



Regulation on Qualifying Holdings 2016

(*Eigentümerkontrollverordnung 2016 – EKV 2016*)

Full title

Regulation of the Financial Market Authority (FMA) on the information that a party subject to notification requirements intending to acquire, increase, relinquish, or reduce a qualifying holding in a credit institution, an insurance or reinsurance undertaking, an investment service provider, a payment institution or an electronic money institution, shall be required to submit to the FMA (Regulation on Qualifying Holdings 2016 – EKV 2016)

Original Version: Federal Law Gazette II No. 425/2015

Amendments: Federal Law Gazette II No. 255/2017; Federal Law Gazette II No. 195/2018;

Preamble/Promulgation clause

Based on Article 20b para. 3 of the Banking Act (BWG; Bankwesengesetz), as published in Federal Law Gazette no. 532/1993, last amended by federal act in Federal Law Gazette I no. 117/2015, on Article 26 para. 3 of the Insurance Supervision Act 2016 (VAG 2016; Versicherungsaufsichtsgesetz 2016), as published in Federal Law Gazette I no. 34/2015, last amended by federal act in Federal Law Gazette I no. 112/2015, and on Article 11b para. 3 of the Securities Supervision Act 2007 (WAG 2007; Wertpapieraufsichtsgesetz 2007), published in Federal Law Gazette I no. 60/2007, last amended by federal act in Federal Law Gazette I no. 117/2015, the following shall be determined by regulation:

Text

Section 1

General provisions

Scope

Article 1. This Regulation is applicable to notifications pursuant to Article 20 paras. 1 and 2 BWG, Article 24 paras. 1 and 2 VAG 2016, Article 8 para. 1 of the e-Money Act 2010 (E-GeldG 2010, E-Geldgesetz 2010) and Article 19 paras. 1 and 3 of the Payment Services Act 2018 (ZaDiG 2018, Zahlungsdienstegesetz 2018) in conjunction with Article 20 para. 3 BWG as well as notifications pursuant to Article 14 paras. 1 and 2 of the Securities Supervision Act 2018 (WAG 2018; Wertpapieraufsichtsgesetz 2018) that relate to a qualifying holding in an investment service provider.

Definition of Terms

Article 2. The following definitions shall apply to this Regulation:

1. “notification”: notification of intention pursuant to Article 20 paras. 1 and 2 BWG, Article 24 paras. 1 and 2 VAG 2016, Article 19 para. 1 ZaDiG 2018 and Article 8 para. 1 E-GeldG 2010 as well as a notification of intention pursuant to Article 14 paras. 1 and 2 WAG 2018 that relate to a qualifying holding in an investment service provider.
2. “party subject to notification requirements”: any party required to notify the Financial Market Authority (FMA) pursuant to Article 20 paras. 1 and 2 BWG, Article 24 paras. 1 and 2 VAG 2016, Article 19 para. 1 ZaDiG 2018 or Article 8 para. 1 E-GeldG 2010, or any party required to make a notification to the FMA pursuant to Article 1 paras. 1 or 2 WAG 2018 that relates to a qualifying holding in an investment service provider.
3. “target undertaking”: a credit institution pursuant to Article 1 para. 1 BWG, an insurance undertaking pursuant to Article 5 no. 1 or a reinsurance undertaking pursuant to Article 5 no. 2 VAG 2016, an investment service provider pursuant to Article 4 WAG 2018 or a payment

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institution pursuant to point a) of Article 4 no. 4 ZaDiG 2018 or an electronic money institution pursuant to Article 3 para. 2 E-GeldG 2010, in which a qualifying holding is proposed to be acquired, an existing qualifying holding changed or a qualifying holding disposed of.

4. "information": all information, documents and declarations which the party subject to notification requirements is required to submit pursuant to this Regulation.
5. "qualifying holding": a direct or indirect holding in an undertaking which represents 10 % or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of that undertaking;
6. "trust": a legal form created by a person (the founder) by means of a legal transaction among living persons or by means of testamentary disposition, in assets for the benefit of a beneficiary or are entrusted to trustees for a specific purpose, whereby the trust itself may also be legally responsible. A trust has the following characteristics:
 - a) The assets of the trust constitute separately held special assets and do not form part of the personal assets of the trustee.
 - b) the titles in relation to the assets of the trust are registered in the name of the trustee or to another person as a representative of the trustee;
 - c) the trustee shall have the power and duty, about which he shall be required to give account, to manage, use or dispose of the assets of the trust in accordance with provisions governing the trust as well as the particular obligations conferred upon him under law.

The fact that specific rights and powers are reserved for the founder or that the trustee himself/herself has rights as a beneficiary, shall not necessarily preclude the existence of a trust.
7. "group": a group consisting of two or more undertakings,
 - a) that are affiliated undertakings as defined in Article 189a no. 8 UGB or Article 15 AktG,
 - b) that are or have been included in a compulsory or voluntarily drawn up group financial statement, or
 - c) that are subject to joint consolidated supervision by authorities in Member States or third countries that are responsible for the supervision of credit institutions, insurance or reinsurance undertakings, payment institutions, e-money institutions, investment firm or other financial institutions or the financial markets.
8. *(repealed in the amendment published in Federal Law Gazette II 195/2018)*

Completeness, correctness and currentness of the notification

Article 3. The party subject to notification requirements shall be responsible for ensuring that the information contained in the notification, or which is submitted at the FMA's request, is complete, correct and current.

