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## COVER NOTE

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	11 July 2017
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	C(2017) 4644 final
Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 11.7.2017 supplementing Directives 2004/39/EC and 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for an exhaustive list of information to be included by proposed acquirers in the notification of a proposed acquisition of a qualifying holding in an investment firm

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Delegations will find attached document C(2017) 4644 final.

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Encl.: C(2017) 4644 final

Brussels, 11.7.2017  
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**COMMISSION DELEGATED REGULATION (EU) .../...**

**of 11.7.2017**

**supplementing Directives 2004/39/EC and 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for an exhaustive list of information to be included by proposed acquirers in the notification of a proposed acquisition of a qualifying holding in an investment firm**

(Text with EEA relevance)

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE DELEGATED ACT**

Article 10b(4) of the Markets in Financial Instruments Directive 2004/39/EC (MiFID)<sup>1</sup> requires Member States to make publicly available the list specifying the information necessary to carry out the assessment by the competent authorities of a proposed acquirer of an investment firm. This information must be provided by the proposed acquirer at the time of the initial notification and is aimed at ensuring that competent authorities are provided with adequate and proportionate information in order to assess the acquisition.

Article 10a(8) requires ESMA to develop draft regulatory technical standards (RTS) to establish an exhaustive list of information referred to in Article 10b(4). Article 10a(8) of MiFID provides that ESMA shall submit those draft regulatory technical standards to the Commission by 1 January 2014. Those draft regulatory technical standards had been submitted to the European Commission on 18 December 2013.

In accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 (the ESMA Regulation), the Commission shall decide within three months of receipt of the draft standards whether to endorse the drafts submitted. The Commission may also endorse the draft standards in part only, or with amendments, where the Union's interests so require, having regard to the specific procedure laid down in those Articles.

However, at the beginning of the process both ESMA and the Commission noticed that a mistake had occurred when the Omnibus I Directive 2010/78/EU amended MiFID and Article 10a (8) of MiFID mistakenly referred to paragraph 4 of Article 10a of MiFID, instead of paragraph 4 of Article 10b. Therefore, pending the adoption by the European Parliament and the Council of the corrigendum of MiFID providing the correct legal basis, the Commission was not in a position to act within the period of three months laid down in Article 10(1) of the ESMA Regulation.

The Corrigendum was adopted and published in the Official Journal of the European Union on 22 February 2014<sup>2</sup>.

Furthermore, Directive 2014/65/EU (MiFID II) and Regulation (EU) No 600/2014 (MiFIR) were published in the Official Journal on 12 June 2014 and entered into force on the twentieth day following their publication. MiFID II, as amended by Directive (EU) 2016/1034<sup>3</sup>, repeals MiFID with effect from 3 January 2018. Article 12(8) of MiFID II contains an empowerment for ESMA to develop regulatory technical standards which are identical, including the deadline for submission by ESMA (1 January 2014), to the one provided for under Article 10a(8) of MiFID. The content of Article 10b(4) of MiFID is also identical to the content of Article 13(4) of MiFID II. The draft technical standards are applicable for the purposes of MiFID II, without the need for further amendments.

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

<sup>2</sup> OJ L 54, 22.2.2014, p. 23

<sup>3</sup> OJ L 175, 30.6.2016, p.8

## **2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT**

In accordance with the third subparagraph of Article 10(1) of the ESMA Regulation, ESMA has carried out a two-months public consultation on the draft regulatory technical standards to be submitted to the Commission in accordance with Article 10a(8) of MiFID 8 July 2013, [http://www.esma.europa.eu/system/files/2013-](http://www.esma.europa.eu/system/files/2013-918_cp_draft_rts_information_reqs_assessment_acquisitions_20130708.pdf)

918\_cp\_draft\_rts\_information\_reqs\_assessment\_acquisitions\_20130708.pdf<sup>4</sup>. The consultation paper included a draft RTS as well as an initial cost-benefit analysis. ESMA received four responses, all of which have been published on ESMA's website.

In addition to this, ESMA sought the views of the Securities and Markets Stakeholder Group (SMSG) set up in accordance with Article 37 of the ESMA Regulation. The SMSG chose not to provide advice on this issue due to the technical nature of the draft RTS.

The ESMA's final report provided an analysis of the responses to the consultation, described any material changes to the technical proposals set out in consultation paper (or confirmed that there have been no material changes), and explained the reasons for this in the light of feedback received.

