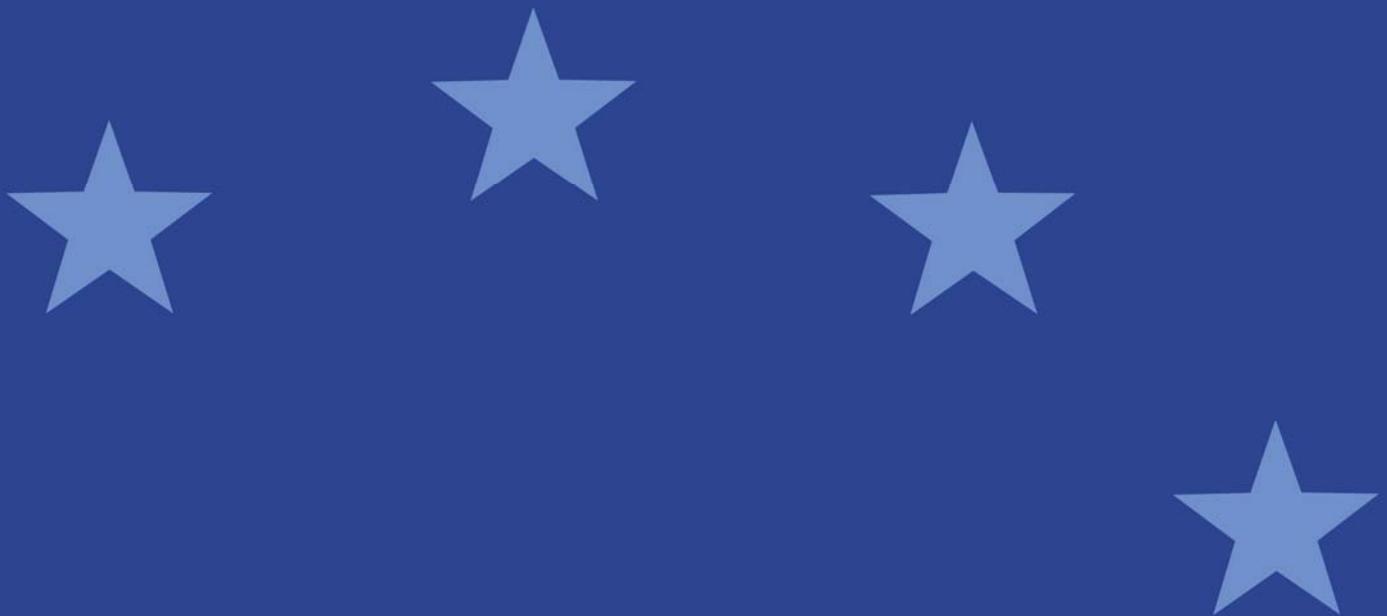




European Securities and
Markets Authority

Final report

Draft technical standards under Article 10a(8) of MiFID on the assessment of acquisitions and increases in qualifying holdings in investment firms



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Acronyms

CEBS	Committee of European Banking Supervisors
CEIOPS	Committee of European Insurance and Occupational Pensions Supervisors
CESR	Committee of European Securities Supervisors
EBA	European Banking Authority (previously CEBS)
EEA	European Economic Area
EIOPA	European Insurance and Occupational Pensions Authority (previously CEIOPS)
ESMA	European Securities and Markets Authority (previously CESR)
ITS	Implementing Technical Standards
MiFID	Markets in Financial Instruments Directive
RTS	Regulatory Technical Standards

I. Overview

Reasons for publication

1. Article 10b(4) of the Markets in Financial Instruments Directive (MiFID¹) requires Member States to make publicly available the information necessary to carry out the assessment of a proposed acquirer of an investment firm. This information must be provided by the proposed acquirer at the time of the initial notification. This information is aimed at ensuring that competent authorities are provided with adequate and proportionate information in order to assess the acquisition. Article 10a of MiFID, as amended by Article 6(4) of the Omnibus Directive², requires ESMA to draft:
 - regulatory technical standards (RTS) to establish an exhaustive list of information referred to in Article 10b(4) of MiFID; and
 - implementing technical standards (ITS) to determine standard forms, templates and procedures for the cooperation and exchange of information between the relevant competent authorities as referred to in Article 10(4) of MiFID.
2. ESMA submitted the draft RTS and ITS to the European Commission (Commission) by 1 January 2014, as required.
3. However, a mistake had intervened when the Omnibus I Directive 2010/78/EU amended MiFID and Article 10a(8) of MiFID mistakenly referred to paragraph 4 of Article 10a of MiFID, instead of paragraph 4 of Article 10b. After the original submission of the draft RTS to the Commission in December 2013³, a Corrigendum was adopted and published in the Official Journal of the European Union on 22 February 2014 (L 54/23). Therefore, ESMA has amended the text of the RTS in order to take into account the published Corrigendum and has included a new Article⁴ to cover the information to be provided by the proposed acquirer to enable the competent authority to assess “the reputation and experience of any person who will direct the business of the investment firm as a result of the proposed acquisition”.⁵ The content of Article 6 is aligned with the content of the Discussion Paper on the draft technical standards that ESMA has published under Article 7(4) of MiFID II and which did

¹ Directive 2004/39/EC.

² Directive 2010/78/EU.

³ See ESMA/2013/1940.

⁴ Article 6 of the draft RTS.

⁵ See Article 10(b)(1)(b) of MiFID.

not raise any particular issue.⁶ Furthermore, Directive 2014/65/EU (MiFID II) and Regulation (EU) No 600/2014 (MiFIR) were published on the Official Journal on 12 June 2014 and entered into force on the twentieth day following their publication. MiFID II repeals MiFID with effect from 3 January 2017. Article 12(8) and 12(9) of MiFID II contains empowerments to ESMA for the development of regulatory and implementing technical standards which are identical, including in the deadline for submission (1 January 2014), to those provided for under Article 10a(8) of MiFID. The content of Articles 10b(4) and Article 10(4) of MiFID is also respectively identical⁷ to the content of Article 13(4) and Article 11(2) of MiFID II.