Filing

Article 4. (1) Notifications concerning the acquisition of or increase in a qualifying holding pursuant to Article 20 para. 1 BWG, Article 24 para. 1 VAG 2016, Article 19 para. 1 first sentence ZaDiG 2018, or Article 8 para. 1 E-GeldG 2010 shall be filed with the FMA using the form contained in **Annex 1**, including the information required to be submitted pursuant to Section 2 of this Regulation. Notifications concerning the acquisition of or increase in a qualifying holding in an investment service provider pursuant to Article 14 para. 1 WAG 2018 must be submitted to the FMA together with the information to be submitted pursuant to Article 7 para. 2.

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(2) Notifications relating to the relinquishing of a qualifying holding or that a holding will fall below the statutory limits pursuant to Article 20 para. 2 BWG, Article 24 para. 2 VAG 2016, Article 19 para. 1 second sentence ZaDiG 2018 or Article 8 para. 1 E-GeldG 2010 shall be filed with the FMA using the form contained in **Annex 2**, including the information required to be submitted pursuant to Section 2 of this Regulation.

The party subject to notification requirements shall file, together with the information required to be submitted as specified in this Regulation, certified translations of any information that is not in German. The FMA may waive the requirement for certified translations in specific cases where such is not or may not be necessary in order to evaluate the information in accordance with supervisory requirements.

Information on the person: natural persons

Article 5. The party subject to notification requirements shall provide the following information on natural persons required to be indicated pursuant to this Regulation:

1. Full name;
2. Date of birth;
3. Place and country of birth as well as nationality;
4. Address of the main place of residence; and
5. Telephone number and e-mail address where known.

Information on the person: non-natural persons and associations of persons

Article 6. The non-natural persons, associations of persons and trusts required to be indicated as parties subject to notification requirements pursuant to this Regulation:

1. Company name or designation;
2. Legal form;
3. Place and country of incorporation;
4. Place of management offices; and

Company register number or details entered in a comparable register if such an entry exists.

Section 2

Information to be submitted

General provisions

Article 7. (1) Notifications concerning the acquisition of, or an increase of a qualifying holding pursuant to Article 20 para. 1 BWG, Article 24 para. 1 VAG 2016 Article 19 para. 1 first sentence ZaDiG 2018 or Article 8 para. 1 E-GeldG 2010 shall include the information listed in Articles 8 to 14, including the scope of the proposed holding.

(2) The following information must be included with a notification concerning the acquisition or increase of a qualifying holding in an investment services provider pursuant to Article 14 para. 1 WAG 2018:

1. information pursuant to Articles 3 to 9 of Delegated Regulation (EU) 2017/1946, except for
 - a) pursuant to Article 4 point e, Article 5 (1) point g, Article 6 point f, Article 7 point b, Article 8 (1) and Article 9 point c of Delegated Regulation (EU) 2017/1946 and
 - b) pursuant Article 4 points a and b, Article 5 (1) points a and b, Article 5 (2) and (8) of Delegated Regulation (EU) 2017/1946, where the party subject to notification requirements is an entity that is authorised and supervised within the European Union;



2. information pursuant to Article 11 (1) of Delegated Regulation (EU) 2017/1946 irrespective of the amount of the intended holding to be acquired.

Articles 5 and 6 shall not apply to notifications in accordance with the paragraph. If the party subject to notification requirements is an entity within a group (of companies) to which more than one party subject to notification requirements belong, must only submit with regard to the same acquisition such information as has not already been submitted by another party subject to notification requirements. Any party subject to notification requirements that makes use of this less stringent requirement must in accordance with Article 3 accept responsibility for the information filed by the other parties subject to notification requirements. Under the requirements set out in the first subparagraph of Article 13 (3) of Delegated Regulation (EU) 2017/1946 information shall not be required to be resubmitted where the party subject to notification requirements has signed a declaration pursuant to the second subparagraph of Article 13 (3) of Delegated Regulation (EU) 2017/1946, in which it is also confirmed that the information that is not being resubmitted remains complete, correct and current.

(3) Where the notification pursuant to para. 1 concerns a party subject to notification requirements that is:

1. a credit institution, a *Pensionskasse* (pension company), an insurance or reinsurance undertaking, an investment firm, an investment services provider, a payment institution or an electronic money institution incorporated in Austria, in addition to the extent of the planned holding, the notification shall include the information specified pursuant to:
 - a) Article 8 para. 1 nos. 5 to 7,
 - b) Article 8 para. 2,
 - c) Article 9 para. 1 no. 1 exclusively about persons pursuant to Article 8 para. 1 no. 7;
 - d) Article 9 para. 3, with the exception of reviews conducted by the FMA;
 - e) Article 11 paras. 1 to 2b and 3a,
 - f) Article 13, and
 - g) Article 14.

A credit institution associated to a central institution making a notification about its holding in this central institution, must only indicate the scope of the planned holding.

- 1a. an entity that together with the target undertaking is subject to consolidated supervision by the FMA, shall include with the notification including the scope of the intended holding the information pursuant to
 - a) no. 1;
 - b) Article 8 para. 1 nos. 1 to 3;
 - c) Article 8 para. 1 no. 4 subject to the proviso that the information about the business activities of the group to which the party subject to notification requirements belongs are not necessary;
 - d) Article 8 paras. 3 to 5;
 - e) Article 9; and
 - f) Article 11.
- 1b. (*Repealed in the amendment published in Federal Law Gazette II 195/2018*)
2. a credit institution authorised in a state in the European Economic Area pursuant Article 4 (1) (1) of Regulation (EU) No 575/2013, an investment firm pursuant to Article 4 (1) (1) of Directive 2014/65/EU, or an insurance or reinsurance undertaking pursuant to Article 13 (1) and (4) of

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Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), OJ L 335, 17.12.2009, p. 1, most recently amended by Directive (EU) 2016/2341, OJ L 354, 23.12.2016, p. 37, incorporated in a state in the European Economic Area, shall include information about the scope of the intended holding pursuant to

- a) no. 1,
- b) Article 8 para. 1 nos. 1 to 4,
- c) Article 9 paras. 1 to 2 and 5, in each exclusively in relation to persons pursuant to Article 8 para. 1 no. 7, as well as;
- d) Article 9 para. 1 no. 4 and Articles 10 to 12 with the exception of Article 10 no. 1 lit. d.