## **3. LEGAL ELEMENTS OF THE DELEGATED ACT**

The draft regulatory technical standards comprise clearly specified criteria for the prudential assessment which shall be applied consistently across Member States

Article 1 defines the subject matter of the delegated act.

Articles 2 to 12 detail the information to be provided by the proposed acquirer to the competent authority of the target entity, varying in accordance with the nature of the acquirer (legal person, natural person or trust) and the proposed acquisition.

Article 13 sets out the reduced information requirements.

Article 14 provides that the Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal.

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<sup>4</sup>

ESMA/2013/918, 23.3.2015.

# COMMISSION DELEGATED REGULATION (EU) .../...

of 11.7.2017

**supplementing Directives 2004/39/EC and 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for an exhaustive list of information to be included by proposed acquirers in the notification of a proposed acquisition of a qualifying holding in an investment firm**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC<sup>5</sup>, and in particular the third subparagraph of Article 10a(8) thereof,

Having regard to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU<sup>6</sup>, and in particular Article 12(8) thereof,

Whereas:

- (1) An exhaustive list of information should be required from a proposed acquirer of a qualifying holding in an investment firm at the time of the initial notification to enable competent authorities to carry out the assessment of the proposed acquisition. Information on the identity of the proposed acquirer and of the persons who will direct the business should be provided by the proposed acquirer irrespective of whether it is a natural or a legal person, in order to enable the competent authority of the target entity to assess the reputation of that proposed acquirer.
- (2) Information on the identity of the beneficial owners and on the reputation and experience of the persons who effectively direct the business of the proposed acquirer is also necessary where the proposed acquirer is a legal person. Similarly, where the proposed acquirer is or is intended to be a trust structure, it is necessary for the competent authority of the target entity to obtain information on both the identity of the trustees who will manage the assets of the trust, and the identity of the beneficial owners of those assets to be able to assess the reputation and experience of these persons.

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<sup>5</sup> OJ L 145, 30.4.2004, p. 1

<sup>6</sup> OJ L 173, 12.6.2014, p. 349

- (3) Where the proposed acquirer is a natural person, it is necessary to obtain information both in relation to the proposed acquirer and in relation to any undertaking formally directed or controlled by the proposed acquirer in order to provide the competent authority of the target entity with full information relevant to the assessment of reputation. Where the proposed acquirer is a legal person it is necessary to obtain this information in relation to any person who effectively directs the business of the proposed acquirer, any undertaking under the proposed acquirer's control, and any shareholder exerting significant influence on the proposed acquirer in order to provide the competent authority with full information relevant to the assessment of reputation.
- (4) The information relevant to the assessment of reputation should include details of criminal proceedings, historical or on-going, as well as civil or administrative cases. Similarly, information should be provided in relation to all open investigations and proceedings, sanctions or other enforcement decisions against the proposed acquirer, as well as other information such as refusal of registration or dismissal from employment or a position of trust which is deemed relevant in order to assess the reputation of the proposed acquirer.
- (5) Information on whether an assessment of reputation as an acquirer, or as a person who directs the business of a credit institution, assurance, insurance or re-insurance undertaking, investment firm or any other entity has already been conducted by another competent authority or other authority and, if so, the outcome of such assessment, should be provided by the proposed acquirer in order to ensure that the outcome of investigations run by other authorities are duly considered by the competent authority of the target entity when assessing the proposed acquirer.
- (6) Financial information concerning the proposed acquirer should be provided in order to assess the financial soundness of that proposed acquirer.
- (7) Information on the financial and non-financial interests or relationships of the proposed acquirer with any shareholders or directors or members of senior management of the target entity or person entitled to exercise voting rights in the target entity, or with the target entity itself or its group, should be provided in order to allow the competent authority of the target entity to assess whether the existence of any potential conflict of interests will not affect the financial soundness of the proposed acquirer.
- (8) Certain additional information, including information on the shareholding owned or contemplated to be owned before and after the proposed acquisition, is necessary when the proposed acquirer is a legal person in order to allow the competent authority of the target entity to complete the assessment of the proposed acquisition as in such cases the legal and group structures involved may be complex and may necessitate detailed review in relation to reputation, close links, a potential action in concert with other parties, and the ability of the competent authority of the target entity to continue effective supervision of the target entity.
- (9) Where the proposed acquirer is an entity established in a third country or is part of a group established outside the Union, additional information should be provided so that the competent authority of the target entity can assess whether there are obstacles to the effective supervision of the target entity posed by the legal regime of the third country, and can also ascertain the proposed acquirer's reputation in that third country.