4. ESMA therefore considers that the submission of the draft technical standards contained in this Final Report should also be considered in compliance with MiFID II, without the need for any further amendment.

Background

Regulatory Technical Standards

5. ESMA's Consultation Paper (CP) on 'Draft Regulatory Technical Standards on information requirements for assessment of acquisitions and increases in holdings in investment firms (MiFID)' (Ref: ESMA/2013/918) was published on 9 July 2013. The consultation period closed on 9 September 2013. ESMA received 4 responses, all of which have been published on ESMA's website.
6. As required by Article 10 of the ESMA Regulation⁸, ESMA also sought the advice of the Securities and Markets Stakeholder Group's (SMSG). However, due to the technical nature of the draft RTS, the SMSG decided not to provide formal feedback.
7. This final report sets out the feedback statement to the CP, provides an analysis of the responses to the consultation, describes any material changes to the technical proposals set out in Annex V of the CP (or confirms that there have been no material changes), and explains the reasons for this in the light of feedback received.
8. The draft RTS are based on the Appendix II of the CEBS, CESR and CEIOPS 'Guidelines for the prudential assessment of acquisitions and increases in holdings in the financial sector required by Directive 2007/44/EC'⁹ (3L3 Guidelines), as well as the report issued by the

⁶ See Article 4 of draft RTS under Article 7(4) of MiFID II [Ref: ESMA/2014/1569].

⁷ With the exception of formal references.

⁸ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority).

⁹ http://www.esma.europa.eu/system/files/08_543.pdf

Commission (in February 2013)¹⁰ to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of Regions on the application of Directive on acquisitions and increase of holdings in the financial sector.¹¹

Implementing Technical Standards

9. Article 15 of the ESMA Regulation requires ESMA, where appropriate, to conduct open public consultations on the draft implementing technical standards, analyse the potential, related costs and benefits, and request the opinion of the SMSG established in accordance with Article 37 of that Regulation.
10. As noted in the CP, ESMA did not carry out a public consultation, analyse the potential, related costs and benefits or request the opinion of the SMSG in relation to the ITS as ESMA considered that it was not appropriate to do so. This is because the ITS concern cooperation arrangements between competent authorities and ESMA has developed them in cooperation with the competent authorities. ESMA has informed the SMSG of this approach,.
11. The draft ITS set out in Annex IV hereto are based on the principles set out in the guidelines on cooperation arrangements and information exchange between competent authorities¹² and the multilateral memorandum of understanding between those authorities to the extent that the obligations in that memorandum relate to Articles 10, 10(a) and 10(b) of MiFID. These draft implementing technical standards have adapted those principles to meet the specific requirements of Article 10(4) of MiFID.

Contents

12. Section II below sets out the feedback statement on the draft RTS; Annex I sets out the legislative mandate for ESMA to develop draft technical standards (both RTS and ITS); Annex II sets out the cost-benefit analysis related to the draft RTS; Annex III contains the full text of the draft regulatory technical standards; and Annex IV contains the full text of the draft implementing technical standards.

Next steps

13. This final report will be submitted to the European Commission for it to decide whether to endorse ESMA's draft technical standards.

¹⁰ http://ec.europa.eu/internal_market/finances/docs/committees/130211_report_en.pdf

¹¹ Directive 2007/44/EC.

¹² ESMA/2013/BS/157.

II. Feedback statement (RTS)

Proportionality

1. Two respondents noted that the CEBS, CESR and CEIOPS 'Guidelines for the prudential assessment of acquisitions and increases in holdings in the financial sector required by Directive 2007/44/EC'¹³ (3L3 Guidelines), which form the basis of the draft RTS, recognise that proportionality should be applied to information required about the professional competence of the acquirer where a purchase is made for investment purposes, as opposed to trying to control the target as a subsidiary. These respondents noted that this approach is not carried over to the RTS.
2. One respondent stated that intra-group transactions should be based on a lighter version of the requirements.
3. ESMA has not made any changes in this regard because it considers that the proportionality principle for information requirements included in the 3L3 Guidelines where a purchase is made for investment purposes has been carried over into the draft RTS in Articles 10 to 12. Further, in Article 13 of the draft RTS, the level of proposed investment is again taken into account in the information requirements set out in points (a) and (b) of paragraph 1.
4. Two respondents, while agreeing with the criteria to define a small, non-complex firm provided in the RTS, noted that it would not be appropriate for acquirers of small (non-complex) asset managers to be subject to lower standards of information provisions. One respondent suggested that alternative investment funds (AIFs) should be subject to specific requirements. ESMA disagrees, and considers that requirements set out in the RTS should aim at standardising and clarifying the current approaches used at national level and should not be differentiated by firm type, if not strictly necessary. Furthermore, no specific issues were raised by respondents on the list of documents set out in the consultation paper (see below).

Documentation

5. The report issued by the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of Regions on the application of Directive 2007/44/EC highlighted the fact that documents required by competent authorities

¹³ http://www.esma.europa.eu/system/files/08_543.pdf

for the assessment, in particular in relation to the financial soundness criteria, differ across Member States.

6. In order to level the playing field, ESMA has prescribed in the RTS specific information with regard to documents to be submitted. No respondent highlighted any relevant issues related to specific documents mentioned in the proposed RTS. Therefore, no changes were made on this matter.