3. an entity within a group of companies to which more than one party subject to notification requirements belong, must only submit with regard to the same acquisition such information as has not already been submitted by another party subject to notification requirements. Any party subject to notification requirements making use of this less stringent requirement shall accept responsibility for the information filed by the other parties subject to notification requirements in accordance with Article 3.

4. a solidarity scheme (*Solidaritätseinrichtung*) or a central institution of a decentralised sectoral network (*Sektorverbund*), is only required to notify the scope of the planned holding, if the holding is for the purpose of ensuring compliance with minimum own funds requirements pursuant to Part Three, Title I, Chapter 1 of Regulation (EU) No 575/2013.

(4) A notification that a qualifying holding is to be relinquished or that it will fall below the statutory limits for holdings pursuant to Article 20 para. 2 BWG, Article 24 para. 2 VAG 2016, Article 19 para. 1 second sentence ZaDiG 2018 or Article 8 para. 1 E-GeldG 2010, shall include the information specified in Article 8 para. 1 no. 1 as well as, if known, the extent of the holding that is planned to be relinquished and the planned acquirers of this holding. In the event that the holding falls below the statutory thresholds for holdings pursuant to Article 20 para. 2 BWG, Article 24 para. 2 VAG 2016, Article 19 para. 1 second sentence ZaDiG 2018, or Article 8 para. 1 E-GeldG 2010, the information listed in Article 8 para. 1 no. 2 must also be submitted. The companies listed in para. 3 nos. 1 and 4 shall not be required to submit the information listed in Article 8 para. 1 nos. 1 and 2.

(5) If the party subject to notification requirements or an entity within the group, to which the party subject to notification requirements belongs, has already submitted information in the last seven years to the FMA, such information shall not be required to be resubmitted in a notification pursuant to para. 1, as long as it remains complete, correct and current. Any party subject to notification requirements making use of this less stringent requirement shall be required to confirm in the notification that the information that is not being resubmitted remains complete, correct and current, and shall accept responsibility for the information that has not been resubmitted in accordance with Article 3. In this case, for every piece of information that is not resubmitted, the following information must be provided:

1. the name of the entity that has submitted the information to the FMA;
2. the date when the information was submitted to the FMA; as well as
3. details that allows information to be quickly and clearly found, namely
 - a) the reference number (GZ) given by the FMA,
 - b) in the case of reports on the basis of a legal obligation to report or notifications on the basis of an obligation to notify, for which no reference number has been allocated by the FMA, information about the legal provision, from which the reporting or notification obligation arises, or



c) if the information is submitted to the FMA in a procedure pursuant to Article 4 (1) c) in conjunction with Article 15 of Regulation (EU) No 1024/2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, OJ L 287 of 29.10.2013, p. 63, the reference number (GZ), or whether such a reference number does not exist, details with a comparable identification characteristic.

(6) Instead of the submission of the information available in the Commercial Register pursuant to Article 1 para. 1 of the Commercial Register Act (FBG; Firmenbuchgesetz), the respective reference about where this can be found in the register may also be used.

General information

Article 8. (1) The following general documents and declarations shall be included in a notification:

1. Proof of the identity or legal existence of the party subject to notification requirements. Valid forms of proof for natural persons include in particular official photo identification documents and, for legal persons, current extracts from the Commercial Register or a comparable register.
2. A copy of the current articles of association, or the current partnership agreement or comparable agreements provided that the party subject to notification requirements is not a natural person.
3. where the party subject to notification requirements is not a natural person, a list of the management bodies and personally liable partners as well as other persons that actually manage the business affairs of the party subject to notification requirements, including a statement about the type and scope of their powers and the distribution of responsibilities. If the party subject to notification requirements is a private foundation as defined in Article 1 PSG or is a trust, then an explanation is to be added, from which it is clear whether and to what extent, in percentage terms, these persons participate in distribution of its assets or profits.
4. a current, convincing statement about the business activities of the party subject to notification requirements, as well as, in the event that the party subject to notification requirements belongs to a group, also for the group;
5. an analysis whether the proposed acquisition will have an effect on the ability of the target undertaking, to continue to supply its supervisory authority with precise information in a prompt manner;
6. a statement as to whether an investigation is being or has been conducted by another authority or a court in connection with the proposed acquisition. This statement shall specifically include the address and name of any such authority or court, and shall provide details about the current status of proceedings or the findings of any such proceedings respectively. Official documents should be used as far as possible for this purpose.
7. a declaration about whether it is to replace members of the management of the target undertaking, and by which persons they are intended to be replaced. With regard to the persons that the party subject to notification requirements intended to appoint as members of the management, it must also be stated:
 - a) which functions this person will perform in the target undertaking, and
 - b) how much time this person will dedicate as a minimum towards the performance of their function.