- (10) Where the proposed acquirer is a sovereign wealth fund, information should be provided by the proposed acquirer to ascertain the controllers of the fund and its investment policy. This is relevant for the competent authority of the target entity both for the assessment of reputation and for assessing whether there is any impact on the effective supervision of the target entity.
- (11) Specific information enabling an assessment as to whether the proposed acquisition will impact on the ability of the competent authority of the target entity to carry out effective supervision of the target entity should be required. This should include an assessment of whether the close links of the proposed acquirer will impact on the ability of the target entity to continue to provide timely and accurate information to its supervisor. For legal persons, it is also necessary to assess the impact of the proposed acquisition on the consolidated supervision of the target entity and the group it would belong to after the acquisition.
- (12) Information on the financing of the proposed acquisition, including information concerning all means and sources of financing, should be provided by the proposed acquirer who should be able to present evidence about the original source of all funds and assets in order for the competent authority of the target entity to assess whether there is a risk of money laundering activities.
- (13) Proposed acquirers holding a qualifying holding of between 20% and up to 50% in the target entity should provide information on strategy to the competent authority of the target entity in order to ensure a comprehensive assessment of the proposed acquisition. Similarly, proposed acquirers holding a qualifying holding of less than 20% in the target entity but exercising an equivalent influence over it through other means such as the relationships between the proposed acquirer and the existing shareholders, the existence of shareholders agreements, the distribution of shares, participating interests and voting rights across shareholders or the proposed acquirer's position within the group structure of the target entity should also provide that information to ensure a high degree of homogeneity in assessing proposed acquisitions.
- (14) Where there is a proposed change in control of the target entity, the proposed acquirer should, as a general rule, submit a full business plan. However, where there is no proposed change in the control of the target entity, it is sufficient to be in possession of certain information on the entity's future strategy and the proposed acquirer's intentions for the target entity in order to assess whether this will not affect the financial soundness of the proposed acquirer.
- (15) It is proportionate that, in certain cases, the proposed acquirer should only produce limited information. In particular, where the proposed acquirer has been assessed by the competent authority of the target entity within the previous two years, or where the target entity is a small investment firm and the proposed acquirer is an entity authorised and supervised within the Union, it should only be necessary to provide certain reduced information to the competent authority of the target entity.
- (16) Any exchange or transmission of information between competent authorities, other authorities, bodies or persons should be carried out in accordance with the rules on

personal data as laid down in Directive 95/46/EC of the European Parliament and of the Council<sup>7</sup>.

- (17) Regulation 45/2001 of the European Parliament and of the Council<sup>8</sup> applies to the processing of personal data by the European Securities and Markets Authority (ESMA) in the application of this Regulation.
- (18) This Regulation is based on the draft regulatory technical standards submitted by ESMA to the European Commission.
- (19) ESMA has conducted an open public consultation on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>9</sup>.
- (20) Directive 2014/65/EU entered into force on 2 July 2014. Article 12(8) of that Directive replaces Article 10a(8) of Directive 2004/39/EC and contains empowerments to ESMA for the development of regulatory technical standards which are identical to those provided for under Article 10a(8) of Directive 2004/39/EC. Furthermore, the content of Articles 10b(4) and Article 10(4) of Directive 2004/39/EC is also identical to the content of Article 13(4) and Article 11(2) of Directive 2014/65/EU. In accordance with Article 94(1) of Directive 2014/65/EU, Directive 2004/39/EC will be repealed with effect from 3 January 2018. The adoption of the technical standards by the Commission in accordance with Article 10a(8) of Directive 2004/39/EC should also be considered in compliance with Article 12(8) of 2014/65/EU with the consequence that the technical standard will continue to apply after 3 January 2018 without the need for further amendment,

HAS ADOPTED THIS REGULATION:

*Article 1*  
*Subject matter*

This Regulation sets out rules on the information to be included by a proposed acquirer in the notification of a proposed acquisition to the competent authorities of the investment firm in which the acquirer is seeking to acquire or increase a qualifying holding ('target entity') for the assessment of the proposed acquisition.

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<sup>7</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23/11/1995, p. 31).