Consolidated supervision and close links

7. All respondents stated that the proposals in relation to the close links of the proposed acquirer are sufficient, and therefore no additional information on the topic should be requested in the RTS.
8. Two respondents disagreed with the information required under Article 6 of the draft RTS in the CP in relation to close links and consolidated supervision. One of these respondents in particular disagreed with the information set out under Article 6(1)(a) of the CP which required an analysis of the impact of the proposed acquisition on the consolidated supervision of the target entity and the group that it would belong to after acquisition. Another respondent did not agree that where the target entity has a waiver from capital requirements on a consolidated basis, confirmation should be provided as to whether the requirements for having the waiver will continue to be met after the proposed acquisition. In response to these comments, ESMA has deleted the requirement that was included in Article 6(1)(b) of the CP in relation to the waiver from capital requirements on a consolidated basis, and ESMA has modified the information required under Article 7 (a) of the final draft RTS to limit its scope to an analysis of the perimeter of consolidated supervision after acquisition, specifically which group entities would be included in the scope of consolidated supervision requirements after acquisition, and at which levels within the group these requirements would apply on a full or sub-consolidated basis.

Third country acquirers

9. One respondent highlighted that requiring a “certificate of good standing” from a government or regulator about a third country acquirer is impractical, since this concept does not exist in many jurisdictions, and foreign authorities are unlikely to willingly supply such a declaration, with the effect that some third country entities will be unable to acquire holdings in investment firms. ESMA has amended the text of the RTS to clarify that a “certificate of good standing”, or equivalent, shall be provided only where available.
10. One respondent suggested that information on compliance, reporting and anti-money laundering measures should be required when the proposed acquirer is located in an off-shore jurisdiction where there are legal barriers to supervision. In this regard, ESMA has introduced an additional information requirement under Article 5(2) to require general information on the regulatory regime of the third country as applicable to the proposed acquirer.

Legal structures of acquirers

11. In the CP, ESMA noted that some particular legal structures of proposed acquirers may require additional information to be provided due to their unusual nature, and therefore suggested a list of information to be required from sovereign wealth funds, or any other state/government-owned controller. No amendments were suggested by respondents.

Shareholding structure of proposed acquirers

12. One respondent disagreed that information relevant to the reputation of shareholders that exert significant influence on the proposed acquirer should be required. This respondent noted that the requirement is disproportionate, would cover highly subjective information that would be difficult to identify and provide, and is likely to increase time and costs in preparing notifications with little apparent benefit. ESMA disagrees, and notes the information required from proposed acquirers on the shareholding structures is clearly set out in Article 5 and cannot be considered highly subjective or difficult to identify and to provide. Therefore, ESMA has not amended the text of the RTS in this respect.

Annex I: Legislative mandate

1. Regulation (EU) No 1095/2010 of the European Parliament and of the Council (the ESMA Regulation) empowers ESMA to develop draft regulatory technical standards where the European Parliament and the Council delegate power to the European Commission to adopt regulatory standards by means of delegated acts under Article 290 the Treaty on the Functioning of the European Union (TFEU).
2. In addition, the ESMA Regulation empowers ESMA to develop draft implementing technical standards where the European Parliament and the Council confer power to the European Commission to adopt implementing standards by means of implementing acts under Article 291 of the Treaty on the Functioning of the European Union (TFEU).
3. The 'Directive on acquisitions and increase of holdings in the financial sector' (Directive 2007/44/EC) amended MiFID, and provides rules and evaluation criteria for the prudential assessment of acquisitions and increases in holdings in investment firms. In particular, Article 10b(4) of MiFID requires Member States to make publicly available the information necessary to carry out the assessment of the proposed acquirer which must be provided at the time of the initial notification. Article 6(4) of the Omnibus Directive amended Article 10(a) of MiFID by adding paragraph 8 which requires ESMA to draft:
 - a. regulatory technical standards to establish an exhaustive list of information referred to in Article 10b(4); and
 - b. implementing technical standards to determine standard forms, templates and procedures for the consultation process between the relevant competent authorities as referred to in Article 10(4).
4. ESMA submitted the draft technical standards to the Commission by 1 January 2014, as required and is submitting it again to take account of a corrigendum which has corrected a wrong reference in the context of MiFID and in order to include an Article¹⁴ to specifically cover the information to the provided by the proposed acquirer to enable the competent authority to assess "the reputation and experience of any person who will direct the business of the investment firm as a result of the proposed acquisition".¹⁵

¹⁴ Article 6 of the draft RTS.

¹⁵ See Article 10(b)(1)(b) of MiFID.

5. Furthermore, Directive 2014/65/EU (MiFID II) and Regulation (EU) No 600/2014 (MiFIR) were published on the Official Journal on 12 June 2014 and entered into force on the twentieth day following their publication. MiFID II repeals MiFID with effect from 3 January 2017. Article 12(8) and 12(9) of MiFID II contains empowerments to ESMA for the development of regulatory and implementing technical standards which are identical, including in the deadline for submission (1 January 2014), to those provided for under Article 10a(8) of MiFID. The content of Articles 10b(4) and Article 10(4) of MiFID is also respectively identical¹⁶ to the content of Article 13(4) and Article 11(2) of MiFID II.
6. ESMA therefore considers that the submission of the draft technical standards contained in this Final Report should also be considered in compliance with MiFID II, without the need for any further amendment.

¹⁶ With the exception of formal references.

Annex II: Cost-benefit analysis

1. Pursuant to Article 10(1) of the ESMA Regulation,¹⁷ ESMA is empowered to develop draft regulatory technical standards where the European Parliament and the Council delegate power to the Commission to adopt regulatory technical standards by means of delegated acts under Article 290 TFEU in order to ensure consistent harmonisation in the areas specifically set out in the legislative acts within the scope of action of ESMA. The same article obliges ESMA to conduct open public consultations on draft regulatory technical standards and to analyse the related potential costs and benefits, where appropriate. Such consultations and analyses shall be proportionate in relation to the scope, nature and impact of the draft regulatory technical standards.
2. The purpose of the proposed draft RTS is to develop an exhaustive list of information to be included by proposed acquirers in their notification to the relevant competent authority. The aim is to set up a harmonised, common list of information that provides legal certainty, clarity and predictability with regard to the assessment process and to the supervisory decision. The proposed RTS will comprise clearly specified criteria for the prudential assessment which shall be applied consistently across Member States. This not only benefits the proposed acquirers themselves, but also competent authorities in facilitating guidance in the supervisory process.
3. The proposed RTS set out in this Final Report are based on the existing CEBS, CESR and CEIOPS 'Guidelines for the prudential assessment of acquisitions and increases in holdings in the financial sector required by Directive 2007/44/EC'. There are no fundamental changes, and although the information requirements are clearer and standardised, which is likely to result in some extra costs, these extra costs are not expected to be significant. Any additional costs in this regard are expected to be outweighed by the benefits of clarity and standardisation.
4. For competent authorities, it is likely that a clearer legal framework with specified criteria will clarify the assessment process, reducing the volume of inquiries by proposed acquirers and simplifying internal processes. However, it is possible that the extension of the list of information required from proposed acquirers could lead to additional costs for competent authorities in terms of time and re-source.