(2) Where the party subject to notification requirements is a natural person, then a curriculum vitae is to be submitted with the notification, as well as a curriculum vitae for every natural person pursuant to para. 1 nos. 3 and 7. Curricula vitae shall include details of the person's specialised training and professional experience, as well as current responsibilities and any additional positions. The curriculum of persons pursuant to para. 1 no. 7 shall in any case contain:

1. the names of all previous employers including the period during which they were employed as well as a description of the activity performed. For activities that were performed in the last ten



years, it must be specified for which business areas the person was responsible, and what powers, including internal decision-making powers were conferred upon them;

2. information that enable an assessment of the person's experience;
3. information about other relevant experience including representation of the management body of an undertaking;
4. a list of the organisations in which the person is a member of the executive body;
5. a list of the organisations, in which the person is a member of the supervisory board, or performs another control function as a member of a body.

(3) If the party subject to notification requirements is a legal person with its registered office in a third country, that is supervised by a competent authority in the third country that is competent for the supervision of the financial sector, the following items are to be attached to the notification:

1. a certificate of good standing issued by the competent authority for the supervision of the financial sector in the third country, or where such a certificate is not available, comparable proof;
2. where available a declaration by the competent authority for the supervision of the financial sector in the third country stating that not impediments or restrictions exist regarding the supply of information that is necessary for the supervision of the target undertaking;
3. general information about the regulatory provisions of the third country that apply to the party subject to notification requirements.

(4) In the case that the party subject to notification requirements is a sovereign wealth fund, the following are to be attached to the notification:

1. the designation of the Ministry or the government body that is competent for determining the investment policy of the fund;
2. details about the investment policy including all restrictions on investments;
3. the name and function titles of the persons that make the investment decisions for the fund. The other details pursuant to Article 5 are not necessary for such persons;
4. a description about the influence that is exercised by the respective ministry or government department on the day-to-day activities of the fund and on the target undertaking.

(5) If the party subject to notification requirements is a private equity fund or a hedge fund, the following items are to be attached to the notification:

1. convincing information about the performance of previous acquisitions of qualifying holdings in financial institutions by the party subject to notification requirements;
2. information about the investment policy and the restrictions on investments of the party subject to notification requirements. The information shall contain explanations regard the monitoring process of existing investments, the criteria that the party subject to notification requirements bases its investment decisions on regarding the target undertaking, as well as with regard to the facts that would influence the planned exit strategy;
3. a description of the decision-making process in making investment decisions, including the names and function titles of the persons that make such decisions. The other details pursuant to Article 5 are not necessary for such persons;
4. a detailed description of the systems that the party subject to notification requirements uses for the combatting of money laundering and terrorist financing as well as, in the case that the party subject to notification requirements has its registered office in a third country, general information about the regulations to which the party subject to notification requirements is subject with regard to the combatting of money laundering and terrorist financing.

Information on reliability

Article 9. (1) The party subject to notification requirements shall include in the notification:

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1. whether
 - a) an investigation is being conducted against it in connection with an act punishable by means of a fine imposed by a court of law or judicial criminal proceedings, or
 - b) judicial criminal proceedings have previously been conducted against it;
2. Details as to whether, in connection with entrepreneurial or other professional activities, administrative penal proceedings or comparable proceedings defined in another legal system are being conducted against that party or have been concluded in a legally final manner during the last five years in which a penalty was imposed or admonition issued;
3. whether it is or has been involved in insolvency proceedings, settlement proceedings or comparable proceedings as the obligor, provided that the period of time for providing access to the insolvency proceedings file has not expired. This shall also apply if a comparable offence has been committed abroad;
- 3a. whether enforcement proceedings are currently pending against it, or if enforcement measures have been imposed against it in the last year;
4. whether a supervisory authority, by whom the party is or has been supervised, has instigated an investigation or taken action against the party during the last ten years and whether and how such proceedings were concluded.
5. whether an authority or a court, or another kind of self-administering body or a trade association has not granted or has revoked, refused or cancelled an entry, approval, licence, membership or an authorisation to practise a trade or other professional activity during the last ten years, or whether such a procedure is currently being conducted;
6. whether he/she has been dismissed or laid off in the five years as an employee, or has been removed from the position of fiduciary, foundation director (Article 14 para. 1 PSG), trustee (Article 2 no. 6) or a comparable position of trust;
7. whether in the last five years, in conjunction with an entrepreneurial or other professional activity, the party subject to notification requirements
 - a) has been involved as a party in administrative proceedings or civil law proceedings, where the proceedings would be suitable, either in its own right or together with other information, to cast doubt on the integrity of the party subject to notification requirements, or
 - b) has had disciplinary action imposed against them, including being excluded from a management body.

(2) Criminal proceedings which were dropped on legal grounds or due to insufficient evidence or which ended with an acquittal are not required to be mentioned pursuant to para. 1 no. 1 lit. b. Furthermore criminal proceedings shall also not be required to be listed that ended with prosecution being withdrawn, if five years have passed since prosecution was withdrawn, and convictions that have been erased from the criminal record.

(3) The party subject to notification requirements shall additionally state whether his propriety or the propriety of a person pursuant to Article 8 para. 1 no. 3 or 7 has been reviewed as the acquirer of a qualifying holding in a credit institution, an insurance or reinsurance undertaking, an investment firm, an investment service provider, a payment institution or an e-money institution by a supervisory authority responsible for the supervision of such an entity. The party shall additionally state whether a comparable review has been conducted by another authority. Official documents that contain the result of the review should be attached to the notification. Where the party subject to notification requirements does not possess such documents, then it shall be required to justify this.

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(4) Where the party subject to notification requirements is a natural person, then the details required pursuant to para. 1 shall also be required with regard to every entity pursuant to Article 10 no. 2 and every person pursuant to Article 8 para. 1 no. 7. Where the party subject to notification requirements is not a natural person, then the details required pursuant to para. 1 shall also be required with regard to every entity that is controlled by the party subject to notification requirements, and with regard to all persons and companies that could exercise a significant influence over the party subject to notification requirements, and with regard to every person pursuant to Article 8 para. 1 no. 3 and 7. Where the information to be submitted on the basis of this paragraph are not available for the party subject to notification requirements, then the party subject to notification requirements shall be required to justify this.

