needed.
    - a written statement of a credit line that is available to the credit institution, should the need arise.
    - a commitment to not pay any dividend/sell assets out of the credit institution.
    - or a combination of those methods.
- One CA suggests that **two additional questions** be added to the list of information to be required:
  - Is the proposed acquirer the sole beneficiary of the shareholding? And have they made any derivative contract referencing shares in the target? (yes or no questions).
  - The proposed acquirer should be asked for some form of confirmation of the financial information they provide (e.g. audited annual accounts, declaration of the proposed acquirer's auditor/bank).

- The Guidelines are not sufficiently clear on how to deal with cases when the shareholders **cross threshold involuntary** and allege there was no decision to acquire from their side.
- The role and the involvement expected from the separate **AML** department versus the role of the analyst from the prudential supervision department in the assessment of the fifth criterion is not defined, thus creating possible threats to level playing field across acquired entities regarding depth and intensity of the assessment performed.
- In respect of the fifth assessment criterion, 1 CA observed that it is difficult to interpret the term '**close personal or business links**'.
- One CA suggested the need to enhance guidance provided in Chapter 7 of the Guidelines (**Decision to Acquire**) so as to clarify how competent authorities should deal with situations where the shareholders cross a particular threshold involuntarily and allege there was no decision to acquire from their side. One CA's national legislation introduced a so-called '**group declaration of no-objection'** which is issued to an entire group and allows the group companies to amend the group structure without having to obtain prior consent by the CA. Such amendments need to be notified only. This stipulation aims at reducing the administrative burden for group companies, which by nature are being managed centrally, usually at the level of the top holding company. The need for a fully-fledged assessment also in these cases jeopardises the pragmatic advantages of the 'group declaration of no-objection'.

4.9 Adequacy of resources and governance arrangements

144. The EBA Regulation requires EBA peer reviews to 'include an assessment of, but not be limited to the adequacy of resources, the degree of independence, and governance arrangements of the competent authority, with particular regard to the effective application of the legislative acts referred to in Article 1(2) and the capacity to respond to market developments'.

145. Accordingly, this question sought to get an overview of the resources allocation (number of full-time equivalent (FTE) staff and time allocated) in a CA to the assessment of acquisitions and increases of qualifying holdings and whether this work was performed in a 'stand-alone' area/unit/department or by cooperation of staff in different areas/units/departments. It also sought to understand the roles performed by these staff undertaking the assessments and their interactions with other staff within the CA. Further, a question was asked on the dedicated staff's AML expertise too.

146. CAs were requested to provide details on their resources, specifically:

- To provide a description of resources and time e.g. average man-days per calendar year devoted in your competent authority (CA) to the prudential assessment of acquisitions and increases of qualifying holdings and whether it is performed in a 'stand-alone' area/unit/department or by cooperation of staff in different areas/units/departments.
- To provide a tally and description of their staff (approximate total full-time employees) in their CA.
- Out of these staff members how many ('full time employee' equivalent) are responsible for the prudential assessment of acquisitions and increases of qualifying holdings? If you do not have staff dedicated only to this, please describe briefly how it is approximately allocated.
- A brief description of the roles/remit/allocation of tasks.
- A brief description of their AML/CFT expertise/training, and/or cooperation or involvement with other AML/CFT competent authorities.

147. This question was not benchmarked.

148. Overall, it was noted for most CAs, the assessment of acquisitions and increases of qualifying holdings is performed by supervisory staff, liaising with other relevant colleagues, such as on AML within their CA. For some CAs, the assessment is led by their licensing / authorisation / common procedures departments, with support provided predominantly from supervisory colleagues (responsible for the supervision of the target bank). For the Banking Union, CAs cited that they work with the Joint Supervisory Teams of the ECB-SSM when performing their assessments. Further, 1 CA said the assessment was performed by dedicated

staff (2 FTEs) within the Authorisations and Advisory function. All CAs informed that their staff performing the assessments of qualifying holdings, also performed other tasks for their CA.

149. One CA cited that they adopted the final implementing decision on their assessment, after ECB instruction. One CA cited that they had a dedicated Licensing Desk with 2 FTEs providing a horizontal quality assurance function.

150. In most cases, AML expertise is sought for assistance with assessment of the fifth criterion on AML, and in some instances the CAs contact other FIUs/other countries' CAs for AML too.

151. Several CAs cited that their internal assessment is subject to review by heads of function, and 1 CA informed that depending on the prudential and integrity risk scores attributed to the target in question, the application might need to be approved by its executive board.

152. Some CAs, referred to using in addition to the Joint Guidelines, the requirements of their national legislative framework and the ECB Handbook when performing their work. For Eurozone CAs, many welcomed the additional review done together by the ECB SSM and benefited from their specialist knowledge and wider experience in handling such applications, i.e. with regard to assessing applicants' business plans.

153. Due to the limited number of applications many CAs had received, few CAs had available data on the dedicated time it took to assess an application. Of those CAs that provided data, it ranged from 2 months to a year per case, and depending on the size of the credit institution, and the complexity of the acquisition, between 1 and 5 FTE staff members worked on each case. Some CAs noted that if they had more resources they could assess applications quicker. Further, many CAs informed that a similar amount of resource is used in pre notification discussions and assessment with potential applicants.

154. Some CAs charge an application fee to make a Qualifying Holding application, and will not start their assessment of an application until the fee has been received.

155. Given the ECB-SSM's exclusive competence on the approval of acquisition or increase of qualifying holdings in all credit institutions of the Banking Union, it is noted that the Authorisation Division at the ECB has 43 staff members (management excluded) who work full-time on common procedures and transactions (qualifying holdings, authorisations).

156. Several CAs cited that their internal assessment is subject to review by Heads of function, and 1 CA informed that depending on the prudential and integrity risk scores attributed to the target in question, the application might need to be approved by its executive board. It is noted that for participating Member States to the Banking Union, the SSM Board approves the application.

157. No specific concern was noted regarding the degree of independence nor governance of CAs with regard to their application of these GLs. However, it was noted, that 2 CAs reported resource issues impacting the timely completion of assessment within the 60 working days envisaged by Article 22 CRD, or comprehensiveness of the assessment. One of the CAs

mentioned however that resources are envisaged to be increased in the future, improving the ability to meet the relevant deadlines.

4.10 Summary of applications of qualifying holdings received

158. This question sought to get an overview of the total number of complete applications received regarding the prudential assessment of acquisitions and increases of qualifying holdings, made in the period under review (01/01/2019- 31/12/2020).

159. CAs were requested to provide details on the number of applications received, broken down by:

i. applications opposed; and if opposed, were they opposed due to assessment against which of the five criteria;
ii. applications withdrawn by proposed acquirer;
iii. applications related to an assessment of acting in concert;
iv. applications related to an assessment of significant influence;
v. applications related to an assessment of involuntary acquisition;
vi. applications by state-owned entities (and if so, whether EU or non-EU State owned entities);
vii. applications related to intra-group proposed acquisitions;
viii. applications from proposed acquirers from outside the EU;
ix. applications involving multi-jurisdictional acquisitions of a group, where the group has subsidiaries in different Member States, and if so the number of cases where the assessments by the involved target supervisors reached different conclusions on the proposed acquirer, and whether this had an impact on the overall multi-jurisdictional acquisition;
x. applications for the proposed acquisition of the control of the target, and if so describe;
xi. applications approved with ancillary provisions.

160. This question was not benchmarked.

161. Overall, **839** applications were received in total over the reference period, where it was noted that many CAs had received few completed applications during the 2-year review period. However, some CAs had received many applications.

162. Of the 839 completed applications in the review period, from the statistics provided, only **4** cases were opposed; **64** cases were withdrawn by the proposed acquirer. The difference between the cases opposed by the CAs and the number of cases withdrawn by the proposed acquirer suggests, as confirmed by several CAs, that CAs prefer to use moral suasion rather than adopting an opposition decision where an acquisition does not meet one or more assessment criteria. Withdrawal of the application may be motivated by lack of information – where one CA advised that to avoid rejection 1 applicant withdrew the application, as it had insufficient information at the end of the assessment period but later applied again when further information had been collected; another CA cited an application was withdrawn as the applicant was unwilling to provide the additional capital required resulting from a supervisory review of its business plan; for 1 CA an applicant withdrew given the economic situation caused by COVID.