¹⁷ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC.

5. As the proportionality principle underlies the information required from proposed acquirers, which information may be adapted to the nature of the proposed acquirer and the proposed acquisition, the expected costs to the industry are likely to be reduced. However, where the proposed list of information is extended in certain areas, this could potentially increase costs in terms of time and re-source, but is balanced by the specification of any additional requirements.
6. There are no specific information requirements in relation to third country acquirers. Therefore, requiring information where the proposed acquirer is a third country legal or natural person, or if it belongs to a non-EU financial group, will lead to additional costs for third country authorities.

Annex III: Draft regulatory technical standards

COMMISSION DELEGATED REGULATION (EU) No .../..

of **XXX**

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

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,
Having regard to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC¹⁸, and in particular the third subparagraph of Article 10a(8) thereof,

Having regard to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council (recast), and in particular of Article 12(8) thereof,

Whereas:

- (1) An exhaustive list of information should be required from a proposed acquirer of a qualifying holding in an investment firm at the time of the initial notification to enable competent authorities to carry out the assessment of the proposed acquisition. This does not prejudice the right of the competent authority of the target entity to request additional information from the proposed acquirer during the assessment process in accordance with the criteria and timelines set out in Directive 2004/39/EC.
- (2) Information on the identity of the proposed acquirer should be proportionate and adapted to the nature of the proposed acquirer and the proposed acquisition. This information

¹⁸ OJ L 145, 30.4.2004, p. 1.

should also be sufficiently precise in order to allow the competent authority of the target entity to assess the reputation of that proposed acquirer. Therefore, information on the identity of the proposed acquirer and of the persons who will direct the business should be provided by the proposed acquirer irrespective of whether it is a natural or a legal person. Information on the identity of the beneficial owners and on the reputation and experience of the persons who effectively direct the business of the proposed acquirer is also necessary where the proposed acquirer is a legal person. Similarly, where the proposed acquirer is or is intended to be a trust structure, it is necessary to obtain information on the identity of the trustees who will manage the assets and on the identity of the beneficial owners of the trust property for the competent authority of the target entity to be able to assess the reputation and experience of these persons.

- (3) Further information should be required from the proposed acquirer in order to assess its reputation. Where the proposed acquirer is a natural person it is necessary to obtain this information both in relation to the proposed acquirer and in relation to any undertaking formally directed or controlled by the proposed acquirer in order to provide the competent authority of the target entity with full information relevant to the assessment of reputation. Where the proposed acquirer is a legal person it is necessary to obtain this information in relation to any person who effectively directs the business of the proposed acquirer, any undertaking under the proposed acquirer's control, and any shareholder exerting significant influence on the proposed acquirer in order to provide the competent authority with full information relevant to the assessment of reputation.
- (4) The information relevant to the assessment of reputation should include details of criminal proceedings, historical or on-going, as well as civil or administrative cases. Similarly information should be required in relation to all open investigations and proceedings and any investigations or proceedings that resulted in a sanction or another enforcement decision against the proposed acquirer, as well as other information such as refusal of registration or dismissal from employment or a position of trust which is deemed relevant in order to assess the reputation of the proposed acquirer.
- (5) Information on whether an assessment of reputation as an acquirer, or as a person who directs the business of a credit institution, assurance, insurance or re-insurance undertaking, investment firm or any other entity has already been conducted by another competent authority or other authority and if so the outcome of such assessment, should be required from the proposed acquirer in order to ensure that the outcome of investigations run by other authorities are duly considered by the competent authority of the target entity when assessing the proposed acquirer.
- (6) Financial information concerning the proposed acquirer should be required in order to assess the financial soundness of that proposed acquirer.
- (7) Information on the financial and non-financial interests or relationships of the proposed acquirer with any shareholders or directors or members of senior management of the target entity or person entitled to exercise voting rights in the target entity, or with the target entity itself or its group, should be required in order to allow the competent authority of the target entity to assess whether the existence of any potential conflicts of interest will not affect the financial soundness of the proposed acquirer.
- (8) Certain additional information including information on the shareholding owned or contemplated to be owned before and after the proposed acquisition is necessary when the

proposed acquirer is a legal person in order to allow the competent authority of the proposed acquirer to complete the assessment of the proposed acquisition as in such cases the legal and group structures involved may be complex and may necessitate detailed review in relation to reputation, close links, a potential action in concert with other parties, and the ability of the competent authority of the target entity to continue effective supervision of the target entity.