(5) The details pursuant to para. 1 no. 1 shall be corroborated by means of a criminal record certificate or comparable proof from a foreign country. The details pursuant to para. 1 nos. 2, 3, and 7 shall be corroborated, when available, by means of statements from official authorities.

Relationships between holdings and membership of a group of companies as well as other possible sources of influence

Article 10. A notification shall include the following information on the relationships between direct and indirect holdings, on membership of a group of companies and other possible sources of influence by the party subject to notification requirements:

1. where the party subject to notification requirements belongs to a group:
 - a) a detailed statement about the group structure including an organisation chart showing every entity within the group, the respective holdings of capital shares and voting rights in per cent by other entities in the group as well as persons and companies that are not part of the group, that are able to exercise significant influence over the entities in the group or on the activities of the group as a whole;
 - b) a list of companies belonging to the group that are supervised by authorities, in Member States or third countries, that are responsible for the supervision of credit institutions, insurance or reinsurance undertakings, payment institutions, e-money institutions, investment firms other financial institutions or financial markets, as well as the name and address of the respective competent supervisory authorities.
 - c) a description of the significant relations between the group entities pursuant to lit. b and the other group entities;
 - d) an analysis of the effects that the proposed acquisition would have on the scope of consolidation for the purpose of consolidated supervision in the group, both on a fully-consolidated and sub-consolidated basis.

An explanation must be given about existing agreements governing voting rights.

2. where the party subject to notification requirements is a natural person, a list of the entities whose business the person manages or over which they have control, or which they have managed in the last 10 years or over which they have had control in the last 10 years. In each case it must be stated whether the party subject to notification requirements manages the business of the company indicated or has control over the company;
3. where the party subject to notification requirements is not a natural person, a list of the natural and legal persons, partnership and companies with other legal forms as well as trusts,
 - a) that hold at least 10 per cent of the capital shares or voting rights of the party subject to notification requirements, including the amount of the respective capital shares and voting rights,



- b) that, irrespective of whether capital shares or voting rights are held, could exercise significant influence on the party subject to notification requirements, including details about the reasons for the significant influence,
- c) those parties, where the party subject to notification requirements is a private foundation or a trust, that participate in the distribution of its assets or profits in the amount of at least 10 per cent, including details about the amount of the participation in the distribution, or
- d) those parties that do not fall under lits. a to c, but which are beneficial owners pursuant to Article 2 of the Beneficial Owners Register Act (WiEReG; Wirtschaftliche Eigentümer Registergesetz), including details about the scope and reasons for the beneficial ownership.

Entities, persons and companies pursuant to no. 1 lit. a are not required to be listed in accordance with this clause. Explanation are to be given about existing agreements governing voting rights.

Relevant business relationships, family ties and other relevant relationships as well as acquisition interests

Article 11. (1) The notification shall include details concerning the financial and other interests that the party subject to notification requirements maintains in the qualifying holding.

(2) The statement pursuant to para. 1 must include details about the business relationships and financial interests that the party subject to notification requirements, an affiliated entity within a group, an entity which it manages or controls, which is required to be indicated, or a person pursuant to Article 8 para. 1 no. 3, to:

1. the target undertaking;
2. the companies associated in a group with the target undertaking;
3. the holders of capital shares in the target undertaking, including the amount of capital shares held;
4. the holders of voting rights in the target undertaking, including the amount of shares with voting rights held,
- 4a. other persons that are authorised to exercise voting rights in the target undertaking pursuant to para. 2a, including the amount of shares with voting rights, that the person is authorised to exercise,
5. the managers of the target undertaking and the persons who will actual conduct the business of the target undertaking; and
6. the members of the supervisory body of the target undertaking.

(2a) For the purposes of para. 2 no. 4a, the following are authorised to exercise voting rights in the target undertaking:

1. anyone who has made an agreement with a shareholder, to pursue a common policy over the long-term with regard to the administration of the target undertaking, so that the voting rights held are consensually exercised;
2. anyone who has made an agreement with a shareholder, in accordance with which voting rights are temporarily transferred for consideration;
3. anyone to whom a holding in target undertaking has been transferred as collateral, provided that they are authorised to exercise the voting rights, and has announced the intention to exercise the voting rights;

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4. anyone for whose benefit a life interest exists from a holding, provided that the life interest authorises the exercising of voting rights;
5. anyone controlling an entity that holds shares with voting rights or that is authorised pursuant to nos. 1 to 4 to exercise voting rights.
6. anyone holding shares in the target undertaking in custody for shareholders, and who is allowed to exercise the voting rights associated with the shares at their own discretion, provided that no special instructions from the shareholders exist;
7. anyone upon whose account shares may be held by a third party;
8. anyone who is authorised as an authorised representative to exercise voting rights in accordance with their own discretion, provided that no special instructions from the shareholders exist;

(2b) The statement regarding the business relationships and financial interests pursuant to para. 2 may be omitted in the statement pursuant to para. 1:

1. in the case of business relationships, in which a natural person is involved, and in the case of financial interests of natural persons, where the requirements of Article 28 para. 2 nos. 1 to 3 BWG are satisfied;
2. in the case of loans, advances, continuing obligations and other legal transactions that respectively exist between non-natural persons, where the appropriate fee, or in the case of continuing obligations the appropriate annually capitalised fee, does not exceed the lower value of EUR 50 000 or 2 % of the annual revenue of the target undertaking.