163. Of the **159** applications **related to acting in concert,** 1 CA informed that of its 91 cases, one was with regard to 3 CRR-credit institutions, where 57 proposed acquirers were deemed to be acting in concert; 1 CA had a case, not included in the overall number of cases, given that no

notification was received, where it became aware that persons were acquiring shares in concert; as a consequence the CA adopted a measure consisting of the suspension of the voting rights of the relevant shareholders. One CA considered that the proposed acquirers were acting in concert, since they were father and son.

164. Further, **34** applications related to **an assessment of significant influence**; **37** applications related to **an assessment of involuntary acquisition; 21** applications related to an **assessment of State-owned entities**; **156** applications related to an **assessment of intra-group proposed acquisitions;** and **66** applications related to an **assessment of applications from proposed acquirers from outside the EU**.

165. Further, of the **48** applications involving **multi-jurisdictional acquisitions of a group, where the group** has subsidiaries in different Member States, there does not appear to be a case where the involved multi -jurisdictional supervisors disagreed with the assessment.

166. There were **170** applications related to the **proposed acquisition of the control of the target**, **11** concerned the acquisition of 50% (or more) of the target undertaking; **56** concerned the target becoming the subsidiary; of those that provided statistics around half were domestic, and half cross border.

167. Out of the **53** applications approved with ancillary provisions, some CAs cited strengthening of the internal organisation and controls, seeking periodical updates on the implementation of the new business plan/strategies.

168. It is noted that CAs have objected to very few applications, because most CAs have the practice of encouraging pre-notification contacts. Some CAs meet potential applicants or potential acquirer's lawyers. Further, many CAs encourage applicants to whom they have raised some concerns with their applications, often due to concerns on origin of funds/financial soundness to withdraw before the CA proceeds to formally objecting to the application.

5. Summary of the 'Review by peers' and conclusions

169. The PRC reviewed the self-assessment provided by the CAs with a view to ensuring consistency of the responses and benchmarks.

170. For some CAs this involved the PRC reverting to the CAs to seek clarifications in their responses to the SAQ, including for 11 CAs, following up by conducting one-to-one meetings, which were held by video conference.

171. It is noted that all euro area countries participate automatically in the ECB-SSM. Further, Bulgaria and Croatia joined the ECB-SSM through its 'close cooperation' supervisory mechanism in October 2020, hence having regard to the reference period of this Peer Review, these two CAs predominantly performed prudential assessments autonomously.

172. For 1 CA the PRC noted that this CA only implemented the Guidelines in their national supervisory practices only on 24 December 2020 following the adoption of a national regulation. Accordingly the PRC, observed that whilst the CA did perform supervisory assessments on the acquisition or increase of qualifying holdings, it did not follow the Guidelines under review. For this reason, the PRC downgraded their self-assessment.

173. Below is a summary of all the received answers to the SAQ from CAs, ***after*** they were subject to the 'review by peers' illustrated in Chapter 4 of this Report.

Table 2: Overall Summary Table of answers to benchmarked questions – peer reviewed

	Q1	Q2	Q3	Q4	Q5	Q6	Q7.1	Q7.2
	Application of Acting in concert	Application of Significant influence	Indirect acquisition of qualifying holdings	Notification & assessment of proposed acquisition	1st Assessment criterion - reputation of proposed acquirer	3rd Assessment criterion - financial soundness of proposed acquirer	5th Assessment criterion - suspicion of ML/TF by proposed acquirer	5th Assessment criterion - suspicion of ML/TF by proposed acquirer
							proposed acquirer	source of funds
AT	FA	FA	FA	FA	FA	FA	FA	FA
BE	FA	FA	FA	FA	FA	FA	FA	FA
BG	LA	LA	FA	FA	FA	LA	FA	FA
CY	FA	LA	FA	FA	FA	FA	FA	FA
CZ	FA	FA	PA	FA	FA	PA	FA	FA
DE	FA	FA	FA	FA	LA	PA	FA	FA
DK	LA	LA	FA	LA	PA	LA	LA	NA

ECB-SSM	FA	FA	FA	N/A	FA	FA	FA	FA
EE	FA	FA	PA	FA	FA	FA	FA	FA
ES	FA	FA	FA	FA	FA	FA	FA	FA
FI	FA	FA	FA	FA	FA	FA	LA	FA
FR	FA	FA	FA	LA	FA	FA	FA	FA
GR	FA	FA	FA	FA	FA	FA	FA	LA
HR	FA	FA	FA	FA	FA	FA	FA	FA
HU	FA	FA	FA	FA	FA	FA	FA	FA
IE	FA	FA	FA	FA	FA	FA	FA	FA
IS	FA	FA	FA	FA	FA	FA	FA	FA
IT	FA	FA	LA	FA	FA	FA	FA	FA
LIE	N/C	N/C	N/C	N/C	N/C	N/C	N/C	N/C
LT	FA	FA	FA	FA	FA	FA	FA	FA
LU	FA	FA	FA	FA	FA	FA	FA	LA
LV	FA	FA	FA	FA	FA	FA	FA	FA
MT	FA	FA	FA	FA	FA	FA	FA	FA
NL	LA	FA	FA	LA	FA	FA	LA	FA
NO	FA	FA	FA	FA	FA	FA	FA	FA
PL	FA	FA	PA	FA	FA	FA	FA	FA
PT	FA	FA	FA	FA	FA	LA	FA	FA
RO	PA	LA	PA	FA	LA	LA	LA	PA
SE	LA	FA	LA	FA	FA	PA	FA	FA
SI	FA	FA	FA	FA	FA	FA	FA	FA
SK	FA	PA	FA	FA	FA	FA	FA	FA

Key
Green: fully applied (FA)
Yellow: largely applied (LA)
Orange: partially applied (PA)
Red: not applied (NA)
Pink: not applicable (N/A)
White: non-contributing (NC)

174. For one CA, the PRC observed that they do not fully apply the Guidelines, since their assessment practice relies on their internal handbook which is an abridged and simplified version of the Guidelines which does not cover several indicators e.g. to assess significant influence, or information requirements envisaged by the Guidelines, and which includes reference to Guidelines to be used for only complex cases. Lack of resources affecting the comprehensiveness of the assessment has also been reported. The assessment of the sources of funds to be used for the acquisition of the qualifying holdings is not fully assessed under fifth criterion (AML).

175. For 1 CA, the PRC takes note that its national regulation, implementing the GLs into its national supervisory practice came into force only on 24 December 2020, (i) this CA's compliance notification of its application of the Guidelines was not accurate, since it stated it complied with the Guidelines; and (ii) their response to the SAQ was misleading, whilst the CA expressly mentioned that the Guidelines have been implemented into their national practice by its December 2020 Regulation, the response relied on the content of such Regulation but the reference period of the peer review relates to the years 2019 and 2020.

General observations:

176. All CAs assess all five criterion in the Guidelines.

177. All CAs either largely apply or fully apply the GLs with the exception of RO and DK.

178. It is observed, based on findings and follow-up with CAs, that the ECB, in its capacity as CA exclusively competent to approve the acquisition and increase of qualifying holdings for the whole Banking Union, has significantly contributed to strengthening the uniform application of the Guidelines throughout the Banking Union.

179. It is observed that several CAs find it challenging to meet the 2 working days timeline set out in Article 22(2) CRD to assess the completeness of notification in case of complex acquisitions involving numerous direct and indirect acquirers within the same acquisition perimeter.

180. It is observed, that if the CAs note during their assessment of the application that the proposed acquirer does not meet one or more criteria and that the application will likely be opposed, then the CA may view there is no need to make a thorough assessment of the remaining criteria. Often in this scenario, the CAs encourage the applicant to withdraw their application, rather than proceed to formally oppose the application.