<sup>8</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p.1).

<sup>9</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), (OJ L 331, 15.12.2010, p. 84).



*Article 2*  
*Information to be provided by the proposed acquirer*

A proposed acquirer shall provide to the competent authority of the target entity the information set out in Articles 3 to 12, where applicable, depending on whether the information relates to a natural person or a legal person or a trust.

*Article 3*  
*General information relating to the identity of the proposed acquirer*

1. Where the proposed acquirer is a natural person, the proposed acquirer shall provide the competent authority of the target entity with the following identification information:
  - (a) personal details including the person's name, date and place of birth, address, and contact details and, where available, the personal national identification number;
  - (b) a detailed curriculum vitae or equivalent document, stating relevant education and training, previous professional experience, and any professional activities or other relevant functions currently performed.
2. Where the proposed acquirer is a legal person, it shall provide the competent authority of the target entity with the following information:
  - (a) documents certifying the business name and registered address of its head office, and postal address if different, contact details and, where available, its national identification number;
  - (b) registration of legal form in accordance with relevant national legislation;
  - (c) an up-to-date overview of the entrepreneurial business of the legal person;
  - (d) a complete list of persons who effectively direct the business, their name, date and place of birth, address, contact details, their national identification number where available, their detailed curriculum vitae stating relevant education and training, their previous professional experience, and their professional activities or other relevant functions currently performed;
  - (e) the identity of all persons who may be considered to be beneficial owners of the legal person, their name, date and place of birth, address, contact details, and, where available, their national identification number.
3. Where the proposed acquirer is or is intended to be a trust, the proposed acquirer shall provide the competent authority of the target entity with the following information:
  - (a) the identity of all trustees who manage assets under the terms of the trust document;
  - (b) the identity of all persons who are beneficial owners of the trust assets and their respective shares in the distribution of income;

- (c) the identity of all persons who are settlors of the trust.

#### *Article 4*

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

The proposed acquirer that is a natural person shall also provide the competent authority of the target entity with the following:

- (a) in respect of the proposed acquirer and of any undertaking directed or controlled by the proposed acquirer, over the past ten years:
  - (1) criminal records, or criminal investigations or proceedings, relevant civil and administrative cases, and disciplinary actions, including disqualification as a company director or bankruptcy, insolvency or similar procedures, notably through an official certificate or through another equivalent document;
  - (2) information on open investigations, enforcement proceedings, sanctions, or other enforcement decisions against the proposed acquirer, which may be provided through a declaration of honour;
  - (3) refusal of registration, authorisation, membership or licence to carry out trade, business or a profession; or the withdrawal, revocation or termination of such a registration, authorisation, membership or licence; or expulsion by a regulatory or government body or a professional body or association;
  - (4) dismissal from employment or a position of trust, fiduciary relationship, or similar situation;
- (b) information as to whether an assessment of reputation of the acquirer has already been conducted by another supervisory authority, the identity of that authority, and evidence of the outcome of the assessment;
- (c) information regarding the current financial position of the proposed acquirer, including details concerning sources of revenues, assets and liabilities, pledges and guarantees, granted or received;
- (d) a description of the business activities of the proposed acquirer;
- (e) financial information including credit ratings and publicly available reports on the undertakings controlled or directed by the proposed acquirer and, if applicable, on the proposed acquirer;
- (f) a description of the financial and non-financial interests or relationships of the proposed acquirer with:
  - (1) any other current shareholder of the target entity;
  - (2) any person entitled to exercise voting rights of the target entity in any one or more of the following cases :

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

For the purposes of point (f), credit operations, guarantees and pledges shall be deemed to be part of the financial interests, whereas family or close relationships shall be deemed to be part of the non-financial interests.