- (9) Where the proposed acquirer is an entity established in a third country or is part of a group established outside the Union, additional information should be required so that the competent authority of the target entity can assess whether there are any obstacles to the effective supervision of the target entity posed by the regime of the third country and also to ascertain the proposed acquirer's regulatory record within that third country.
- (10) Where the proposed acquirer is a sovereign wealth fund, information should be required from the proposed acquirer to ascertain the controllers of the fund and its investment policy as well as details on the investment policy itself. This is relevant for the competent authority of the target entity both for the assessment of reputation and also for assessing whether there is any impact on the effective supervision of the target entity.
- (11) Specific information that enables an assessment as to whether the proposed acquisition will impact on the ability of the competent authority of the target entity to carry out effective supervision of the target entity should be required. This should include an assessment of whether the close links of the proposed acquirer will impact on the ability of the target entity to continue to provide timely and accurate information to its supervisor. For legal persons it is also necessary to assess the impact of the proposed acquisition on the consolidated supervision of the target entity and the group it would belong to after the acquisition.
- (12) Information on the financing of the proposed acquisition including information concerning all means and sources of financing should be required from the proposed acquirer who should be able to present evidence about the original source of all funds and assets in order that the competent authority of the target entity can assess whether there is a risk that money laundering activities have occurred.
- (13) Where there is a proposed change in control of the target entity, the proposed acquirer should, as a general rule, be required to submit a full business plan. However, where there is no proposed change in the control of the target entity, it is sufficient to require certain information on strategy and the proposed acquirer's intentions for the target entity in order to assess whether this will not affect the financial soundness of the proposed acquirer.
- (14) In certain cases it is proportionate to require reduced information from the proposed acquirer. In particular, where the proposed acquirer has been assessed by the competent authority of the target entity within the previous two years or where the target entity is a small investment firm and the proposed acquirer is an entity authorised and supervised within the European Union it should only be necessary to provide certain reduced information to the competent authority of the target entity.
- (15) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the

free movement of such data applies to the processing of personal data by the Member States in the application of this Regulation.

- (16) Regulation 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data applies to the processing of personal data by the European Securities and Markets Authority (ESMA) in the application of this Regulation.
- (17) This Regulation is based on the draft regulatory technical standards submitted by ESMA to the European Commission.
- (18) ESMA has conducted an open public consultation on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council¹⁹.
- (19) Directive 2014/65/EU was published in the Official Journal on 12 June 2014, entering into force on the twentieth day following its publication. Article 12(8) of 2014/65/EU replaces Article 10a(8) of Directive 2004/39/EC and contain empowerments to ESMA for the development of regulatory technical standards which are identical to those provided for under Article 10a(8) of Directive 2004/39/EC. Furthermore, the content of Articles 10b(4) and Article 10(4) of Directive 2004/39/EC is also respectively identical to the content of Article 13(4) and Article 11(2) of 2014/65/EU. In accordance with Article 94(1) of 2014/65/EU, Directive 2004/39/EC will be repealed with effect from 3 January 2017. The submission of the draft technical standards to the European Commission in accordance with Article 10a(8) of Directive 2004/39/EC should also be considered in compliance with Article 12(8) of 2014/65/EU, without the need for any further amendment. Reference to Articles of Directive 2004/39/EC in this act shall be construed as references to the equivalent Articles of Directive 2014/65/EC,

HAS ADOPTED THIS REGULATION:

Article 1
Subject matter

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

¹⁹ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), OJ L 331, 15.12.2010, p. 84.

Article 2

Information to be provided by the proposed acquirer

The information to be provided by the proposed acquirer to the competent authority of the target entity shall be that referred to in Articles 3 to 13, depending on whether the information relates to a natural person or a legal person or a trust.

Article 3

General information relating to the identity of the proposed acquirer

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

Article 4

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

4. The proposed acquirer that is a natural person shall provide the competent authority of the target entity with the following additional information:
- (a) the following information concerning the proposed acquirer, any undertaking directed or controlled by the proposed acquirer, over the last 10 years:
 - (1) criminal records, or criminal investigations or proceedings, relevant civil and administrative cases, and disciplinary actions (including disqualification as a company director or bankruptcy, insolvency or similar procedures), notably through an official certificate (if and in so far as it is available from the relevant Member State or third country), or through another equivalent document. For ongoing investigations information could be provided through a declaration of honour;
 - (2) open investigations, enforcement proceedings, sanctions, or other enforcement decisions against the proposed acquirer;
 - (3) refusal of registration, authorisation, membership or licence to carry out trade, business or a profession; or the withdrawal, revocation or termination of such a registration, authorisation, membership or licence; or expulsion by a regulatory or government body or a professional body or association;
 - (4) dismissal from employment or a position of trust, fiduciary relationship, or similar situation;
 - (b) information as to whether an assessment of reputation of the acquirer has already been conducted by another supervisory authority, the identity of that authority, and evidence of the outcome of the assessment.
 - (c) information regarding the current financial position of the proposed acquirer, including details concerning sources of revenues, assets and liabilities, pledges and guarantees, granted or received.
 - (d) a description of the business activities of the proposed acquirer.
 - (e) financial information including credit ratings and publicly available reports on the undertakings controlled or directed by the proposed acquirer and, if applicable, on the proposed acquirer.
 - (f) a description of the financial and non-financial interests or relationships of the proposed acquirer with the persons listed in the following points:
 - (1) any other current shareholder of the target entity;
 - (2) any person entitled to exercise voting rights of the target entity in any of the following cases or a combination of them:
 - voting rights held by a third party with whom that person or entity has concluded an agreement, which obliges them to adopt, by concerted exercise of the voting rights they hold, a lasting common policy towards the management of the issuer in question;
 - voting rights held by a third party under an agreement concluded with that person or entity providing for the temporary transfer for consideration of the voting rights in question;

- voting rights attaching to shares which are lodged as collateral with that person or entity, provided the person or entity controls the voting rights and declares its intention of exercising them;
 - voting rights attaching to shares in which that person or entity has the life interest;
 - voting rights which are held, or may be exercised within the meaning of the first four items of this (2), by an undertaking controlled by that person or entity;
 - voting rights attaching to shares deposited with that person or entity which the person or entity can exercise at its discretion in the absence of specific instructions from the shareholders;
 - voting rights held by a third party in its own name on behalf of that person or entity;
 - voting rights which that person or entity may exercise as a proxy where the person or entity can exercise the voting rights at its discretion in the absence of specific instructions from the shareholders;
- (3) any member of the administrative, management or supervisory body, in accordance with relevant national legislation, or of the senior management of the target entity;
- (4) the target entity itself and its group.
- (g) Information on any other interests or activities of the proposed acquirer that may be in conflict with those of the target entity and possible solutions for managing those conflicts of interest.
5. With regard to point (f) of paragraph 1, financial interests may include interests such as credit operations, guarantees and pledges. Non-financial interests may include interests such as family or close relationships.