Specific observations:

<u>Q1 Acting in Concert</u>

181. Based on the above findings, it may be concluded that the notion of acting in concert is applied by all CAs when relevant circumstances so require, and that the list of factors set out in the Guidelines are predominantly applied by CAs to carry out the case-by-case analysis required to establish the existence of acting in concert and are supportive of such analysis. Notwithstanding this, the examination of the factual situation and the existence of definitions of the notion of acting in concert in the national law of some MS may still contribute to some degree of divergence of practices. In addition, based on the findings, CAs generally apply the notion of 'acting in concert' to group entities where the relevant circumstances envisaged by the Guidelines so indicate. However, some divergences have emerged as regards the relevance of the steer and control of the UBO to trigger the assumption that group entities down the chain of control act in concert. Finally some divergences still remain about the application of the notion of acting in concert in case of acquisition of capital without voting rights.

Q2 Significant Influence

182. Based on the findings and the comments provided by the CAs, the Guidelines are generally applied in a uniform manner to the assessment where the acquisition or increase in qualifying holdings would enable the proposed acquirer to exercise a significant influence over the management of the target undertaking. Given the case-by-case assessment and the relevance of specific circumstances, and the reference to definitions set out in national laws, the existence of divergent practices may not be completely excluded.

183. One CA does not fully apply the Guidelines, since its internal manual which its staff mostly rely upon is less specific than the guidance provided by the Guidelines. For instance, it does not specify the factors, included in the Guidelines that may indicate whether the proposed acquirer can exercise significant influence over the management of the target undertaking. Although the manual contains a link to the online version of the Guidelines, the responses to the questionnaire and the supervisory practice mainly rely on the application of the internal manual rather than on the Guidelines.

Q3 Indirect acquisition of qualifying holdings

184. The results of the SAQ show the positive reception by CAs of the multiplication criterion introduced by the Guidelines. Such criterion proves to be an effective means of determining the perimeter of the proposed acquisition. It provides an easy-to-apply method to identify who is an indirect acquirer of qualifying holdings subject to the obligation to notify a proposed acquisition; in so doing the multiplication criterion brings consistency and convergence of practices across the EU. In the context of follow-up meetings with some CAs, the PRC noted, however, that the multiplication criterion has not yet been applied by all CAs, in particular by those who initially notified their non-compliance with the Guidelines or their intention to comply. This still gives rise to inconsistent supervisory practices.

185. Therefore, it is recommended that the four CAs who have not fully or partially implemented the multiplication criterion incorporate such criterion within their supervisory practices.

186. No CA has opposed an acquisition based on its assessment of the application of the multiplication criterion, although it is noted that the overall opposition rate is very small.

Q4 Notification and assessment of proposed acquisition

187. Based on the SAQ findings and follow-up interaction with some CAs, it is the PRC's view that the procedure set out in the Guidelines specifying that the AoR has to be sent to the applicant subject to a simple formal check of the application, has improved the provision of prompt communication to prospective acquirers as to the completeness or incompleteness of their application. To note that based on the SAQ findings, the majority of CAs usually take between 0 and 10 working days to send the list of missing information in case of receipt of an incomplete notification. However, it is observed that still a significant number of CAs take 16 days or longer to send the list with the missing information.

188. Further, the encouragement of pre-notification contacts coupled with the indication of the list of information to be submitted with the application has enhanced the transparency of the

expectations of the target supervisors in respect of the content of the application and contributed to shortening the length of the overall assessment.

189. Challenges to the effective respect of the time limits set out in Article 22 CRD, however, still remain, especially in the case of complex acquisitions. Based on the responses to the SAQ, the overall length of the procedure still varies between 2 months and 1 year in particular in case of complex transactions.

190. The PRC supports the practice followed by several CAs to encourage pre-notification contacts with potential acquirers to make the overall process more effective and faster, especially in the case of complex acquisitions. However, it is noted, that by summing up the timeframe of the pre-notification phase with the actual assessment process, the overall procedure can last up to 1 year. It is acknowledged that complex transactions with a high number of simultaneous notifications and requiring coordination among various target supervisors raise special challenges.

191. To minimise the need to revert to the applicant for additional information, CAs could enhance the disclosure and transparency of the list of information that is required from proposed acquirers, as well as by raising potential issues about the required information in any pre-notification contact with applicants; potentially sign posting the applicants regarding the time needed to access criminal record history if the potential acquirer is based overseas could also be a good practice. It is the PRC's understanding that an increase in headcount in some CAs, and an increase in IT systems could also be a remedy to shorten the overall timeframe for the assessment of the application.

192. As a way forward, consideration may also be given to better specify in the Guidelines CAs' expectations as to the quality and content of the required information, in particular of the business plan so as to facilitate the submission of complete applications and speed up the assessment process.

193. It is also acknowledged that complex transactions with numerous direct and indirect acquirers raise specific challenges for CAs as to the compliance with the strict time limit of 2 working days set out in Article 22(2) CRD for the assessment of the completeness of the notification. In respect of complex acquisitions, additional guidance, including as regards the application of the principle of proportionality in respect of the information to be submitted and of the assessment, as well as the coordination among relevant CAs, would also be opportune in order to improve the overall efficiency of the assessment.

<u>Q5 First assessment criterion – Reputation of proposed acquirer</u>

194. All CAs assess the reputation criterion.

195. Based on the findings, all CAs but two reported that they always require official certificates issued by a public authority to check criminal records and to resort to alternative sources in cases where it is not legally possible to obtain criminal record certificates at all or to share them with a third party. Some CAs check all publicly available information as a rule, others in addition also require a personal questionnaire and/or self-declaration.

196. Some CAs noted that the principle of proportionality does not apply to the assessment of reputation, and this is particularly burdensome in cases of complex acquisition where they need to obtain and assess criminal records for all of the acquirers involved, including for partners of private equity funds.

197. The observed good practices include complementary public searches, collection of self-declarations, assessment of financial soundness when assessing professional competence of the proposed acquirer (i.e. previous business failures/bankruptcies may be an indication of lack of professional competence), setting specific standards which, if applied, do not trigger the assessment (e.g. the proposed acquirer has already been assessed in the recent past by that or another CA and no material changes have occurred in the meantime).

Q6 Third assessment criterion – Financial soundness of proposed acquirer

198. General remark. It was noted that CAs generally apply this criterion.

199. In terms of the evidence that the CAs use to so assess the proposed acquirer's willingness to provide additional own funds, the PRC note that some CAs referred to the strategic aim of the proposed acquirers as an indicator, e.g. the strategic development plan, general statements or specific statements of the proposed acquirers in their notifications, as well as specific and detailed commitments such as declarations / comfort letters / written commitments to maintain / inject (lend) additional capital or recapitalise if needed, a commitment that the target will always comply with the prudential requirements. One CA also reported that willingness to provide additional own funds can also be deducted from documents such as multi-year capital and funding plans, including dividend distribution policy; or certain circumstances, such as the proposed acquirer's intention to maintain their holding for a substantial period of time; or where the acquisition is part of a long-term strategic investment move which involves additional investment in the target by the proposed acquirer. In a case where the business plan shows an acute need, an injection of additional capital may be required to confirm the proposed acquirer's willingness to support the target.

200. The observed good practices include attentive scrutiny and identification of risks which may suggest that the proposed acquirer is not willing to support the target if needed. Circumstances that may be evidence of such risks are e.g. an aggressive dividend distribution policy of the target, past cases where the proposed acquirer did not fulfil their obligations, reluctance of the proposed acquirer to provide additional funding commitments; calibration of the evidence to be provided based on the circumstances of the specific case, i.e. a general statement, a commitment letter or an immediate capital injection; more precise commitments indicating, e.g. the exact amount to be injected if needed, the time frame for the injection, the source of funds and financial instruments to be used as well as the confirmation of no legal restrictions potentially preventing the additional capital injection.

201. The PRC notes that the Guidelines could provide more guidance on the content and assessment of the viability of the business plan to support the acquisition.

Q7 Fifth assessment criterion – Suspicion of money laundering or terrorist financing by the proposed acquirer

202. The Questionnaire included two sets of questions: i) ML/TF risk assessment and ii) sources of the funds that will be used for the proposed acquisition.