## Article 5

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

1. The proposed acquirer that is a legal person shall also provide the competent authority of the target entity with the following:
  - (a) information regarding the proposed acquirer, any person who effectively directs the business of the proposed acquirer, any undertaking under the proposed acquirer's control, and any shareholder exerting significant influence on the proposed acquirer as identified in point (e). That information shall include the following:
    - (1) criminal records, criminal investigations or proceedings, relevant civil and administrative cases, or disciplinary actions, including disqualification as company director or bankruptcy, insolvency or similar procedures, through an official certificate or through another equivalent document;
    - (2) information on open investigations, enforcement proceedings, sanctions, or other enforcement decisions against the proposed acquirer, which may be provided through a declaration of honour;
    - (3) refusal of registration, authorisation, membership, or licence to carry out a trade, business or profession; or the withdrawal, revocation or termination of such a registration, authorisation, membership or licence; or expulsion by a regulatory or government body or by a professional body or association;
    - (4) dismissal from employment or a position of trust, fiduciary relationship, or similar situation of any person who effectively directs the business of the proposed acquirer and of any shareholder exerting significant influence on the proposed acquirer;
  - (b) information as to whether an assessment of reputation of the acquirer or of the person who directs the business of the acquirer has already been conducted by another supervisory authority, the identity of that authority and evidence of the outcome of the assessment;
  - (c) a description of financial interests, and non-financial interests or relationships of the proposed acquirer, or, where applicable, the group to which the proposed acquirer belongs, as well as the persons who effectively direct its business with:
    - (1) any other current shareholders of the target entity;
    - (2) any person entitled to exercise voting rights of the target entity in any of the following cases or a combination of them:
      - voting rights held by a third party with whom that person or entity has concluded an agreement, which obliges them to adopt, by concerted exercise of the voting rights they hold, a lasting common policy towards the management of the target entity in question;

- voting rights held by a third party under an agreement concluded with that person or entity providing for the temporary transfer for consideration of the voting rights in question;
  - voting rights attaching to shares which are lodged as collateral with that person or entity, provided the person or entity controls the voting rights and declares its intention of exercising them;
  - voting rights attaching to shares in which that person or entity has a life interest;
  - voting rights which are held, or may be exercised within the meaning of the first four items of point (c)(ii), by an undertaking controlled by that person or entity;
  - voting rights attaching to shares deposited with that person or entity which the person or entity can exercise at its discretion in the absence of specific instructions from the shareholders;
  - voting rights held by a third party in its own name on behalf of that person or entity;
  - voting rights which that person or entity may exercise as a proxy where the person or entity can exercise the voting rights at its discretion in the absence of specific instructions from the shareholders;
- (3) any member of the administrative, management or supervisory body, or of the senior management of the target entity;
- (4) the target entity itself and the group to which it belongs;
- (d) information on any other interests or activities of the proposed acquirer that may be in conflict with those of the target entity and possible solutions for managing those conflicts of interest;
- (e) the shareholding structure of the proposed acquirer, with the identity of all shareholders exerting significant influence and their respective share of capital and voting rights including information on any shareholders agreements;
- (f) if the proposed acquirer is part of a group, as a subsidiary or as the parent undertaking, a detailed organisational chart of the entire corporate structure and information on the share of capital and voting rights of shareholders with significant influence of the entities of the group and on the activities currently performed by the entities of the group;
- (g) if the proposed acquirer is part of a group as a subsidiary or as the parent company, information on the relationships between the financial and the non-financial entities of the group;
- (h) identification of any credit institution; assurance, insurance or re-insurance undertaking; collective investment undertakings and their managers or

investment firm within the group, and the names of the relevant supervisory authorities;

- (i) statutory financial statements, at an individual and, where available, at consolidated and sub-consolidated group levels, , for the last three financial periods. Where those financial statements are audited externally, the proposed acquirer shall provide them approved by the external auditor. The statutory financial statements shall include:
  - (1) the balance sheet;
  - (2) the profit and loss accounts or income statement;
  - (3) the annual reports and financial annexes and any other documents registered with the relevant registry or authority in the particular territory relevant to the proposed acquirer.
- (j) where available, information about the credit rating of the proposed acquirer and the overall rating of its group.

For the purposes of point (c), credit operations, guarantees and pledges shall be deemed to be part of financial interests, whereas family or close relationships shall be deemed to be part of non-financial interests.

For the purposes of point (i), where the the proposed acquirer is a newly established entity, instead of the statutory financial statements, the proposed acquirer shall provide to the competent authority of the target entity the forecast balance sheets and forecast profit and loss accounts or income statements for the first three business years, including planning assumptions used.