Article 5

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

1. The proposed acquirer that is a legal person shall provide the competent authority of the target entity with the following additional information:
- (a) Information regarding the proposed acquirer, any person who effectively directs the business of the proposed acquirer, any undertaking under the proposed acquirer's control, and any shareholder exerting significant influence on the proposed acquirer as identified in point (e). That information shall include the following:
- (1) criminal records, criminal investigations or proceedings, relevant civil and administrative cases, or disciplinary actions (including disqualification as company director or bankruptcy, insolvency or similar procedures), through an official certificate (if and in so far as it is available within the relevant Member State or third country), or through another equivalent document. For ongoing investigations information could be provided through a declaration of honour;

- (2) open investigations, enforcement proceedings, sanctions, or other enforcement decisions against the proposed acquirer;
 - (3) refusal of registration, authorisation, membership, or licence to carry out a trade, business or profession; or the withdrawal, revocation or termination of such a registration, authorisation, membership or licence; or expulsion by a regulatory or government body or by a professional body or association;
 - (4) dismissal from employment or a position of trust, fiduciary relationship, or similar situation (in relation to any person who effectively directs the business of the proposed acquirer and any shareholder exerting significant influence on the proposed acquirer).
- (b) Information as to whether an assessment of reputation of the acquirer or of the person who directs the business of the acquirer has already been conducted by another supervisory authority, the identity of that authority and evidence of the outcome of the assessment.
- (c) A description of financial interests, and non-financial interests or relationships of the proposed acquirer, or, where applicable, the group to which the proposed acquirer belongs, as well as the persons who effectively direct its business with:
- (1) any other current shareholders of the target entity;
 - (2) any person entitled to exercise voting rights of the target entity in any of the following cases or a combination of them:
 - voting rights held by a third party with whom that person or entity has concluded an agreement, which obliges them to adopt, by concerted exercise of the voting rights they hold, a lasting common policy towards the management of the issuer in question;
 - voting rights held by a third party under an agreement concluded with that person or entity providing for the temporary transfer for consideration of the voting rights in question;
 - voting rights attaching to shares which are lodged as collateral with that person or entity, provided the person or entity controls the voting rights and declares its intention of exercising them;
 - voting rights attaching to shares in which that person or entity has the life interest;
 - voting rights which are held, or may be exercised within the meaning of the first four items of this (2), by an undertaking controlled by that person or entity;
 - voting rights attaching to shares deposited with that person or entity which the person or entity can exercise at its discretion in the absence of specific instructions from the shareholders;
 - voting rights held by a third party in its own name on behalf of that person or entity;
 - voting rights which that person or entity may exercise as a proxy where the person or entity can exercise the voting rights at its discretion in the absence of specific instructions from the shareholders;

- (3) any member of the administrative, management or supervisory body in accordance with relevant national legislation, or of the senior management of the target entity;
- (4) the target entity itself and the group to which it belongs;
- (d) Information on any other interests or activities of the proposed acquirer that may be in conflict with those of the target entity and possible solutions for managing those conflicts of interest;
- (e) The shareholding structure of the proposed acquirer, with the identity of all shareholders exerting significant influence and their respective share of capital and voting rights including information on any shareholders agreements;
- (f) If the proposed acquirer is part of a group, as a subsidiary or as the parent undertaking, a detailed organisational chart of the entire corporate structure and information on the share of capital and voting rights of shareholders with significant influence of the entities of the group and on the activities currently performed by the entities of the group;
- (g) If the proposed acquirer is part of a group as a subsidiary or as the parent company, information on the relationships between the financial entities of the group and other non-financial group entities;
- (h) Identification of any credit institution; assurance, insurance or re-insurance undertaking; or investment firm within the group, and the names of the relevant supervisory authorities;
- (i) Statutory financial statements, at an individual and, where applicable, at consolidated and sub-consolidated group levels, regardless of the size of the proposed acquirer, for the last three financial periods, approved, where the financial statements are audited, by the external auditor, including:
 - (1) the balance sheet;
 - (2) the profit and loss accounts or income statement;
 - (3) the annual reports and financial annexes and any other documents registered with the relevant registry or authority in the particular territory relevant to the proposed acquirer.

Where the proposed acquirer is a newly established entity, instead of the information specified in the first sub-paragraph, the proposed acquirer shall provide to the competent authority of the target entity the forecast balance sheets and forecast profit and loss accounts or income statements for the first three business years, including planning assumptions used;

- (j) Where available, information about the credit rating of the proposed acquirer and the overall rating of its group.
2. With regard to point (c) of paragraph 1, financial interests may include interests such as credit operations, guarantees and pledges. Non-financial interests may include interests such as family or close relationships.
 3. Where the proposed acquirer is a legal person which has its head office registered in a third country, the proposed acquirer shall provide to the competent authority of the target entity the following additional information:

- (a) a certificate of good-standing, or equivalent where not available, from foreign financial markets authorities in relation to the proposed acquirer;
 - (b) where available, a declaration by foreign financial markets authorities that there are no obstacles or limitations to the provision of information necessary for the supervision of the target entity;
 - (c) general information on the regulatory regime of that third country as applicable to the proposed acquirer.
4. Where the proposed acquirer is a sovereign wealth fund, the proposed acquirer shall provide to the competent authority of the target entity the following additional information:
- (a) the name of the ministry or government department in charge of defining the investment policy of the fund;
 - (b) details of the investment policy and any restrictions on investment;
 - (c) the name and position of the individuals responsible for making the investment decisions for the fund; details of any influence exerted by the identified ministry or government department on the day-to-day operations of the fund and the target entity.