203. While the assessment of the fifth criterion is conducted by all CAs, practices vary in respect of the intensity and scope of the assessment. The PRC notes that while all CAs conduct a general assessment, there are cases where the assessment is conducted only when the CA has reasonable grounds to suspect ML/TF activities.

204. With specific regard to the ECB-SSM, it should be noted that whilst they are not competent for AML/CFT supervision, they are empowered to conduct the prudential assessment of the fifth assessment criterion under Article 23 CRD. For this purpose the PRC observed that in addition to drawing attention to the aspects considered by the Guidelines to perform the assessment of the fifth criterion, the ECB-SSM Handbook on the prudential assessment of the acquisition or increase of qualifying holdings, includes additional aspects, requiring for instance to pay attention to any change in the business model that may have the effect of increasing ML/TF risks. Furthermore, the ECB-SSM confirmed that it reviewed the information and reports submitted by the CAs on the assessment of the fifth criterion and that it challenged them in the past. However, based also on the PRC's bilateral visit with the ECB-SSM, it emerged also that the ECB-SSM's qualitative and quantitative level of engagement in respect of the assessment of the fifth criterion is different from the other four assessment criteria set out in Article 23 CRD, also due to the limitations linked to the ECB-SSM's absence of a specific mandate on AML/CFT matters with the ECB. For example, some CAs have observed that whilst experience about the assessment of specific complex applications relating to the other four assessment criteria envisaged by Article 23 CRD is regularly shared within the ECB-NCAs network, such attention is not dedicated to the assessment of the ML/TF risk criterion.

205. Regarding the uninterrupted paper trail, a number of CAs do not always assess it but limit their assessment to the last account from which the funds used for the proposed acquisition come. Furthermore, there is no common understanding amongst the CAs on the definition of 'uninterrupted paper trail' (which is not defined in the CRD) nor on how far down the chain these checks should go. In light of the above, the Guidelines would benefit from enhanced clarity as to what constitutes an uninterrupted paper trail, including more specific guidance on the depth and scope of this assessment.

206. Based on the PRC findings, there is a lack of common understanding amongst CAs of what are 'reasonable grounds' to suspect ML/TF risk. In general it is noted also that the guidance on the fifth criterion is much less detailed and is not given equal relevance compared to the other criteria in the Guidelines. Therefore, the PRC are of the view that the Guidelines would benefit from more specific guidance on the assessment and process to achieve a more harmonised approach across the MS for the purposes of assessing ML/TF risk in proposed acquisitions. Furthermore, an enhanced proactive exchange of information between involved prudential CAs and AML supervisors could achieve a more effective cooperation and assessment of specific cases. In this regard, the upcoming EBA Guidelines on cooperation and information exchange between prudential supervisors, AML/CFT supervisors and financial intelligence units will be an

important tool to be used in the assessment process[13]. The PRC also acknowledges that, as already pointed out by the EBA in the Report on the future AML/CFT framework in the EU, amendments to the Level 1 text are opportune to ensure actual harmonisation of EU law and effectiveness of supervisory practices in the application of the fifth assessment criterion[14]

Q8: Application of GLs – challenges CAs have faced

207. CAs have provided comments and suggestions for clarifications and additional guidance on several aspects.

208. The following elements CAs suggest could be supplemented in the Guidelines:

- Consider difficulty to perform an assessment of incomplete application within 2 working days.
- Provide further guidance, both to CAs and market players, in order to assess when an acquirer can exercise significant influence.
- Further clarify the notion of acting in concert, including application of the principle of proportionality in cases of complex transaction with a large number of applicants.
- Provide more guidance on assessment of special acquirers like private equity funds and complex transactions, including articulation of the principle of proportionality to simplify the process and the assessment, including as regards the assessment of reputation.
- Ask the proposed acquirer for some form of confirmation of the financial information it provides (e.g. audited financial statements).
- Provide further guidance on the objectives and scope of the assessment of the fifth criterion relating to the suspicion of AML/CTF.

Q9 Resources.

209. Overall, it was noted for most CAs, the assessment of acquisitions and increases of qualifying holdings is performed by supervisory staff, liaising with other relevant colleagues, such as on AML within their CA. For some CAs, the assessment is led by their licensing/authorisation/common procedures departments, with support provided predominantly from supervisory colleagues (responsible for the supervision of the target bank).

[13] Consultation Paper on draft Guidelines on cooperation and information exchange between prudential supervisors, AML/CFT supervisors and financial intelligence units under Directive 2013/36/EU, EBA/CP/2021/21 of 27 May 2021, available at https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Consultations/2021/Guidelines%20on%20cooperation%20and%20information%20exchange%20between%20prudential%20supervisors%2C%20AML-CFT%20supervisors%20and%20financial%20intelligence%20units/1012943/Consultation%20Paper%20on%20draft%20AML-CFT%20Cooperation%20Guidelines.pdf

[14] EBA/REP/2020/25, Page 45, recommendations are laid down on three aspects: i) the need to have a common understanding of 'reasonable grounds' to suspect that ML/TF may be committed or that the risk thereof could be increased; ii) on the power to refuse an application; and iii) on the need for flexibility on the time periods to complete the assessment. The Report is available at https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Reports/2020/931093/EBA%20Report%20on%20the%20future%20of%20AML%20CFT%20framework%20in%20the%20EU.pdf

Eurozone CAs cited that they work with the Joint Supervisory Teams of the ECB-SSM when performing their assessments. Further, 1 CA said the assessment was performed by dedicated staff (2 FTEs) within the Authorisations and Advisory function. All CAs informed that their staff performing the assessments of qualifying holdings also performed other tasks for their CA.

210. In most cases, AML expertise is sought for assistance with assessment of the fifth criterion on AML, and in some instances the CAs contact other FIUs/other countries' CAs for AML too.

211. Several CAs cited that their internal assessment is subject to review by heads of function, and 1 CA informed that depending on the prudential and integrity risk scores attributed to the target in question, the application might need to be approved by its executive board.

212. Some CAs, referred to using in addition to the Joint Guidelines, the requirements of their national legislative framework and the ECB Handbook when performing their work. For Eurozone CAs, many welcomed the additional review done together by the ECB SSM and benefited from their specialist knowledge and wider experience in handling such applications, i.e. with regard to assessing applicants' business plans.

213. Due to the limited number of applications many CAs had received, few CAs had available data on the dedicated time it took to assess an application. Of those CAs that provided data, it ranged from 2 months to a year per case, and depending on the size of the credit institution, and the complexity of the acquisition, between 1 and 5 FTE staff worked on each case. Some CAs noted that if they had more resources they could assess applications quicker. Further, many CAs reported that a similar amount of resource is used in pre-notification discussions and assessment with potential applicants.

214. Some CAs charge an application fee to make a Qualifying Holding application, and will not start their assessment of an application until the fee has been received.

Q10 - Application Data:

215. Eight hundred and thirty-nine applications were received by CAs in the reference period for this Peer Review, which provides sufficient evidence to make an assessment by CAs of their application of the Guidelines.

216. It is noted that CAs have objected to few applications, because most CAs practice encouraging pre-application discussions. Some CAs meet potential applicants or potential acquirer's lawyers. Further, many CAs encourage applicants to whom they have raised some concerns with their applications, often due to concerns on origin of funds / financial soundness, to withdraw before the CA proceeds to formally objecting to the application.

Conclusions

217. In light of the above, the EBA PRC takes note of the effective guidance and convergence of supervisory practices in the most critical areas provided by the Guidelines, which are fully or largely applied by almost all CAs across the EU. The scope of the peer review was limited to a selection of topics corresponding to the questions of the SAQ, including the notion of acting in

concert, significant influence, indirect qualifying holdings, assessment of completeness of the notification and time limits, financial soundness, reputation of the acquirer, and selected aspects relating to the fifth assessment criterion on suspicion of money laundering or terrorist financing by the proposed acquirer. However, the PRC takes note that the results are limited to a challenge of the results of the SAQ and not to a full review; furthermore that their review did not cover all areas of the Guidelines, and as such, there may be divergences in the areas of the Guidelines not covered by this peer review.