- 2. Where the proposed acquirer is a legal person which has its head office registered in a third country, the proposed acquirer shall provide to the competent authority of the target entity the following additional information:
  - (a) a certificate of good-standing or equivalent document from the relevant foreign competent authorities in relation to the proposed acquirer;
  - (b) a declaration by the relevant foreign competent authorities that there are no obstacles or limitations to the provision of information necessary for the supervision of the target entity;
  - (c) general information on the regulatory regime of that third country as applicable to the proposed acquirer.
- 3. Where the proposed acquirer is a sovereign wealth fund, the proposed acquirer shall provide to the competent authority of the target entity the following additional information:
  - (a) the name of the ministry or government department in charge of defining the investment policy of the fund;
  - (b) details of the investment policy and any restrictions on investment;

- (c) the name and position of the individuals responsible for taking the investment decisions for the fund, as well as the details of qualifying holdings or the influence as referred to in Article 11(2) exerted by the identified ministry or government department on the day-to-day operations of the fund and the target entity.

#### *Article 6*

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

The proposed acquirer shall provide the competent authority of the target entity with the following information relating to the reputation and experience of any person who will effectively direct the business of the target entity as a result of the proposed acquisition:

- (a) personal details including the person's name, date and place of birth, address and contact details and, where available, the personal national identification number;
- (b) the position for which the person is or will be appointed;
- (c) a detailed curriculum vitae stating relevant education and professional training, professional experience, including the names of all organisations for which the person has worked and nature and duration of the functions performed, in particular for any activities within the scope of the position sought, and documentation relating to person's experience such as a list of reference persons including contact information and letters of recommendation. For positions held in the past 10 years, when describing these activities, the person shall specify their delegated powers, internal decision-making powers and the areas of operations under their control. If the curriculum vitae includes other relevant experiences, including management body representation, this shall be stated;
- (d) information on the following:
  - (1) criminal records, criminal investigations or proceedings, relevant civil and administrative cases, or disciplinary actions, including disqualification as a company director, bankruptcy, insolvency and similar procedures, through an official certificate or through another equivalent document;
  - (2) open investigations, enforcement proceedings, sanctions or other enforcement decision against the person which may be provided through a declaration of honour;
  - (3) refusal of registration, authorisation, membership or licence to carry out a trade, business or profession; or the withdrawal, revocation or termination of such a registration, authorisation, membership or licence; or expulsion by a regulatory or government body or by a professional body or association;
  - (4) dismissal from employment or a position of trust, fiduciary relationship, or similar situation;

- (e) information as to whether an assessment of reputation as a person who directs the business has already been conducted by another supervisory authority, the identity of that authority and evidence of the outcome of this assessment;
- (f) a description of financial interests, and non-financial interests or relationships of the person and that person's close relatives to members of the management body and key function holders in the same institution, the parent institution and subsidiaries and shareholders;
- (g) the minimum time, in annual and monthly indications, that will be devoted to the performance of the person's functions within the target entity;
- (h) the list of executive and non-executive directorships currently held by the person.

For the purposes of point (f), credit operations, shareholdings, guarantees and pledges shall be deemed to be part of financial interests, whereas family or close relationships shall be deemed to be part of non-financial interests.

#### *Article 7* *Information relating to the proposed acquisition*

The following information relating to the proposed acquisition shall be provided by the proposed acquirer to the competent authority of the target entity:

- (a) identification of the target entity;
- (b) details of the proposed acquirer's intentions with respect to the proposed acquisition, including the strategic investment or portfolio investment;
- (c) information on the shares of the target entity owned, or contemplated to be owned, by the proposed acquirer before and after the proposed acquisition, including:
  - (1) the number and type of shares, and the nominal value of such shares;
  - (2) the percentage of the overall capital of the target entity that the shares owned, or intended to be acquired, by the proposed acquirer represent before and after the proposed acquisition;
  - (3) the share of the overall voting rights of the target entity that the shares owned, or contemplated to be owned, by the proposed acquirer represent before and after the proposed acquisition, if different from the share of capital of the target entity;
  - (4) the market value, in euro and in local currency, of the shares of the target entity owned, or intended to be acquired, by the proposed acquirer before and after the proposed acquisition.
- (d) a description of any action in concert with other parties, including the contribution of those other parties to the financing of the proposed acquisition, the means of participation in the financial arrangements in relation to the



proposed acquisition and future organisational arrangements of the proposed acquisition;

- (e) the content of intended shareholder's agreements with other shareholders in relation to the target entity;
- (f) the proposed acquisition price and the criteria used when determining such price and, where there is a difference between the market value and the proposed acquisition price, an explanation as to why that is the case.

