

EN ANNEX I PART 7

Part 7

Qualifying holdings in a credit institution

	Directive 2013/36/EU	Assessment criteria and information that is necessary for assessing the suitability of the proposed acquirer seeking to acquire a credit institution and the financial soundness of the proposed acquisition	Information to be provided by the competent authority	
010	Date of the last update of information in this template			20.07.2022
020	Article 23(1)(a)	Reputation of the proposed acquirer	Description on how the competent authority assesses the integrity of the proposed acquirer	In general, the integrity of the proposed acquirer is presumed unless there are indications to the contrary. "Integrity" requires the absence of adverse records. The proposed acquirer is obligated to confirm that such adverse records do not exist. Delayed, incomplete or not delivered statements may question the proposed acquirer's integrity. When assessing the proposed acquirer's integrity especially the following has to be taken into consideration: - conviction for relevant criminal offenses, especially if the banking, finance, insurance or security sector are concerned, further anti money laundering provisions, market manipulation, usury, insider dealing, anti fraud provisions, other financial crimes, bankruptcy or insolvency provisions, consumer protection or corporate law provisions are concerned - pending or prior investigations or executions or imposed administrative penalties in relevant areas - pending or prior investigations and/or executions of other authorities or professional associations in relation to the non-compliance with relevant supervisory provisions. Further, the proposed acquirer's diligence when conducting his business affairs, the prior relationship and behaviour in respect of the supervisory authorities, the disallowance of entries into the commercial registry or trade licenses, exclusion from the position as trustee or a position as manager etc. have to be taken into consideration as well.
030		Reputation of the proposed acquirer	Description on how the competent authority assesses the professional competence of the proposed acquirer	The assessment of the professional competence of the proposed acquirer has to take into consideration management as well as technical competences of the proposed acquirer. Management competence may be based on the experience of the proposed acquirer related to the acquiring and management of investments and should include appropriate competence, accuracy, diligence and compliance. Technical competence also is based on the experience of the proposed acquirer in relation to management of financial businesses and has to meet the same criteria as management competence. Key for the assessment of the technical competence is the influence on the achievement of objectives. Accordingly, the criteria for the assessment of the professional competence are less strict if the proposed acquirer will not be of major influence for the institution or does not intend to have that kind of influence. In such cases, the professional competence shall be deemed given, if the assessment of the management competences was positive. But on the other hand, in case the acquisition enables the acquirer to great influence, the technical competences are more important.
040		Reputation of the proposed acquirer	Practical details on the cooperation process between competent authorities pursuant to Article 24 of Directive 2013/36/EU	<p><i>Article 20a(5)&(6) of the Austrian Banking Act (BWG):</i></p> <p><i>(5) For the assessment of a proposed acquisition or the increase of a qualifying holding under Articles 20 to 20b, the FMA shall cooperate closely with the responsible authority of any other Member State or sector and shall, without undue delay, exchange with them any information which is essential or relevant for the assessment, if the proposed acquirer is one of the following: 1. a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed; 2. the parent undertaking of a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed; or 3. a natural or legal person controlling a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed.</i></p> <p><i>(6) In the event of a procedure as described in paragraph 5, the FMA shall provide upon request all relevant information and communicate on its own initiative all essential information to the competent authorities, in particular information regarding assessment and/or prohibition of the acquisition. The FMA shall obtain the opinions of the responsible authorities under Article 20b(1)(1-5).</i></p>
050	Article 23(1)(b)	Reputation, knowledge, skills and experience of any member of the management body or senior management who will direct the business of the credit institution	Description on how the competent authority assesses the reputation, knowledge, skills and experience of members of management body and senior managers	Assessing the reputation, knowledge, skills and experience is of relevance, if the proposed acquirer will be in the position to appoint managers and already has taken the respective steps. In that case, the reliability and experience of each person that will manage the business of the credit institution will be assessed. The criteria are not applicable in case it is not planned to appoint new managers.
060	Article 23(1)(c)	Financial soundness of the proposed acquirer	Description on how the competent authority assesses the financial soundness of the proposed acquirer	<p><i>The proposed acquirer has to be able to finance the proposed acquisition and to maintain a functioning financial structure of the institution for the foreseeable future (about 3 years). This financial soundness should be perceptible in the overall objective and the acquisition strategy of the proposed acquirer. In case there is a change in the control over the institution, the financial soundness also has to be assessed with regard to the future financial objectives and in an overall assessment of the business plan. The criteria of financial soundness should not be assessed isolated, but together with the criteria of the fulfilment of supervisory requirements, because this criteria also considers the future solidity of the institution, not only the proposed acquirer. It has to be considered, if the financial mechanisms of the proposed acquirer might lead to conflicts of interests with the potential of destabilising the financial soundness of the institution. The target supervisor has to prohibit the acquisition if it might lead to financial problems at the time of the acquisition or in the foreseeable future. The scope of the assessment of the financial soundness of the proposed acquirer has to be proportional to the proposed acquirer and the acquisition: A rigorous examination is necessary if the acquisition leads to a change in the control over the financial systems of the institution. Also the scope of necessary information depends on the legal status of the proposed acquirer: financial institutions that are already supervised are to be treated differently than other legal persons or natural persons. If the financial institution is under the supervision of another state of the EEA, the target supervisor is in charge of the assessment of the financial situation and its assessment including relevant documents that have been submitted are to be taken into consideration.</i></p>
070		Financial soundness of the proposed acquirer	Practical details on the cooperation process between competent authorities pursuant to Article 24 of Directive 2013/36/EU	<p><i>Article 20a(5)&(6) Austrian Banking Act (BWG):</i></p> <p><i>(5) For the assessment of a proposed acquisition or the increase of a qualifying holding under Articles 20 to 20b, the FMA shall cooperate closely with the responsible authority of any other Member State or sector and shall, without undue delay, exchange with them any information which is essential or relevant for the assessment, if the proposed acquirer is one of the following: 1. a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed; 2. the parent undertaking of a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed; or 3. a natural or legal person controlling a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed.</i></p> <p><i>(6) In the event of a procedure as described in paragraph 5, the FMA shall provide upon request all relevant information and communicate on its own initiative all essential information to the competent authorities, in particular information regarding assessment and/or prohibition of the acquisition. The FMA shall obtain the opinions of the responsible authorities under Article 20b(1)(1-5) BWG.</i></p>
080	Article 23(1)(d)	Compliance of the credit institution with the prudential requirements	Description on how the competent authority assesses whether or not the credit institution will be able to comply with the prudential requirements	<p><i>The proposed acquirer has to be able to finance the proposed acquisition and to maintain a functioning financial structure of the institution for the foreseeable future (about 3 years). This financial soundness should be perceptible in the overall objective and the acquisition strategy of the proposed acquirer. In case there is a change in the control over the institution, the financial soundness also has to be assessed with regard to the future financial objectives and in an overall assessment of the business plan. The criteria of financial soundness should not be assessed isolated, but together with the criteria of the fulfilment of supervisory requirements, because this criteria also considers the future solidity of the institution, not only the proposed acquirer. It has to be considered, if the financial mechanisms of the proposed acquirer might lead to conflicts of interests with the potential of destabilising the financial soundness of the institution. The target supervisor has to prohibit the acquisition if it might lead to financial problems at the time of the acquisition or in the foreseeable future. The scope of the assessment of the financial soundness of the proposed acquirer has to be proportional to the proposed acquirer and the acquisition: A rigorous examination is necessary if the acquisition leads to a change in the control over the financial systems of the institution. Also the scope of necessary information depends on the legal status of the proposed acquirer: financial institutions that are already supervised are to be treated differently than other legal persons or natural persons. If the financial institution is under the supervision of another state of the EEA, the target supervisor is in charge of the assessment of the financial situation and its assessment including relevant documents that have been submitted are to be taken into consideration.</i></p>