218. The PRC also observes that some improvements could be introduced to the Guidelines to increase their effectiveness and level the playing field, and suggests that the following could be introduced in the Guidelines:

- Review and enhancement of guidance on the fifth assessment criterion relating to ML/TF risk.

- Additional guidance on the assessment of large and complex acquisitions, including – but not limited to –special acquirers like private equity funds, with multiple direct and indirect acquirers or acquirers acting in concert, in order to achieve a more proportionate and efficient assessment. It is also acknowledged that complex transactions with numerous direct and indirect acquirers raise specific challenges for CAs, in particular as to the compliance with the strict time limit of 2 working days set out in Article 22(2) CRD for the assessment of the completeness of the notification.

- Review of the guidance on the application of the principle of proportionality;

- Review and improvement of the guidance on the list of documents and information to be provided with an application, in order to speed up the pre-application phase, e.g. in respect of the expectations about the content and assessment of the business plan.

Annex

ANNEX 1: Country codes and acronyms of relevant authorities

Country code	Country	Relevant authority
AT	Austria	Finanzmarktaufsicht (Financial Market Authority (FMA), Oesterreichische Nationalbank (OeNB)
BE	Belgium	National Bank of Belgium (NBB)
BG	Bulgaria	Българска народна банка (Bulgarian National Bank)
CY	Cyprus	Κεντρική Τράπεζα της Κύπρου (Central Bank of Cyprus)
CZ	Czech Republic	Ceska Narodni Banka (Czech National Bank (CNB)
DE	Germany	Bundesanstalt für Finanzdienstleistungsaufsicht (Federal Financial Supervisory Authority, BaFin), Deutsche Bundesbank
DK	Denmark	Finanstilsynet (Danish Financial Supervisory Authority (Danish FSA)
ECB-SSM		European Central Bank – Single Supervisory Mechanism
EE	Estonia	Eesti Pank (National Bank of Estonia)
GR	Greece	Τράπεζα της Ελλάδος (Bank of Greece)
ES	Spain	Banco de España (Bank of Spain)
FI	Finland	Finanssivalvonta (Finnish Financial Supervisory Authority)
FR	France	Autorité de Contrôle Prudentiel et de Résolution (Prudential Supervisory & Resolution Authority (ACPR)
GR	Greece	Τράπεζα της Ελλάδος (Bank of Greece)
HR	Croatia	Hrvatska Narodna Banka (Croatian National Bank)
HU	Hungary	Magyar Nemzeti Bank (National Bank of Hungary)
IE	Ireland	Central Bank of Ireland
IT	Italy	Banca d'Italia (Bank of Italy)
IS	Iceland	Fjármálaeftirlitið (Icelandic Financial Supervisory Authority (FME)
LI	Liechtenstein	Finanzmarktaufsicht – FMA (Financial Market Authority)
LT	Lithuania	Lietuvos Bankas (Bank of Lithuania)
LU	Luxembourg	Commission de Surveillance du Secteur Financier (Commission for the Supervision of the Financial Sector (CSSF)
LV	Latvia	Finansu un Kapitala Tirgus Komisija (Financial and Capital Market Commission)
MT	Malta	Malta Financial Services Authority
NL	Netherlands	De Nederlandsche Bank (Dutch Central Bank (DNB)
NO	Norway	Finanstilsynet (Norwegian Financial Supervisory Authority)
PL	Poland	Komisja Nadzoru Finansowego (Polish Financial Supervision Authority (KNF))
PT	Portugal	Banco de Portugal (Bank of Portugal)
RO	Romania	Banca Naţională a României (National Bank of Romania) Autoritatea de Supraveghere Financiara (Financial Supervisory Authority)
SE	Sweden	Finansinspektionen (Swedish Financial Supervisory Authority)
SI	Slovenia	Banka Slovenije (Bank of Slovenia)
SK	Slovakia	Narodna Banka Slovenska (National Bank of Slovakia)

ANNEX 2: Questions of the Self-Assessment Questionnaire

	Acting in Concert	Benchmark
Q1.1	Do you assess whether the acquisition of, or an increase in qualifying holding, is the result of acting in concert? (Yes/No)	**Fully Applied**: Answers to (1.1), (1.4) and (1.5) are 'Yes'. **Largely Applied** Answer to (1.1) is 'Yes' and either two of any of the responses to (1.2), (1.4.), (1.5) are 'Yes' *or* either (1.4) or (1.5) are 'Yes', and (1.2) is 'No' but comment is referenced to Para 4.6(b)(3) of the GLs. **Partially Applied** Answer to (1.1) is 'Yes' and one of the responses to (1.2), (1.4), (1.5) is 'Yes', *or* (1.2) is 'No' but comment is referenced to Para 4.6(b)(3) of the GLs. **Not Applied** Answer to (1.1) is 'No'. (*Answer to Q1.3 is not benchmarked*)
Q1.2	Do you apply the notion of 'acting in concert' to entities that belong to the same group (with the exception of those situations specified under paragraph 4.6 (b)(3) of the Guidelines), where the target undertaking does not belong to the group? (Yes/No) [comment box]	
Q1.3	If you answered 'yes' to question 1.2, please provide details as to how you assess group entities acting in concert, in particular any case where you deem that the notion of acting in concert does not apply to entities belonging to the same group.	
Q1.4	Do you apply the notion of acting in concert in cases where one of the involved parties owns or intends to acquire capital qualifying holding without voting rights? (Yes/No)[comment box]	
Q1.5	Do you apply the notion of acting in concert to the situation where existing shareholders of the target agree to vote jointly in the upcoming general assembly for the appointment of members of the management body, and such shareholder agreement gives rise to a qualifying holding? (Please note that such shareholder agreement among existing shareholders is not in connection with any transaction to acquire or increase qualifying holdings) (Yes/No)[comment box]	
	Significant Influence	Benchmark
Q2.1	Do you apply the provisions laid down in Section 5 of the Guidelines to assess whether the holding would enable the proposed acquirer to exercise a significant influence over the management of the target undertaking? Y/N plus comment box	**Fully Applied** Answers to (2.1) and (2.2) are 'Yes'. **Largely Applied** Answers to (2.1) and (2.2) are 'Yes' but depending on specific issues indicated in comments it is not 'Fully applied'. **Partially Applied** Answer to (1.1) is 'Yes' and to (2.2) is 'No' **Not Applied** Answers to (2.1) and (2.2) are 'No'.
Q2.2	Do you apply the provisions laid down in Section 5 to assess whether the holding would enable the proposed acquirer to exercise a significant influence over the management of the target undertaking, also in the cases when a significant influence will ***not*** be exercised? Y/N plus comment box	