#### *Article 8*

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

1. Where the proposed acquirer is a legal person, it shall provide the competent authority of the target entity with an analysis of the scope of consolidated supervision of the group which the target entity would belong to after the proposed acquisition. That analysis shall include information about which group entities would be included in the scope of consolidated supervision requirements after the proposed acquisition and at which levels within the group those requirements would apply on a full or sub-consolidated basis.
2. The proposed acquirer shall also provide the competent authority of the target entity with an analysis of the impact of the proposed acquisition on the ability of the target entity to continue to provide timely and accurate information to its supervisor, including as a result of close links of the proposed acquirer with the target entity.

#### *Article 9*

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

The proposed acquirer shall provide the competent authority of the target entity a detailed explanation of the specific sources of funding for the proposed acquisition, including:

- (a) details on the use of private financial resources and the origin and availability of the funds, including any relevant documentary support to provide evidence to the competent authority that no money laundering is attempted through the proposed acquisition;
- (b) details on the means of payment of the proposed acquisition and the network used to transfer funds;
- (c) details on access to capital sources and financial markets including details of financial instruments to be issued;
- (d) information on the use of borrowed funds including the name of relevant lenders and details of the facilities granted, including maturities, terms, pledges and guarantees, as well as information on the source of revenue to be used to repay such borrowings and the origin of the borrowed funds where the lender is not a supervised financial institution;

- (e) information on any financial arrangement with other shareholders of the target entity;
- (f) information on assets of the proposed acquirer or the target entity which are to be sold in order to help finance the proposed acquisition, as well as the conditions of the sale, including price, appraisal, details regarding the characteristics of the assets and information on when and how the assets have been acquired.

#### *Article 10*

#### *Additional information for qualifying holdings of up to 20%*

Where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target entity of up to 20%, the proposed acquirer shall provide a document on strategy to the competent authority of the target entity containing the following information:

- (a) the period for which the proposed acquirer intends to hold its shareholding after the proposed acquisition and any intention of the proposed acquirer to increase, reduce or maintain the level of their shareholding in the foreseeable future;
- (b) an indication of the intentions of the proposed acquirer in relation to the target entity, including whether or not it intends to exercise any form of control over the target entity, and the rationale for that action.
- (c) information on the financial position of the proposed acquirer and its willingness to support the target entity with additional own funds if needed for the development of its activities or in case of financial difficulties.

#### *Article 11*

#### *Additional requirements for qualifying holdings between 20% and 50%*

1. Where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target entity between 20% and 50%, the proposed acquirer shall provide a document on strategy to the competent authority of the target entity containing the following information:
  - (a) all the information set out in Article 10;
  - (b) details on the influence that the proposed acquirer intends to exercise on the financial position in relation to target entity including dividend policy, the strategic development, and the allocation of resources of the target entity;
  - (c) a description of the proposed acquirer's intentions and expectations in relation to the target entity in the medium-term, covering all the elements referred to in Article 12(2) and (3).
2. By way of derogation from paragraph 1, the information referred to in that paragraph shall also be provided to the competent authority of the target entity by any proposed acquirer referred to in Article 10 where the influence exercised by the shareholding

of that proposed acquirer, based on a comprehensive assessment of the shareholding's structure of the target entity, would be equivalent to the influence exercised by shareholdings between 20% and 50.

#### *Article 12*

##### *Additional requirements for qualifying holdings of 50% or more*

1. Where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target entity of 50% or more, or in the target entity becoming its subsidiary, the proposed acquirer shall provide a business plan to the competent authority of the target entity which shall comprise a strategic development plan, estimated financial statements of the target entity, and the impact of the acquisition on the corporate governance and general organisational structure of the target entity.
2. The strategic development plan referred to in paragraph 1 shall indicate, in general terms, the main goals of the proposed acquisition and the main ways for achieving them, including:
  - (a) the overall aim of the proposed acquisition;
  - (b) medium-term financial goals which may be stated in terms of return on equity, cost-benefit ratio, earnings per share, or in other terms as appropriate;
  - (c) the possible redirection of activities, products, targeted customers and the possible reallocation of funds or resources expected to impact on the target entity;
  - (d) general processes for including and integrating the target entity in the group structure of the proposed acquirer, including a description of the main interactions to be pursued with other companies in the group, as well as a description of the policies governing intra-group relations.
3. Where the proposed acquirer is an entity authorised and supervised in the Union, information about the particular departments within the group structure which are affected by the proposed acquisition shall be sufficient for the purposes of the information referred to in point (d)
4. The estimated financial statements of the target entity referred to in paragraph 1 shall, on both an individual and a consolidated basis, include the following for a reference period of three years:
  - (a) a forecast balance sheet and income statement;
  - (b) a forecast prudential capital requirements and solvency ratio;
  - (c) information on the level of risk exposures including credit, market and operational risks as well as other relevant risks;
  - (d) a forecast of intra-group transactions.

