

FBF position on Consultation on Draft Regulatory Technical Standards specifying the minimum list of information to be provided to the competent authorities at the time of the notification under Article 23(6) of Directive 2013/36/EU

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We agree with reference to a risk-based approach, which nevertheless remains insufficient for the six points mentioned below.

Our main general comment is the fact that in order to have a robust harmonized supervision in the EU, EU competent authorities shall be able to rely on the supervision of institutions carried on by the other EU competent authorities. This does not appear in the draft RTS.

Our 6 main points are the following :

1/ The draft RTS concern the acquisitions of qualifying holdings “ directly or indirectly”. This means that in large groups, when there is a chain of control, each entity part of such chain must file an authorization. This is unnecessary administrative layers and trigger a high level of costs for groups. One file for the concerned group shall be sufficient;

2/ In large groups, changes in the chain of control shall not trigger a request for authorization when the ultimate beneficiary is still the same entity which is a supervised entity. In such case, a simple information shall be sufficient;

3/ The list of information to be communicated to supervisors in the context of acquisitions shall not be a “minimum” list of information but an exhaustive list; otherwise the harmonization objective throughout the EU would not be reached;

4/ When the proposed acquirer is an institution subject to EU fit and proper rules, fit and proper of the institution as well as of each member of the management body should not be assessed again by the EU competent authority of the target institution;

5/ Some of the information to be provided are very large as they also concern the same information for the undertakings controlled by the relevant legal person: this is quite impossible to gather for major large groups;

6/ The draft provides an obligation to keep the competent authority informed of any new fact or issue that may impact its reputation. This point is not acceptable when the proposed acquirer is an EU financial institution already supervised by the competent authority of an EU Member State. If a proposed acquirer takes throughout time qualifying holdings in several Members States and if it triggers each time obligations to disclose/notify competent authorities of each of the target companies when changes occur, then this proposed acquirer becomes “supervised” by several EU competent authorities which is complex to monitor in practice.

Question 1. Do you agree with the information request laid down in Article 1 and with the granularity envisaged for the information to be provided by proposed acquirers that are trusts, AIF or UCITS management companies or sovereign wealth funds?

- All the articles refer to “direct or indirect” qualifying holdings. This means that when an entity A, holds the majority of the share capital of an entity B, which in turns holds the majority of an entity C, then A and B shall file an authorization file. This must be simplified and a unique file should be sufficient.

Moreover, in large groups, an authorization should not be required when the ultimate beneficial entity (i.e. the ultimate parent) remains the same. In such case, a simple notification process should be sufficient. For complex internal re-organizations within large supervised groups, those processes trigger a lot of administrative burdens and a high level of costs as internal teams are not equipped to cope with the preparation of so many filings.

- It is stated in the third paragraph of Section 3 (Background and rationale) that “The draft RTS aims at reaching a broad harmonization of the list of minimum information to be submitted to the competent authority”, that list not covering “national specificities, e.g. linked to the information relating to criminal or administrative records, or specific information needs that may be necessary based on the particular acquisition structure”.

-> That list rather needs to be a limitative list without prejudice to additional information that may be required in respect of the acquisition structure. For instance, information relating to criminal or administrative records must be specified in the fit and proper requirements as set out in the RTS. Otherwise, considering that the RTS does not cover national specificities and relate to minimum information to be submitted to the competent authority, would be to waive the objective of a harmonization. Under paragraph 2(j) of Article 1, the proposed acquirer that is a legal person must provide to the competent authority “a complete list of the members of the management body in its management function of the proposed acquirer and, in respect of each such person, the name, date and place of birth, address, contact details, a copy of the official identity document, the national identification number where available, the detailed curriculum vitae stating relevant education and training, the previous professional experience, and the professional activities or other relevant functions currently performed, including professional experience in managing holdings in companies, in financial services, information technology, cybersecurity or digital innovation, where relevant, crypto-assets or other digital assets, distributed ledger technology (DLT), together with the information referred to in Article 2(1), points (a) and (b) and Article 2(1), second-subparagraph”.