Indirect acquisitions of qualifying holdings		Benchmark
Q3.1	Do you assess indirect acquisitions of qualifying holdings under Section 6, by application of the control criterion? (Yes/ No)	**Fully Applied** Answers to (3.1) and (3.2) are 'Yes' and answer to (3.3) is 'Always apply both criteria'. **Largely Applied** Answers to (3.1) and (3.2) are 'Yes' and answer to (3.3) is 'Not in all cases'. **Partially Applied** Answer to (3.1) is 'Yes' and to (3.2) is 'No'. **Not Applied** Answers to (3.1) is 'No'. *[Q3.4 and Q3.5 are not benchmarked]*
Q3.2	The multiplication criterion (paragraph 6.6 of the GL) applies where the application of the control criterion does not determine that a qualifying holding was acquired indirectly by the person to which the control criterion is applied. Do you apply the multiplication criterion supplementary to the application of the control criterion to identify the indirect acquirer? (Yes/No)	
Q3.3	If you answered 'Yes' to question 3.2 do you: (a) always apply both criteria or (b)Not in all cases, and if so, please explain the relevant situations, e.g. in a group structure the multiplication criterion is not applied to all ramifications of the corporate chain: [comment box]	
Q3.4	Have you ever opposed the proposed acquisition on grounds that the indirect proposed acquirer identified by the multiplication criterion did not meet any of the five assessment criteria? (Yes/No)[comment box]	
Q3.5	If you answered 'Yes' to question 3.4, please explain the advantages of the application of the multiplication criterion [comment box]	
Notification and assessment of proposed acquisition		Benchmark
Q4.1	Acquirers are encouraged to engage in pre-notification contacts with the target supervisor for significant or complex transactions. Pre-notification contacts should focus on the information required by the target supervisor to start its assessment, noting that drafting of the application remains the sole responsibility of the proposed acquirer. Do you encourage engaging in pre-notification contacts? (Yes, always Yes, but only in specific cases, No)	**Fully Applied** Answers to (4.3), (4.4), (4.6) and (4.7) are 'Yes'. **Largely Applied** Answer to (4.3) is 'Yes' and one of any of the answers to (4.4), (4.6) or (4.7) is 'No'. **Partially Applied** Answer to (4.3) is 'Yes' and two of any of the answers to (4.4), (4.6) or (4.7) is 'No'. **Not Applied** Answer to (4.3) is 'No'. *[Q4.1 and 4.2 are not benchmarked]*
Q4.2	If you answered 'Yes, but only in specific cases' to question 4.1, please explain: [comment box]	
Q4.3	The acknowledgement of receipt is a procedural step and it is distinct from the substantive review by the target supervisor of the information provided with the notification. The acknowledgement relates to the formal completeness of the notification with the effect of starting the 60-working-day period for the prudential assessment. Do you provide acknowledgement of receipt of a notification within 2 working days upon checking its formal completeness? (Yes / No) [comment box]	
Q4.4	In case, upon checking its formal completeness, the notification results incomplete, do you indicate the missing information in either the acknowledgement of receipt or in a separate letter within a reasonable time? (Yes/No)	

Q4.5	If you send a separate letter, how many days from the acknowledgement of receipt of the incomplete notification do you send such a letter? Drop down box: 0-5 working days; 6-10 working days; 11-15 working days or 16 working days of longer.	
Q4.6	Where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target undertaking of 20% to 50% do you check whether a strategic development plan, as per Section 10, 11, 12.2 of Annex 1,is included in the notification? (Yes/No)[comment box]	
Q4.7	Where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target undertaking of 50% or more, or where the target undertaking becomes a subsidiary of the proposed acquirer, do you check whether a business plan as per Section 12 of Annex 1 is included? (Yes/No)	
	First assessment criterion -- Reputation of the proposed acquirer	Benchmark
Q5.1	Do you always assess the integrity of the ultimate beneficial owner of the proposed acquirer? (Yes/No)	**Fully Applied** Answers to (5.1), (5.2), (5.4) and (5.6) are 'Yes' **Largely Applied** Answers to (5.1) and (5.6) are 'Yes' and one of the answers (5.2) or (5.4) is 'Yes'; and depending on types of situations described in answers to (5.3), (5.5) and (5.7). **Partially Applied:** Answer to (5.1) and (5.6) are 'Yes' and both (5.2) and (5.4) are 'No'; and depending on type of situation described in (5.3), (5.5) and (5.7). **Not Applied** Neither answer (5.1) nor (5.6) is 'Yes'.
Q5.2	Do you always require official certificates issued by a public authority (if and to the extent it is available in the MS or in the third country) to assess criminal records? (Yes/No)	
Q5.3	Please explain the circumstances where you check alternative sources to assess criminal records. [*comment box*]	
Q5.4	Do you assess the collective material impact (if any) of more minor incidents? (Yes/No)	
Q5.5	Please illustrate what evidence you have used to demonstrate that the proposed acquirer lacks integrity [COMMENT Box]	
Q5.6	Do you assess professional competence?(Yes/No)	
Q5.7	If you answered 'Yes' to question 5.6,, please describe what sources you have used to assess that the proposed acquirer lacks professional competence and in which situations [Comment box]	

	Third assessment criterion – Financial soundness of the proposed acquirer	Benchmark
Q6.1	Do you assess the financial soundness of the proposed acquirer? (Yes /No)	**Fully Applied** Answers to (6.1) and (6.2) are 'Yes' and to (6.3) is 'Yes, always'. **Fully Applied** Answers to (6.1) and (6.2) are 'Yes' and to (6.3) is 'Yes, but not in all cases'.
Q6.2	If you answered 'Yes' to question 6.1, do you oppose the acquisition if, based on the analysis of the information received, you conclude that the proposed acquirer is likely to face financial difficulties during the acquisition process or in the foreseeable future? (To answer this question, please note that if you impose ancillary conditions to the acquisition in	

	order to get it approved, it means that you concluded that the proposed acquirer in your judgement will not face financial difficulties). (Yes/No)	**Partially Applied** Answers to (6.1) and (6.2) are 'Yes' and to (6.3) is 'No, the financial soundness is always assessed in the same manner'. **Not Applied** Answer to (6.1) is 'No'. [*Q6.4 and 6.5 are not benchmarked]*
Q6.3	If you answered 'Yes' to question 6.2, do you calibrate the intensity of the assessment of the financial soundness in relation to the magnitude of the likely influence of the proposed acquirer on the target undertaking? Drop down box: • Yes always. • Yes, but not in all cases. • No, the financial soundness is always assessed in the same manner. If you answered 'Yes, but not in all cases', please explain [comment box]	
Q6.4	Do you request specific (financial) commitments from the proposed acquirer where the acquisition results in the control of the target undertaking or the target becoming a subsidiary? (Yes/No)	
Q6.5	If you answered 'Yes' to question 6.4, please explain what evidence you are satisfied would demonstrate the proposed acquirer's willingness to provide additional own funds [comment box]	
Fifth assessment criterion – Suspicion of money laundering or terrorist financing by the proposed acquirer		Benchmark
Q7.1.1	Do you always assess ML/TF risk when assessing a proposed acquisition? (Yes/ No)	**Fully applied:** Answers to (7.1.1), (7.1.2), (7.1.4), (7.1.5) and (7.1.6) are 'Yes'. **Largely applied:** Answer to (7.1.1) is 'Yes' and (6.2) are 'Yes' and one of any of the responses to (7.1.4), (7.1.5) or (7.1.6) is 'No'. If answer to (7.1.2) is 'No' then consideration given to criteria explained. **Partially applied:** Answer to (7.1.1) is 'Yes' and to (7.1.5) and (7.1.6) is 'No. If answer to (7.1.2) is 'No' then consideration given to criteria explained. **Not applied:** Answer to (7.1.1) is 'No'. [*Q7.1(iii) is not benchmarked]*
Q7.1.2	Do you always assess the ML/TF risk associated with persons with close personal or business links to the proposed acquirer, including the legal and beneficial owners of the proposed acquirer? (Yes/No)	
Q7.1.3	If you do not always assess the persons referred to in to in question 7.1.2, please set out the criteria you use when deciding whether or not to assess ML/TF risk [comment box] NA	
Q7.1.4	Can you oppose the proposed acquirer solely on ML/TF risk grounds where there are no criminal records? (Yes/No)	
Q7.1.5	If you answered 'Yes' to 7.1.4, can you oppose the proposed acquisition if you have 'reasonable grounds' to suspect that ML/TF is being committed or attempted? (Yes/No)	
Q7.1.6	If you answered 'Yes' to 7.1.4, can you oppose the proposed acquisition if you have reasonable grounds to suspect that the context of the acquisition would give rise to an increased risk of ML/TF? (Yes/No)	
Q7.2.1	Do you assess the information about the source of the funds that will be used to finance the proposed acquisition from a ML/TF perspective? (Yes/No)	**Fully applied:** Answer is 'Yes' to all (7.2.1), (7.2.2), (7.2.3), 7.2.4) and (7.2.5). **Largely applied:** Answers to (7.2.1), (7.2.2), (7.2.4) and
Q7.2.2	If you answered 'Yes' to 7.2.1, do you assess that the funds are channelled through chains of financial institutions? (Yes/No)	