For the purposes of calculation of the ceilings on the amounts in nos. 1 and 2 all business relationships and financial interests between the same persons are to be totalised.

(3) close associations as defined in Article 3 (1) (26) points a to c of Regulation (EU) No. 596/2014 on market abuse (Market Abuse Regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC, OJ L 173, 12.06.2014, p. 1, most recently amended by Regulation (EU) 2016/1033, OJ L 175 p. 1, in the version of the corrigendum published in OJ L 348, 21.12.2016, p. 83, of the party subject to notification requirements and persons pursuant to Article 8 para. 1 no. 3 with the persons listed in para. 2 nos. 3 to 6 are to be listed in the statement pursuant to para. 1.

(3a) The statement pursuant to para. 1 must contain the business relationships and financial interests as well as the close associations as defined in Article 3 (1) (26) points a to c of Regulation (EU) No. 596/2014 on market abuse, that persons pursuant to Article 8 para. 1 no. 7 or their close relatives as defined in Article 3 (1) (26) points a to c of Regulation (EU) No. 596/2014 on market abuse have with the members of the management board, members of the supervisory body as well as key function holders pursuant to para. 2 nos. 1 to 4a. The statement about business relationships and financial interests may be omitted if the requirements of Article 28 para. 2 nos. 1 to 3 BWG are satisfied.

(4) The statement pursuant to para. 1 shall include:

1. those persons pursuant to Article 8 para. 1 no. 3, that are authorised to manage the business of an owner pursuant to para. 2 nos. 3 to 4a or of the target undertaking based on the law, articles of association, memorandum of association or a comparable agreement at the same time, that actually conduct their business, or are members of the supervisory body;
2. those persons pursuant to Article 10 no. 3 – regardless of whether they are group entities pursuant to Article 10 no. 1 lit. a – that are holders of capital shares or shares with voting rights, with the respective amount of capital shares or shares with voting rights to be indicated respectively.

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(5) The statement pursuant to para. 1 shall separately address and explain about any interests or activities of the party subject to notification requirements that might be in conflict with the interests of the target undertaking of having sound and prudent governance, and shall explain how it is intended to be prevented that such interests have a negative impact on the target undertaking.

Financial situation and credit standing of the party subject to notification requirements

Article 12. (1) The party subject to notification requirements shall describe their economic situation:

(2) Parties subject to notification requirements that prepare balance sheets shall include the following details concerning the party in the information pursuant to para. 1:

1. annual financial statements and, if required to be prepared or prepared voluntarily, management reports for the last three financial years;
2. reports on the auditing of the annual financial statements for the last three financial years, provided that the annual financial statements were bound under law to be audited by an external auditor, or were externally audited;
3. other documentation, that were required to be submitted to the Commercial Register Court (Article 277 para. 1 UGB) or to the competent register abroad together with the annual financial statement pursuant to no. 1;
4. in the case that the party subject to notification requirements is a natural person, a current breakdown of their assets and liabilities, that do not arise from the annual financial statements and management reports pursuant to no. 1.

If a party subject to notification requirements which draws up balance sheets is associated with a group, then the information to be supplied with the notification pursuant to nos. 1 to 3 shall also be submitted for the consolidated financial statement for the whole group, provided that such a consolidated financial was required to be drawn up or was actually drawn up, as well as for the sub-consolidated financial statement of the party subject to notification requirements as the parent undertaking, provided that such a sub-consolidated financial statement was required to be drawn up or was actually drawn up.

(2a) If a party subject to notification requirements obliged to draw up a balance sheet was not obliged to draw up an annual financial statement for the preceding three financial years, then projected annual financial statement are to be submitted for three financial years starting with the current financial year. The projected financial statement consists of a projected balance sheet, a projected income statement and also discloses the underlying assumptions of the projects. For every annual financial statement submitted pursuant to para. 2 nos. 1 to 3, the period of time for which projected annual financial statements must be submitted is reduced by one year.

(3) Parties subject to notification requirements that that are not required to prepare balance sheets shall include the following details concerning the party in the information pursuant to para. 1:

1. a complete listing and description of the sources of income;
2. a current breakdown of assets, also indicating any liabilities;
- 2a. a current breakdown of all collateral and guarantees that have been obtained or entered into by the party subject to notification requirements, or which have been obtained or entered into for the liabilities of the party subject to notification requirements; and
3. where an obligation exists for the party subject to notification requirements to file an income tax return or has filed one voluntarily, the income tax returns and income tax assessment notices for the last three calendar years.

(4) If the credit rating of the party subject to notification requirements has been graded by one or more rating agencies, the party shall indicate the most recent rating given by each agency, providing evidence

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in the form of relevant documents issued by the rating agency in each case. The same shall apply by analogy for the credit rating of the group to which the party subject to notification requirements belongs and, where the party is a natural person, for undertakings over which the party has control or the business of which the party conducts. If the party subject to notification requirements does not possess the documents specified in the first sentence, then it shall be required to explain this.

Financing of the acquisition, disclosure of all agreements

Article 13. (1) A detailed statement is to be submitted with the notification about:

1. the availability of and the financial provenance of equity and debt capital that are intended to be used for the acquisition;
2. all agreements and contracts related to the intended acquisition;
3. joint actions and envisaged agreements respectively with persons who hold or are acquiring a direct or indirect holding on the target undertaking;
4. the acquisition price pursuant to para. 3 and the criteria based upon which the acquisition price was determined;
5. where the party subject to notification requirements acquires or increases a direct holding in the target undertaking, the market value of the shares in the target undertaking, both before and after the proposed acquisition. The criteria that are used to determine the market value must be explained. Any difference between the acquisition price pursuant to no. 4 and the market value must be explained.