Article 6

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

1. The proposed acquirer shall provide the competent authority with following information relating to the reputation and experience of any person who will effectively direct the business of the target entity as a result of the proposed acquisition:
- (a) personal details including the person's name, date and place of birth, personal national identification number (where available), address and contact details;
 - (b) the position for which the person is/will be appointed;
 - (c) a detailed curriculum vitae stating relevant education and professional training, professional experience, including the names of all organisations for which the person has worked and nature and duration of the functions performed, in particular for any activities within the scope of the position sought, and documentation relating to person's experience such as a list of reference persons including contact information and letters of recommendation. For positions held in the last 10 years, when describing these activities, the person shall specify his or her delegated powers, internal decision-making powers and the areas of operations under his or her control. If the curriculum vitae includes other relevant experiences, including management body representation, this shall be stated;
 - (d) criminal records, criminal investigations or proceedings, relevant civil and administrative cases, or disciplinary actions (including disqualification as a company director, bankruptcy, insolvency and similar procedures), through an official certificate (if and in so far as it is available within the relevant Member State or third country), or through another equivalent document. For ongoing investigations information could be provided through a declaration of honour;
 - (e) information on:

- (1) open investigations, enforcement proceedings, sanctions or other enforcement decision against the person;
 - (2) refusal of registration, authorisation, membership or licence to carry out a trade, business or profession; or the withdrawal, revocation or termination of such a registration, authorisation, membership or licence; or expulsion by a regulatory or government body or by a professional body or association; and
 - (3) dismissal from employment or a position of trust, fiduciary relationship, or similar situation;
- (f) information as to whether an assessment of reputation as a person who directs the business has already been conducted by another supervisory authority, the identity of that authority and evidence of the outcome of this assessment;
- (g) a description of financial interests, and non-financial interests or relationships of the person and his/her close relatives to members of the management body and key function holders in the same institution, the parent institution and subsidiaries and shareholders;
- (h) the minimum time that will be devoted to the performance of the person's functions within the firm (annual and monthly indications);
- (i) the list of executive and non-executive directorships currently held by the person.
2. With regard to point (g) of paragraph 1, financial interests may include interests such as credit operations, shareholdings, guarantees and pledges. Non-financial interests may include interests such as family or close relationships.

Article 7
Information relating to the proposed acquisition

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

- (a) identification of the target entity;
- (b) details of the proposed acquirer's intentions with respect to the proposed acquisition, such as strategic investment or portfolio investment;
- (c) information on the shares of the target entity owned, or contemplated to be owned, by the proposed acquirer before and after the proposed acquisition, including:
 - (1) the number and type of shares, whether ordinary shares, or other, of the target entity owned, or intended to be acquired, by the proposed acquirer before and after the proposed acquisition, along with the nominal value of such shares;
 - (2) the share of the overall capital of the target entity that the shares owned, or intended to be acquired, by the proposed acquirer represent before and after the proposed acquisition;
 - (3) the share of the overall voting rights of the target entity that the shares owned, or contemplated to be owned, by the proposed acquirer represent before and after the proposed acquisition, if different from the share of capital of the target entity;

- (4) the market value, in euro and in local currency, of the shares of the target entity owned, or intended to be acquired, by the proposed acquirer before and after the proposed acquisition.
- (d) Any action in concert with other parties which shall include, amongst other things, the following considerations: the contribution of other parties to the financing, the means of participation in the financial arrangements and future organisational arrangements;
- (e) Content of intended shareholder's agreements with other shareholders in relation to the target entity;
- (f) The proposed acquisition price and the criteria used when determining such price and, if there is a difference between the market value and the proposed acquisition price, an explanation as to why that is the case.

Article 8

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

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

Article 9

Information relating to the financing of the proposed acquisition

1. The proposed acquirer shall provide a detailed explanation, as provided in paragraph 2, on the specific sources of funding for the proposed acquisition.
2. The explanation referred to in paragraph 1 shall include:
 - (a) details on the use of private financial resources and the origin and availability of the funds, including any relevant documentary support to provide evidence to the financial supervisor that no money laundering is attempted through the proposed acquisition;
 - (b) details on the means of payment of the intended acquisition and the network used to transfer funds;
 - (c) details on access to capital sources and financial markets including details of financial instruments to be issued;
 - (d) information on the use of borrowed funds including the name of relevant lenders and details of the facilities granted, including maturities, terms, pledges and guarantees, along with information on the source of revenue to be used to repay such borrowings and the origin of the borrowed funds where the lender is not a supervised financial institution;

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

Article 10

Additional information requirements where the proposed acquisition would result in a qualifying holding of up to 20%

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

- (a) The strategy of the proposed acquirer regarding the proposed acquisition, including the period for which the proposed acquirer intends to hold its shareholding after the proposed acquisition and any intention of the proposed acquirer to increase, reduce or maintain the level of his shareholding in the foreseeable future;
- (b) An indication of the intentions of the proposed acquirer towards the target entity, and in particular whether or not it intends to act as an active minority shareholder, and the rationale for that action.
- (c) Information on the financial position of the proposed acquirer and its willingness to support the target entity with additional own funds if needed for the development of its activities or in case of financial difficulties.

Article 11

Additional information requirements where the proposed acquisition would result in a qualifying holding of 20% and up to 50%

1. Where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target entity of 20% and up to 50%, the proposed acquirer shall provide a document on strategy to the competent authority of the target entity containing, where relevant, the following information:
 - (a) All the information requested pursuant to Article 10
 - (b) details on the influence that the proposed acquirer intends to exercise on the financial position including dividend policy, the strategic development, and the allocation of resources of the target entity;
 - (c) a description of the proposed acquirer's intentions and expectations towards the target entity in the medium-term, covering all the elements referred to in Article 12(2).
2. Where, depending on the global structure of the shareholding of the target entity, the influence exercised by the shareholding of the proposed acquirer is considered to be equivalent to the influence exercised by shareholdings of 20% and up to 50%, the proposed acquirer shall provide the information set out in paragraph 1.