Q7.2.3	If you answered 'Yes' to 7.2.1 and 7.2.2, do you assess that all financial institutions through which funds were channelled are subject to effective AML/CFT supervision by AML/CFT supervisors in EU and non-EU equivalent jurisdictions? Yes	(7.2.5) is 'Yes' and to (7.2.3) is 'No'. **Partially applied:** Answer to (7.2.1) is 'Yes' and to (7.2.2) is 'No', *and* one of (7.2.4) or (7.2.5) is 'Yes'; (7.2.3) is 'Yes' or 'No'. **Not applied:** Answer to (7.2.1) is 'No' and neither of (7.2.4) or (7.2.5) is 'Yes'.
Q7.2.4	If you answered 'Yes' to question 7.2.1, do you assess the activity that generated the funds, including its credibility and consistency with the business activity of the proposed acquirer? (Yes/No). Please describe your answer to 7.2.4: [comment box]	
Q7.2.5	Do you <u>always</u> assess that there is an 'uninterrupted paper trail' between the funds to be used for the proposed acquisition and the activity that generated the funds? (Yes/No) If you answered 'Yes', please describe the evidence you seek about the sources of funds [comment box]	
Application of Guidelines (Optional question)		
Q8.1	(***Optional***) What are the challenges that your Competent Authority has faced when applying these Guidelines (including the feedback that you may have received from the industry, if any)?	NOT BENCHMARKED
Question on resources		
Q9.1	Please provide a description of **resources** and **time** e.g. average man-days per calendar year devoted in your competent authority (CA) to the prudential assessment of acquisitions and increases of qualifying holdings and whether it is performed in a 'stand alone' area/unit/department or by cooperation of staff in different areas/units/departments.	NOT BENCHMARKED
Q9.2	How many staff (Total FTEs, approximately) are in your CA?	
Q9.2a	Out of these how many (FTE equivalent) are responsible for the prudential assessment of acquisitions and increases in qualifying holdings? If you do not have staff dedicated only to this, please describe briefly how it is approximately allocated (for example, 3 persons in [different] units are each allocated 25% of their time to this task).	
Q9.2b	Please provide a brief description of their roles/remit/allocation of tasks	
Q9.2c	Please provide a brief description of their AML expertise/ training, and/or cooperation with involved other AML competent authorities	

Question on applications received (Quantitative)		
Q10.1	Please provide the **total number of *complete* applications *received*** regarding the prudential assessment of acquisitions and increases in qualifying holdings, made **in the period under review (01/01/2019-31/12/2020)**. Please include all cases, completed and ongoing assessments and specify it in the comment box). (Insert number. If the data is not available, please insert 0 and indicate 'not available' in the comment box below.)	NOT BENCHMARKED
Q10.1.1	Of these applications, please provide the **total number** of applications **opposed** (Insert number. If the data is not available, please insert 0 and indicate 'not available' in the comment box below.)	
Q10.1.1.1	If any were opposed, please specify how many of them were opposed due to the following: i) First assessment criterion – **reputation of the proposed acquirer** *(Insert number)* Please indicate how many were opposed solely due to this criterion and add comments (if any) ii) Second assessment criterion – **reputation and experience of those who will direct the business of the target undertaking** *(Insert number)* Please indicate how many were opposed solely due to this criterion and add comments (if any) iii) Third assessment criterion – **financial soundness of the proposed acquirer** (*Insert number*) Please indicate how many were opposed solely due to this criterion and add comments (if any) iv) Fourth assessment criterion – **compliance with prudential requirements of the target undertaking** *(Insert number)* Please indicate how many were opposed solely due to this criterion and add comments (if any) v) Fifth assessment criterion – **suspicion of money laundering or terrorist financing by the proposed acquirer** *(Insert number)* Please indicate how many were opposed solely due to this criterion and add comments (if any) vi) Lack of information in the **notification** *(Insert number)[Comments if any]*	
Q10.1.2	Of these applications, please provide the **total number** of applications **withdrawn** by the proposed acquirer	

	(Insert number. If the data is not available, please insert 0 and indicate 'not available' in the comment box below.)[Comments if any]	
Q10.1.3	Of these applications, please provide the **total number** of applications that were **related to an assessment of acting in concert**. *(Insert number. If the data is not available, please insert 0 and indicate 'not available' in the comment box below.)[Comments if any]*	
Q10.1.4	Of these applications, please provide the **total number** of applications that were **related to an assessment of significant influence**. (Insert number. If the data is not available, please insert 0 and indicate 'not available' in the comment box below.)[Comments if any]	
Q10.1.5	Of these applications, please provide the **total number** of applications that were **related to an assessment of involuntary acquisition** (Insert number. If the data is not available, please insert 0 and indicate 'not available' in the comment box below.)[Comments if any]	
Q10.1.6	Of these applications, please provide the **total number of applications by state owned entities (please specify EU and extra-EU state owned entities)** (Insert number. If the data is not available, please insert 0 and indicate 'not available' in the comment box below.)[Comments if any]	
Q10.1.7	Of these applications, please provide the **total number of applications relating to intra-group proposed acquisitions** (Insert number. If the data is not available, please insert 0 and indicate 'not available' in the comment box below.)[Comments if any]	
Q10.1.8	Of these applications, please provide the **total number** of applications **from proposed acquirers from outside the EU** (Insert number. If the data is not available, please insert 0 and indicate 'not available' in the comment box below.)	
Q10.1.9	Of these applications regarding the prudential assessment of acquisitions and increases in qualifying holdings, involving **multi-jurisdictional acquisitions** of a group, where the group has subsidiaries in different Member States, please indicate any instances where the **assessments by the involved target supervisors reached different conclusions** on the proposed acquirer. Also, please indicate whether this had an impact on the overall multi-jurisdictional acquisition. • *Different conclusions were reached , and had an impact on the overall multi-jurisdictional acquisition [Comment box]* • *Different conclusions were reached , but no impact on the overall multi-jurisdictional acquisition [Comment box]* • *Similar conclusions reached* • *Not/applicable*	

Q10.1.10	Of these applications, please provide the **total number** of applications **for the proposed acquisition of the control of the target.** **(Insert number. If the data is not available, please insert 0 and indicate 'not available' in the comment box below.)** *If so*, please describe and also provide reasoning:	
(A)	How many concerned the acquisition of 50% (or more) of the target undertaking:	
(B)	How many concerned the target becoming the subsidiary	
(C)	How many were domestic/cross border:	
(D)	Any other comments	
Q10.1.11	Out of these applications, please provide the **total number** of **applications approved with ancillary provisions**. (Insert number. If the data is not available, please insert 0 and indicate 'not available' in the comment box below.)[Comments, if any]	

ANNEX 3: Joint ESA Guidelines (JC/GL/2016/01)

The Joint ESA Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector (JC/GL/2016/01) can be retrieved through the link below:

https://esas-joint-committee.europa.eu/Publications/Guidelines/JC_QH_GLs_EN.pdf

ANNEX 4: Compliance Table of the Joint ESA Guidelines (JC/GL/2016/01)

On 24 September2020, the ESAs published the compliance table for the Joint ESA Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector (JC/GL/2016/01), showing CAs intention to comply with the GLs. This Compliance Table can be retrieved through the following link below https://esas-joint-committee.europa.eu/Publications/jc-gl-2017-27-qualifying-holdings-guidelines-compliance-table.pdf

ANNEX 5: Capital Requirements Directive: Chapter 2 - Qualifying holding in a credit institution

Article 22: Notification and assessment of proposed acquisitions

1. Member States shall require any natural or legal person or such persons acting in concert (the "proposed acquirer"), who have taken a decision either to acquire, directly or indirectly, a qualifying holding in a credit institution or to further increase, directly or indirectly, such a qualifying holding in a credit institution as a result of which the proportion of the voting rights or of the capital held would reach or exceed 20 %, 30 % or 50 % or so that the credit institution would become its subsidiary (the "proposed acquisition"), to notify the competent authorities of the credit institution in which they are seeking to acquire or increase a qualifying holding in writing in advance of the acquisition, indicating the size of the intended holding and the relevant information, as specified in accordance with Article 23(4). Member States shall not be required to apply the 30 % threshold where, in accordance with Article 9(3)(a) of Directive 2004/109/EC, they apply a threshold of one-third.