The information for the purposes of nos. 1 to 3 must be corroborated using suitable proof.

(2) The information about the availability and financial provenance of equity capital and debt-based capital pursuant to para. 1 no. 1 shall be required to contain:

1. where equity capital is to be used for the acquisition, information about the origin of and the availability of funds. This shall be corroborated by means of suitable proof to show that the proposed acquisition is not taking place as an attempt to launder money;
2. Information about the payment instruments as well as the payment systems that are intended to be used for the proposed acquisition;
3. where the party subject to notification requirements is a legal person, information about the party subject to notification requirements' access to financial markets through which the funds have been raised or are intended to be raised, that are intended to be used for funding the acquisition, including detailed information about the financial instruments used for this purpose;
4. with regard to debt-based capital that is intended to be used for the acquisition, information about maturity and other material contractual conditions, about collateral, guarantees as well as about the sources of revenue that are intended to be used in order to repay debt-based capital. The respective creditors are to be named. In the case that the creditors are not entities that are supervised by authorities in Member States or third countries that are responsible for the supervision of credit institutions, insurance or reinsurance undertakings, payment institutions, e-money institutions, investment firms, other financial institutions or the financial markets, then more detailed information shall be required regarding the origin of the debt-based capital;
5. Information about all financial agreements entered into by the party subject to notification requirements with other shareholders of the target undertaking;
6. detailed information about the assets including the assets of the target undertaking, that are intended to be disposed of for the purposes of funding the proposed acquisition.



(3) To be stated regarding the acquisition price as mentioned in para. 1 no. 4:

1. if the party subject to notification requirements acquires or increases a direct holding in the target undertaking, the purchase price of the holding in the target undertaking;
2. if the party subject to notification requirements acquires or increases an indirect holding in the target undertaking, by acquiring or increasing another direct holding, the purchase price of the directly acquired or increased other holding.
3. if the party subject to notification requirements acquires or increases an indirect holding in the target undertaking, without acquiring or increasing another direct holding in so doing, then no purchase price is to be stated.

Business plan, description of strategic objectives and plans

Article 14. (1) If the party subject to notification requirements obtains control over the target undertaking is as a result of the planned acquisition or the planned increase of the qualifying holding by holding capital shares or voting rights of more than 50 % of the target undertaking, then a business plan must be included with the notification that describes the strategic objectives and plans which the party subject to notification requirements pursues by acquiring or increasing the qualifying holding in the target undertaking. The business plan shall specifically contain relevant information about the planned strategic development (para. 2), the planned development of the net assets, financial position and results of operations (para. 3) and the impact on the corporate and organisational structure of the target undertaking (para. 4).

(2) The details concerning the planned strategic development shall include general explanations of the major objectives in acquiring the holding and of the actions planned in order to achieve the objectives. These comprise in particular:

1. the objectives and considerations, in terms of business strategy, of the acquisition of the holding;
2. the medium-term objectives with regard to net assets, and the financial and earnings situation;
3. the desired synergy effects in the target undertaking.
4. the potential realignment of business activities including the realignment of services offered, target clientele, and the reallocation of resources and effects thereof on the target undertaking;
5. any planned change to the financial structure of the target undertaking.
6. general specifications and stipulations for incorporation and integration of the target undertaking in the acquiring party's group structure. This shall contain a description of the material business relationships desired with other undertakings belonging to the group as well as a description of the principles and procedures for managing and controlling the relationships among the undertakings within the group.
7. Explanations concerning the willingness and financial ability to make additional capital available to the target undertaking in the future should the need arise.

(3) The details concerning the projected development of net assets, the financial and earnings position shall consist of projected balance sheets, projected income statements for each of the next three financial years following the acquisition or planned increase of a qualifying holding for both for the target undertaking as well as for the group. In particular they shall contain:

1. the projected key capital figures;
 - 1a. the expected regulatory capital requirements and solvency ratios;
2. information about the amount of expected exposures including credit risk, market risk, operative risk and other material risks; and

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3. an outlook on planned intragroup transactions.

(4) The details about the impact on the corporate and organisational structure of the target undertaking shall include all material effects arising from the acquisition on the corporate and organisational structure of the target undertaking, and shall specially address and describe the following items:

1. the compensation and areas of responsibility of the body's of the undertaking as well as the central committees deployed by it, with, where they exist, the governance committee, the risk committee, the audit committee and the remuneration committee shall in any case belong to the central committees;
2. The accounting methods and the management, steering and control processes, as well as any material changes to such methods and procedures. These remarks shall also include details about material changes with regard to the internal audit unit, the compliance function, prevention of money laundering (AML) and risk management, as well as with regard to changes in personnel of managerial staff including the Head of Internal Audit, the Compliance Officer and the Head of Risk Management;
3. the IT systems used, IT security as well as material changes to such systems including changes to the strategy on outsourcing IT functions, the data flow diagram, the proprietary and third party software used, to procedures and instruments for data and system integrity including the backing up of data, to the business continuity plans and in logging processes;
4. the principles for the delegation and outsourcing of business activities and processes to another entity or persons, including details about the affected business activities, the selection of the providers, the material rights and obligations to be determined in the outsourcing contracts and in audit agreements and the quality of the services expected from service providers.