5. The impact of the acquisition on the corporate governance and general organisational structure of the target entity referred to in paragraph 1 shall include the impact on:
- (a) the composition and duties of the administrative, management or supervisory body, and the main committees created by such decision-taking body including the management committee, risk committee, audit committee, remuneration committee, and including information concerning the persons who will be appointed to direct the business;
  - (b) administrative and accounting procedures and internal controls, including changes in procedures and systems relating to accounting, internal audit, compliance with anti-money laundering and risk management, and the appointment of key functions of internal auditor, compliance officer and risk manager;
  - (c) the overall IT systems and organisation including any changes concerning the IT outsourcing policy, the data flowchart, the in-house and external software used and the essential data and systems security procedures and tools such as back-up, continuity plans and audit trails;
  - (d) the policies governing outsourcing, including information on the areas concerned, the selection of service providers, and the respective rights and obligations of the parties to the outsourcing contract such as audit arrangements and the quality of service expected from the provider;
  - (e) any other relevant information pertaining to the impact of the acquisition on the corporate governance and general organisational structure of the target entity, including any modification regarding the voting rights of the shareholders.

*Article 13*  
*Reduced information requirements*

1. By way of derogation from Article 2, where the proposed acquirer is an entity authorised and supervised within the Union and the target entity meets the criteria set out in paragraph 2, the proposed acquirer shall submit the following information to the competent authority of the target entity:
- (a) where the proposed acquirer is a natural person:
    - (1) the information set out in Article 3(1);
    - (2) the information set out in points (c) to (g) of Article 4;
    - (3) the information set out in Articles 6, 7 and 9;
    - (4) the information set out in Article 8(1);
    - (5) where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target entity of up to 20%, a document on strategy as set out in Article 10;

- (6) where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target entity between 20% and 50% , a document on strategy as set out in Article 11.
  - (b) where the proposed acquirer is a legal person:
    - (1) the information set out in Article 3(2)
    - (2) the information set out in points (c) to (j) of Article 5(1) and, where relevant, the information set out in Article 5(3);
    - (3) the information set out in Articles 6, 7 and 9;
    - (4) the information set out in Article 8(1);
    - (5) where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target entity of up to 20%, a document on strategy as set out in Article 10;
    - (6) where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target entity between 20% and 50% , a document on strategy as set out in Article 11.
  - (c) where the proposed acquirer is a trust:
    - (1) the information set out in Article 3(3)
    - (2) where relevant, the information set out in Article 5(3)
    - (3) the information set out in Articles 6, 7 and 9;
    - (4) the information set out in Article 8(1);
    - (5) where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target entity of up to 20%, a document on strategy as set out in Article 10;
    - (6) where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target entity between 20% and 50% , a document on strategy as set out in Article 11.
2. The target entity referred to in paragraph 1 shall meet the following criteria:
- (a) it does not hold assets of its clients;
  - (b) it is not authorised for the investment services and activities ‘Dealing on own account’ or ‘Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis’ referred to in points (3) and (6) of Section A of Annex I of Directive 2004/39/EC;
  - (c) where it is authorised for the investment service of ‘Portfolio management’ as referred to in point (4) of Section A of Annex 1 of Directive 2004/39/EC, the assets under management by the firm are below EUR 500 million.

3. Where the proposed acquirer referred to in paragraph 1 has been assessed by the competent authority of the target entity within the previous two years regarding the information referred to in Articles 4 and 5, that proposed acquirer shall only provide those pieces of information that have changed since the previous assessment.

Where the proposed acquirer only provides those pieces of information that have changed since the previous assessment in accordance with the first subparagraph, the proposed acquirer shall sign a declaration informing the competent authority of the target entity that there is no need to update the rest of information.

#### *Article 14*

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 11.7.2017

*For the Commission*  
*The President*  
*Jean-Claude JUNCKER*