2. The competent authorities shall acknowledge receipt of notification under paragraph 1 or of further information under paragraph 3 promptly and in any event within two working days following receipt in writing to the proposed acquirer.

   The competent authorities shall have a maximum of 60 working days as from the date of the written acknowledgement of receipt of the notification and all documents required by the Member State to be attached to the notification on the basis of the list referred to in Article 23(4) (the "assessment period"), to carry out the assessment provided for in Article 23(1) (the "assessment").

   The competent authorities shall inform the proposed acquirer of the date of the expiry of the assessment period at the time of acknowledging receipt.

3. The competent authorities may, during the assessment period if necessary, and no later than on the 50th working day of the assessment period, request further information that is necessary to complete the assessment. Such a request shall be made in writing and shall specify the additional information needed.

   For the period between the date of request for information by the competent authorities and the receipt of a response thereto by the proposed acquirer, the assessment period shall be suspended. The suspension shall not exceed 20 working days. Any further requests by the competent authorities for completion or clarification of the information shall be at their discretion but shall not result in a suspension of the assessment period.

4. The competent authorities may extend the suspension referred to in the second subparagraph of paragraph 3 up to 30 working days if the proposed acquirer is situated or regulated in a third country or is a natural or legal person not subject to supervision under this Directive or under Directive 2009/65/EC, 2009/138/EC, or 2004/39/EC.

5. If the competent authorities decide to oppose the proposed acquisition, they shall, within two working days of completion of the assessment, and not exceeding the assessment period, inform the proposed acquirer in writing, providing the reasons. Subject to national law, an appropriate statement of the reasons for the decision may be made accessible to the public at the request of the proposed acquirer. This shall not prevent a Member State from allowing the competent authority to publish such information in the absence of a request by the proposed acquirer.

6. If the competent authorities do not oppose the proposed acquisition within the assessment period in writing, it shall be deemed to be approved.

7. The competent authorities may fix a maximum period for concluding the proposed acquisition and extend it where appropriate.

8. Member States shall not impose requirements for notification to, or approval by, the competent authorities of direct or indirect acquisitions of voting rights or capital that are more stringent than those set out in this Directive.

9. EBA shall develop draft implementing technical standards to establish common procedures, forms and templates for the consultation process between the relevant competent authorities as referred to in Article 24.

   EBA shall submit those draft implementing technical standards to the Commission by 31 December 2015.

   Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

Article 23: Assessment criteria

1. In assessing the notification provided for in Article 22(1) and the information referred to in Article 22(3), the competent authorities shall, in order to ensure the sound and prudent management of the credit institution in which an acquisition is proposed, and having regard to the likely influence of the proposed acquirer on that credit institution, assess the suitability of the proposed acquirer and the financial soundness of the proposed acquisition in accordance with the following criteria:

   (a) the reputation of the proposed acquirer;

   (b) the reputation, knowledge, skills and experience, as set out in Article 91(1), of any member of the management body who will direct the business of the credit institution as a result of the proposed acquisition;

   (c) the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the credit institution in which the acquisition is proposed;

(d) whether the credit institution will be able to comply and continue to comply with the prudential requirements based on this Directive and Regulation (EU) No 575/2013, and where applicable, other Union law, in particular Directives 2002/87/EC and 2009/110/EC, including whether the group of which it will become a part has a structure that makes it possible to exercise effective supervision, effectively exchange information among the competent authorities and determine the allocation of responsibilities among the competent authorities;

(e) 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 of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (1) is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

2. The competent authorities may oppose the proposed acquisition only if there are reasonable grounds for doing so on the basis of the criteria set out in paragraph 1 or if the information provided by the proposed acquirer is incomplete.

3. Member States shall neither impose any prior conditions in respect of the level of holding that must be acquired nor allow their competent authorities to examine the proposed acquisition in terms of the economic needs of the market.

4. Member States shall publish a list specifying the information that is necessary to carry out the assessment and that must be provided to the competent authorities at the time of notification referred to in Article 22(1). The information required shall be proportionate and adapted to the nature of the proposed acquirer and the proposed acquisition. Member States shall not require information that is not relevant for a prudential assessment.

5. Notwithstanding Article 22(2), (3) and (4), where two or more proposals to acquire or increase qualifying holdings in the same credit institution have been notified to the competent authority, the latter shall treat the proposed acquirers in a non-discriminatory manner.

Article 24: Cooperation between competent authorities

1. The relevant competent authorities shall fully consult each other when carrying out the assessment if the proposed acquirer is one of the following:

(a) a credit institution, insurance undertaking, reinsurance undertaking, investment firm, or a management company within the meaning of Article 2(1)(b) of Directive 2009/65/EC ("UCITS management company") authorised in another Member State or in a sector other than that in which the acquisition is proposed;

(b) the parent undertaking of a credit institution, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed;

(c) a natural or legal person controlling a credit institution, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed.

1. The competent authorities shall, without undue delay, provide each other with any information which is essential or relevant for the assessment. In that regard, the competent authorities shall communicate to each other upon request all relevant information and shall communicate on their own initiative all essential information. A decision by the competent authority that has authorised the credit institution in which the acquisition is proposed shall indicate any views or reservations expressed by the competent authority responsible for the proposed acquirer.

Article 25: Notification in the case of a divestiture

Member States shall require any natural or legal person who has taken a decision to dispose, directly or indirectly, of a qualifying holding in a credit institution to notify the competent authorities in writing in advance of the divestiture, indicating the size of the holding concerned. Such a person shall also notify the competent authorities if it has taken a decision to reduce its qualifying holding so that the proportion of the voting rights or of the capital held would fall below 20 %, 30 % or 50 % or so that the credit institution would cease to be its subsidiary. Member States shall not be required to apply the 30 % threshold where, in accordance with Article 9(3)(a) of Directive 2004/109/EC, they apply a threshold of one-third.

Article 26: Information obligations and penalties

1. Credit institutions shall, on becoming aware of any acquisitions or disposals of holdings in their capital that cause holdings to exceed or fall below one of the thresholds referred to in Article 22(1) and Article 25, inform the competent authorities of those acquisitions or disposals.

Credit institutions admitted to trading on a regulated market shall, at least annually, inform the competent authorities of the names of share- holders and members possessing qualifying holdings and the sizes of such holdings as shown, for example, by the information received at the annual general meetings of shareholders and members or as a result of compliance with the regulations relating to companies admitted to trading on a regulated market.

2. Member States shall require that, where the influence exercised by the persons referred to in Article 22(1) is likely to operate to the detriment of the prudent and sound management of the institution, the competent authorities shall take appropriate measures to put an end to that situation. Such measures may consist in injunctions, penalties, subject to Articles 65 to 72, against members of the management body and managers, or the suspension of the exercise of the voting rights attached to the shares held by the shareholders or members of the credit institution in question.

Similar measures shall apply to natural or legal persons who fail to comply with the obligation to provide prior information as set out in Article 22(1) and subject to Articles 65 to 72.

If a holding is acquired despite opposition by the competent authorities, Member States shall, regardless of any other penalty to be adopted, provide either for exercise of the corresponding voting rights to be suspended, or for the nullity of votes cast or for the possibility of their annulment.

Article 27: Criteria for qualifying holdings

In determining whether the criteria for a qualifying holding as referred to in Articles 22, 25 and 26 are fulfilled, the voting rights referred to in Articles 9, 10 and 11 of Directive 2004/109/EC and the conditions regarding aggregation thereof set out in Article 12(4) and (5) of that Directive, shall be taken into account.

In determining whether the criteria for a qualifying holding as referred to in Article 26 are fulfilled, Member States shall not take into account voting rights or shares which institutions may hold as a result of providing the underwriting of financial instruments or placing of financial instruments on a firm commitment basis included under point 6 of Section A of Annex I to Directive 2004/39/EC, provided that those rights are not exercised or otherwise used to intervene in the management of the issuer and are disposed of within one year of acquisition.

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