(5) If as a result of the planned acquisition or the planned increase of the qualifying holding in the target undertaking the party subject to notification requirements will hold between 20 per cent and 50 per cent of the capital shares or voting rights or if the party subject to notification requirements is able to exercise a comparable degree of influence on the target undertaking and the party subject to notification requirements does not have control over the target undertaking following the planned acquisition or the planned increase of the qualifying holding, then documents that contain the following information are to be attached to the notification:

1. conclusive information about the planned strategic development pursuant to para. 2,
2. conclusive information pursuant to para. 6 and
3. detailed information about the type and extended of the intended future influence on the financial situation taking into consideration the desired dividend policy, on strategic development as well as the allocation of resources of the target undertaking.

(6) If as a result of the planned acquisition or the planned increase of the qualifying holding in the target undertaking the party subject to notification requirements will hold less than 20 per cent of the capital shares or shares with voting rights, no influence may be exercised by the party subject to notification requirements on the target undertaking that is comparable to a holding of 20 per cent to 50 per cent, and the party subject to notification requirements does not have control over the target undertaking following the planned acquisition or the planned increase of the qualifying holding, then the notification shall contain the following information:

1. a conclusive statement about the general strategic objectives being pursued through the acquisition. In this case, it should specifically be stated about how long the shares are intended to be held, as well as whether the amount of shares held is intended to change within a foreseeable period following the acquisition;



2. a statement about the influence intended to be exercised over the target undertaking in the future, stating reasons for doing so.
3. Explanations concerning the willingness and financial ability to make additional capital available to the target undertaking in the future should the need arise.

References

Article 15. (1) Where references are made in this Regulation to other legal acts, such references shall relate to the following respective versions:

1. to the Banking Act (BWG; Bankwesengesetz) as published in Federal Law Gazette I no. 532/1993, in the version amended by federal act in Federal Law Gazette I no. 37/2018;
2. to the Insurance Supervision Act 2016 (VAG 2016; Versicherungsaufsichtsgesetz 2016) as published in Federal Law Gazette I no. 34/2015, in the version amended by federal act in Federal Law Gazette I no. 37/2018;
3. to the Commercial Code (UGB; Unternehmensgesetzbuch) published in Reich Law Gazette p. 219/1897, in the version amended in Federal Law Gazette I No. 17/2018;
4. to the Securities Supervision Act 2018 (WAG 2018; Wertpapieraufsichtsgesetz 2018), published in Federal Law Gazette I no. 107/2017, in the version amended by federal act in Federal Law Gazette I no. 37/2018;
5. to the Payment Services Act 2018 (ZaDiG 2018; Zahlungsdienstegesetz 2018) as published in Federal Law Gazette I no. 17/2018, in the version amended by federal act in Federal Law Gazette I no. 37/2018;
6. to the Electronic Money Act 2010 (EGeldG 2010; E-Geldgesetz 2010) as published in Federal Law Gazette I no. 107/2010, it shall be applied in the version amended by federal act in Federal Law Gazette I no. 37/2018;
7. to the Private Foundation Act (PSG; Privatstiftungsgesetz) published in Federal Law Gazette I No. 694/1993, in the version amended in Federal Law Gazette I No. 112/2015;
8. to the Stock Corporation Act (AktG; Aktiengesetz) published in Federal Law Gazette No. 98/1965, in the version amended in Federal Law Gazette I No. 107/2017;
9. to the Commercial Register Act (FBG; Firmenbuchgesetz) published in Federal Law Gazette No. 10/1991, in the version amended in Federal Law Gazette I No. 60/2017;
10. to the Beneficial Owners Register Act (WiEReG; Wirtschaftliche Eigentümer Registergesetz) published in Federal Law Gazette I 150/2017, in the version amended in Federal Law Gazette I No. 37/2018;
11. to the Delegated Regulation (EU) 2017/1946 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, published in OJ L 276, 26.10.2017, p. 32, in its original version.

Transitional Provision

Article 15a. Article 7 para. 5 shall not be used in procedures pursuant to point (c) of Article 4(1) in conjunction with Article 15 of Regulation (EU) No. 1024/2013 for information that was submitted to the FMA prior to 5 November 2014.



Entry into force

Article 16. (1) This Regulation shall enter into force on 1 January 2016.

(2) The Regulation of the Financial Market Authority (FMA) on the information that a party subject to notification requirements intending to acquire, increase or reduce a qualifying holding in a credit institution, an insurance undertaking, an investment firm, an investment services provider, a payment institution or an electronic money institution, shall be required to supply to the FMA, (Regulation on Owner Control) (EKV; Eigentümerkontrollverordnung) as published in Federal Law Gazette II no. 83/2009, last amended by Federal Law Gazette II no. 318/2013, shall be repealed at the end of 31 December 2015.

(3) Articles 1, 2 and 4 and Articles 5 to 15a as well as Annexes 1 and 2 in the version of the Regulation amended in Article 1 in Federal Law Gazette II No. 255/2017 shall first be used for notifications submitted on 1 October 2017.

(4) Articles 1, 2, 4, 7 and 15 as well as Annexes 1 and 2 in the version of the Regulation amended in Article 2 in Federal Law Gazette II No. 255/2017 shall enter into force on 3 January 2018.

(5) The full title, Article 1, Article 2 nos. 1 to 3, Article 4 paras. 1 and 2, Article 7 paras. 1 and 2, Article 7 para. 3 no. 2, Article 7 para. 4 and para. 5 first sentence, Article 10 no. 2 and no. 3 lit. d, Article 15 and **Annexes 1 and 2** in the version of the Regulation amended in Federal Law Gazette II No. 195/2017 shall enter into force at the end of the day on which they are announced. At the same time Article 2 no. 8 and Article 7 para. 3 no. 1b shall be repealed. Article 7 paras. 2 and 5 shall first be used for notifications that are submitted after 31 August 2018.