-> The fit and proper assessment of members of the management body of the proposed acquirer is not to be duplicated if the relevant information has already been provided to the competent authority of that proposed acquirer in the same or another Member State. The authority of the target institution needs to rely on the assessment already made by the authority of the proposed acquirer in a Member State. Under CRD rules, the fit and proper assessment is made on an on-going basis which allows the competent authority of the EU target institution to rely on the work done by the EU competent authority of the proposed acquirer. In any case, if the work was to be done several times (which once again seems to be a non-sense), then the content of the fit and proper assessment shall be exactly the same in respect of the applicable law, ie CRD for CRD institutions, Solvency for insurance companies, etc. In addition we could in practice sometimes note that the curriculum vitae required by each Member State do not always require the same

format, this makes it more difficult to collect and harmonize information. To conclude on that topic we could also add that some Member States still insist on some level of formalism (in particular the requirement for apostilled documents, despite such apostille not being required on the basis of Regulation (EU) 2016/1191); we suggest that such requirements be explicitly set aside on the basis of Regulation (EU) 2016/1191.

- Same concern regarding paragraphs 3(a) and (b) (trust structure) and 4(b) (AIFM or UCITS management company): the fit and proper assessment already made by another competent authority in a Member State is not to be duplicated by the competent authority of the target institution, even if the latter is in a different Member State than the one of the proposed acquirer.
- The general information that is requested is laid down in Article 1 but also in articles 2 and 3 (additional information). Regarding the additional information relating to the proposed acquirer that is a legal person, the information requested under paragraph 1 (a) (in particular (i) and (iv)) of Article 3 seems redundant with the fit and proper assessment already carried out by the competent authority of the proposed acquirer in a Member State.

Question 2: With regard to the information for the assessment of the sound and prudent management of the target institution, do you agree with the proportionate approach set out in Articles 8, 9 and 10 that reflect the envisaged influence that will be exercised by the proposed acquirer on the target institution?

- We agree with the proportionate approach based on the level of interest to be taken by the proposed acquirer. We wonder, however, whether the 20% threshold for the first tranche is too low and believe that the 30% threshold would be more appropriate, allowing for a more consistent typology of qualifying holdings.
- It is stated in Section 3 (Background and rationale) that “the draft RTS, in the interest of proportionality, cooperation and efficiency of prudential assessment procedures, provides the possibility for the competent authority of the target institution to waive the proposed acquirer from the submission of the information on good repute or financial soundness, provided it has received the relevant information or a certificate of good standing from the authority of the proposed acquirer, satisfactory for the assessment, and a declaration from the proposed acquirer that the information is true, accurate and up-to-date”.

When the proposed acquirer is a “significant institution” (within the meaning of Article 6(4), third sub-paragraph of Regulation (EU) N. 1024) and is supervised by a banking authority in the European Union, the competent authority of the target institution does not need to request additional information in respect of the good repute or financial soundness of the proposed acquirer. In order to avoid duplication of burdens and to implement operational efficiency, it would make sense to provide that the competent authority of the target institution needs to rely in this respect on the assessment already made by the authority of the proposed acquirer. It would not only be a “possibility”.

- In article 3, there are some information listed that are too wide and can be very difficult to gather in a notification file. This is the case for article 3. 1. (a) (ii), (iii), (iv) and (vi) as they refer to extensive

information concerning the legal person itself but also the undertakings under the control of that legal person. In large groups, those undertakings can refer to hundreds or thousands of legal entities which is not realistic. The information required in article 3(1) (a) (ii), (iii), (iv) and (vi) should only pertain to the proposed acquirer and not to all undertakings under his control. The information referred to in 3. 1. (b) can also be potentially very wide, in particular for listed entities. The information referred to in 3. 1. (e) refers to information concerning the identity of all shareholders with qualifying holdings. What is the definition of qualifying holdings in that context?

The information referred to in 3. 1. (g) refers to information on the relationships between the financial and the non-financial sector entities of the group, as well as the name of the relevant supervisory authorities of the financial sector entities. The objective of such provision is not clear and can also be the source of administrative burden as potentially very large. The content of such request is accordingly not clear.

- Regarding articles 8 and 9, it is our opinion that the gap from 20% to 50% is too broad and results in confusing very different typologies of acquisition. We suggest referring to the other threshold instituted by DIRECTIVE 2013/36/EU, i.e. 30% or a third of the capital or voting rights. For the sake of clarity, the obligations under article 8 should apply to proposed acquisitions resulting in qualifying holding of up to 30%, and the obligations under article 9 should be triggered for acquisitions resulting in a qualifying holding of 30% and up to 50%.
- Regarding article 10, we do not understand why that article does not limit the requirements, including the scenario, to the consolidated target group. It is stated (section 4) that *“the business plan shall include the financial projections on an individual and where applicable, consolidated or sub-consolidated basis”*. Usually, the rationale and the business plan used for the acquisition project are established for the consolidated target group, meaning that there is no business plan established individually for each entity / subsidiary of the target group on a standalone basis. **We strongly recommend limiting this requirement to the consolidated target group only.**
- Also, article 10.7 provides that the Due Diligence reports should be submitted where available. This requirement seems irrelevant in the sense that (i) the target institution is regulated and has been already assessed by the relevant competent authority and (ii) the main purpose of the regulation is to assess the proposed acquirer and not the target institution.