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090			Description on how the competent authority assesses whether or not there are reasonable grounds to suspect money laundering or terrorist financing	Generally, the assessment of the integrity of the proposed acquirer should provide answers to the question whether or not there are reasonable grounds to suspect money laundering or terrorist financing. The acquisition might be prohibited even if there have not been any convictions or reasons that question the integrity of the proposed acquirer, but the overall assessment lead to the conclusion that the acquisition would increase the risk of money laundering or terrorism financing (e.g. acquisition in non-cooperative countries or countries that are on the FATF-List).
100	Article 23(1)(e)	Suspicion of money laundering or terrorist financing	Practical details on the cooperation process between competent authorities pursuant to Article 24 of Directive 2013/36/EU	<p>Article 20a(5)&(6) of the Austrian Banking Act (BWG):</p> <p>(5) For the assessment of a proposed acquisition or the increase of a qualifying holding under Articles 20 to 20b, the FMA shall cooperate closely with the responsible authority of any other Member State or sector and shall, without undue delay, exchange with them any information which is essential or relevant for the assessment, if the proposed acquirer is one of the following:</p> <ol style="list-style-type: none"> 1. a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed; 2. the parent undertaking of a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed; 3. a natural or legal person controlling a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed. <p>(6) In the event of a procedure as described in paragraph 5, the FMA shall provide upon request all relevant information and communicate on its own initiative all essential information to the competent authorities, in particular information regarding assessment and/or prohibition of the acquisition. The FMA shall obtain the opinions of the responsible authorities under Article 20b(1)(1-5).</p>
110	Article 23(4)	List specifying the information to be provided to the competent authorities at the time of notification	List of information that must be provided by the proposed acquirer at the time of notification in order for the competent authority to carry out the assessment of the proposed acquirer and the proposed acquisition	<p>Pursuant to Article 5 of the regulation on qualifying holdings 2016, the application has to contain details relating to natural persons: Full name, date of birth, place and country of birth as well as nationality, address of the main place of residence, and telephone number and e-mail address where known and for legal entities according to Article 8 of the regulation on qualifying holdings 2016:</p> <ol style="list-style-type: none"> 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. In addition, the rules of Article 9 EK-V must be taken into consideration concerning information on the credibility.