Question 3: a) Do you agree with the proportionate approach set out in Article 11, relating to the submission of reduced information where the proposed acquirer has already been assessed for the acquisition of qualifying holdings or is a supervised entity under Union financial sector law? b) With specific regard to the exemptions under paragraphs (2) and (3), do you agree to their application only in case of significant institutions or should the exemption cover also the cases where the proposed acquirer or the target respectively are less significant institutions?

- The reduced information requirements are a progress, but they are not comprehensive enough to allow for a relief of the information obligations in all circumstances.
- The first exemption (cf. paragraph 1) does not avoid the obligation to provide the information already in possession of the competent authority of the proposed acquirer in a Member State when no assessment of the proposed acquirer by the authority of the target institution has been made during the previous two years in respect of the acquisition of a qualifying holding in a credit

institution. In particular, the information regarding the fit and proper assessment of the management of the proposed acquirer still needs to be provided by the latter in such circumstances. As mentioned above, the supervisory authority should rely on the fit and proper analysis done by the competent authority of the proposed acquirer if such competent authority is an EU authority.

- In addition, tracking changes to a considerable volume of documents and information over at least a two-year period becomes practically impossible without a dedicated IT system, which few institutions currently possess. The higher the granularity, the greater the risk of inconsistencies between different submissions, creating legal uncertainty for institutions. Furthermore, the high level of granularity mechanically leads to rapid obsolescence of the information.
- The second and third exemptions (cf. paragraphs 2 and 3) are more satisfactory to the extent:
 - The situation in which the proposed acquirer is established in the same Member State as the target institution is covered, then only the information not in the possession of the authority of the target institution having to be provided by the proposed acquirer.
 - Those exemptions also apply where either the proposed acquirer or the target institution is a significant institution. Then solely the information not in possession of the authority of the target institution would be provided by the proposed acquirer. It is nevertheless necessary to specify that, in respect of the information relating to the proposed acquirer, the authority of the target institution must rely on the assessment made by the authority in a Member State of that proposed acquirer. Otherwise, these exemptions would have a very limited effect or no effect.
- In the event the authority of the target institution has already possession of the relevant information or can rely on the assessment made by the authority of the proposed acquirer in another Member State, it would make sense that the exemptions under paragraphs (2) and (3) apply not only in case of significant institutions, but also where the proposed acquirer or the target respectively are less significant institutions. Moreover, less significant institutions generally have more limited resources to manage the high detailed documentary requirements, making the regulatory burden particularly heavy. We believe that extending these exemptions to less significant institutions would perfectly align with the spirit of proportionality that guides the entire European banking regulatory framework. Facilitating processes for less significant institutions would help preserving the diversity of the European banking sector, an objective that we know is shared by the EBA.
 - Otherwise, we would appreciate contextual elements, especially technical ones, allowing us, on one hand to understand which difficulties competent authorities might encounter when sharing information related to proposed acquirers and target institutions to a different EU competent authority, and on the other hand to understand why the criterion of significant institution is an issue.
- Pursuant to the exemptions, the only information to be submitted to the competent authority is the information that has changed/is not in the possession of the competent authority since the previous assessment. However, given the level of detail of the required information, the exemptions proposed by Article 11 will in any case prove difficult to apply, due to the rapid evolution of much information such as:
 1. Consolidated or individual financial statements;
 2. Prudential situations (solvency ratios, exposures, etc);

3. Disputes and litigations;
4. Governance elements (identity, role, experience, multiples corporate offices)

This modality is to be reviewed as, technically, one could consider that all the information changes over time. Otherwise, this exemption would be useless (please see first bullet point of our answer to this question 3 above)

- Paragraph 4 of article 11 provides that, for the benefit of the exemptions, the proposed acquirer shall submit a declaration stating the exact information as set out in this Regulation that has not been submitted in the current notification. We think that this declaration is not useful and would entail a significant work for the entities to list the information that does not need to be updated however it is clear that the information submitted must be true, accurate and up to date.
- EU competent authorities have to trust and rely on the work already done by other EU competent authorities without making such principle a heavy burden for institutions. Although the present draft RTS aims to standardize the required information, it also seems necessary to simultaneously develop the ITS (Implementing Technical Standards) between all national authorities and the ECB. Same comment on paragraph 5. Also, such paragraph refers to fit and proper information referred to in article 3. (1) (a) point (i) where it should simply be specified that, if the persons have already been subject to fit and proper assessment by an EU competent authority, there should not be anything more to declare.

It should be remembered that fit and proper assessment is done on an on-going basis according to EU law : as a consequence, there should not be any obligation to keep the competent authority informed of any new fact. The competent authority of the target entity should rely on the work done by the competent authority of the proposed acquirer. If a proposed acquirer takes throughout time qualifying holdings in several members states and if it triggers each time obligations to disclose/notify competent authorities of each of the target companies when changes occur, then this proposed acquirer becomes “supervised” by several EU competent authorities which is not acceptable.

We have seen this in practice for files where a proposed acquirer supervised by an EU competent authority took a qualifying holding in another EU Member State. The competent authority of this EU Member State formally asked the proposed acquirer to obtain its prior approval for any change of the effective directors of the proposed acquirer. Those changes, according to applicable law on supervision, are already approved by the supervisor of the proposed acquirer. This is not acceptable and contrary to harmonized supervision.

By extension, we are wondering how each competent authority will handle the declaration set out in Article 11(4) of this RTS regulation, in particular in the context of the Article 22 of the Directive (UE) 2013/36 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms - which deals with the processing timeframes for notifications between proposed acquirers and competent authorities. The sharing between competent authorities and their analyses of information declared unchanged should not lead to a suspension of the 60-day period which starts after the filing of a complete file. The risk of suspension of this period would be an additional reason for not taking advantage of the exemptions proposed by Article 11 of this draft.

- In summary, the proposals contained in Article 11 are positive but their application would be strongly limited by technical considerations as mentioned above (risk of misalignment between

competent authorities and a subsequent significant administrative burden for proposed acquirers).

To enhance the practical effectiveness of Article 11 and address the issues of significant granularity of information, we respectfully submit the following suggestions, insofar as this is possible with regard to the relevant regulations, such as the GDPR regulation:

- Creation of a secure European register: develop a common platform listing executives, directors supervised groups, prudential information, updated in real time and accessible to EU competent authorities in charge of the review and/or the assessment of the information set out in this RTS regulation project. This platform would avoid duplication of submissions and secure consistency of information.
- Replace certain detailed documentary requirements with more concise, harmonized standardized forms shared between EU competent authorities, with a view to aligning documentary requirements across different regulatory frameworks.
- Simplify requests for information by using public information from our respective groups (including in particular our universal registration reference document).

Question 4. Do you agree with the simplification in the case of complex acquisition structures described in Article 12?

- That simplification is satisfactory but, as stated above and at least in respect of trust structures, AIFM or UCITS management companies, it seems necessary for the purpose of avoiding duplication of burdens and implementing operational efficiency, that the authority of the target institution relies on the assessment already made by the authority of the proposed acquirer in a Member State (in particular regarding the non-duplication of the fit and proper assessment).

Question 5: Do you find the provisions of this draft Regulation sufficiently clear and comprehensive?

- As mentioned above, it seems necessary to clarify that the list of information to be provided to the authority of the target institution is a limitative list without prejudice to additional information that may be required in respect of the acquisition structure. This is a key concern since otherwise the harmonization objective of the RTS would not be met.
- Some information required under Article 3 should be clarified.

For instance, article 3.1(e) requires information about the shareholding structure of the proposed acquirer, with the identity of all shareholders with qualifying holdings. Does the term “qualifying holdings” as referred to in this article align with the notion of qualifying holding as defined in REGULATION (EU) No 575/2013 and the thresholds instituted by DIRECTIVE 2013/36/EU?

Article 3.1(g) requires information on the relationships between the financial and the non-financial sector entities of the proposed acquirer’s group. This provision should be clarified by detailing the nature of the financial and non-financial relationships referred to, in order to standardize the level of information required by the competent authorities.

- See our comments on question 2 about the thresholds (30% and 50% instead of 20% and 50%).