Article 12

Additional information requirements where the proposed acquisition would result in a qualifying holding of 50% or more, or where the target entity becomes a subsidiary of the proposed acquirer

1. Where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target entity of 50% or more, or in the target entity becoming its subsidiary, the proposed acquirer shall provide a business plan to the competent authority of the target entity which shall comprise a strategic development plan, estimated financial statements of the target entity, and the impact of the acquisition on the corporate governance and general organisational structure of the target entity.
2. The strategic development plan referred to in paragraph 1 shall indicate, in general terms, the main goals of the proposed acquisition and the main ways for achieving them, including:
 - (a) the overall aim of the proposed acquisition;
 - (b) medium-term financial goals which may be stated in terms of return on equity, cost-benefit ratio, earnings per share, or in other terms as appropriate;
 - (c) the possible redirection of activities, products, targeted customers and the possible reallocation of funds or resources expected to impact on the target entity;
 - (d) general processes for including and integrating the target entity in the group structure of the proposed acquirer, including a description of the main interactions to be pursued with other companies in the group, as well as a description of the policies governing intra-group relations.

With regard to point (d), for institutions authorised and supervised in the Union, information about the particular departments within the group structure which are affected by the transaction shall be sufficient.

3. The estimated financial statements of the target entity referred to in paragraph 1 shall, on both an individual and, where applicable, a consolidated basis, for a period of three years, include the following:
 - (a) a forecast balance sheet and income statement;
 - (b) forecast prudential capital requirements and solvency ratio;
 - (c) information on the level of risk exposures including credit, market and operational risks as well as other relevant risks;
 - (d) a forecast of provisional intra-group transactions.
4. The impact of the acquisition on the corporate governance and general organisational structure of the target entity referred to in paragraph 1 shall include the impact on:
 - (a) the composition and duties of the administrative, management or supervisory body, and the main committees created by such decision-taking body including the management committee, risk committee, audit committee, remuneration committee and any other committees, including information concerning the persons who will be appointed to direct the business;
 - (b) administrative and accounting procedures and internal controls, including changes in procedures and systems relating to accounting, internal audit, compliance including anti-money laundering and risk management, and including

the appointment of key functions of internal auditor, compliance officer and risk manager;

- (c) the overall IT architecture including any changes concerning the outsourcing policy, the data flowchart, the in-house and external software used and the essential data and systems security procedures and tools including back-up, continuity plans and audit trails;
- (d) the policies governing outsourcing, including information on the areas concerned, on the selection of service providers, and on the respective rights and obligations of the principal parties as set out in contracts such as audit arrangements and the quality of service expected from the provider;
- (e) any other relevant information pertaining to the impact of the acquisition on the corporate governance and general organisational structure of the target entity, including any modification regarding the voting rights of the shareholders.

Article 13

Reduced information requirements

1. Notwithstanding the requirements in Articles 2 to Article 12, where the proposed acquirer is an entity authorised and supervised within the European Union and the target entity meets the criteria provided in paragraph 2 of this Article, the proposed acquirer shall submit the following information to the competent authority of the target entity:
 - (a) Where the proposed acquirer is a natural person:
 - (1) the information set out in Article 3(1);
 - (2) the information set out in points (c) to (g) of paragraph 1 of Article 4;
 - (3) the information set out in Articles 6, 7 and 9;
 - (4) the information set out in Article 8(1);
 - (5) where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target entity of up to 20%, a document on strategy as set out in Article 10;
 - (6) where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target entity of 20% or more, a document on strategy as set out in Article 11.
 - (b) Where the proposed acquirer is a legal person:
 - (1) the information set out in Article 3(2) and, where relevant, Article 3(3);
 - (2) the information set out in points (c) to (j) of Article 5(1) and, where relevant, the information set out in Article 5(4);
 - (3) the information set out in Articles 6, 7 and 9;
 - (4) the information set out in Article 8(1);
 - (5) where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target entity of up to 20%, a document on strategy as set out in Article 10;

- (6) where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target entity of 20% or more, a document on strategy as set out in Article 11.
2. The requirements provided in paragraph 1 shall apply to acquisitions in target entities that meet all of the following criteria:
 - (a) they do not hold client assets;
 - (b) they are not authorised for the investment services and activities 'Dealing on own account' or 'Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis' referred to in points (3) and (6) of Section A of Annex I of Directive 2004/39/EC;
 - (c) in case they are authorised for the investment service of 'Portfolio management' as referred to in point (4) of Section A of Annex 1 of Directive 2004/39/EC, the assets under management by the firm are below EUR 500 million.
3. If the proposed acquirer has been assessed by the competent authority of the target entity within the previous two years, regarding the information referred to in Articles 4 and 5, that proposed acquirer should only provide those pieces of information that have changed since the previous assessment.

Where there have been no changes, the proposed acquirer shall sign a declaration informing the competent authority of the target entity that there is no need to update such information, since it remains unchanged from the previous assessment.

*Article 14
Entry into force*

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

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

Done at Brussels,

*For the Commission
The President
Jean-Claude Juncker*

Annex IV: Draft implementing technical standards

COMMISSION IMPLEMENTING REGULATION (EU) No .../..

of **XXX**

laying down implementing technical standards with regard to standard forms, templates and procedures for the consultation process between relevant competent authorities in relation to the notification of a proposed acquisition of a qualifying holding in an investment firm in accordance with Directive 2004/39/EC and Directive 2014/65/EU of the European Parliament and of the Council

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC²⁰, and in particular the sixth subparagraph of Article 10a(8) thereof,

Having regard to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council (recast), and in particular of Article 12(9) thereof,

Whereas:

- (1) It is appropriate to set out common standard procedures and templates to ensure the accurate assessment by Member States' competent authorities of notifications of intended acquisitions or increases in qualifying holdings in an investment firm. In those cases, the relevant competent authorities should consult and provide each other with any essential or relevant information.
- (2) To facilitate the cooperation between competent authorities and ensure efficiency in their exchange of information, competent authorities designated in accordance with Article 48 of Directive 2004/39/EC should designate contact persons specifically for the

²⁰ OJ L 145, 30.4.2004, p. 1.

purpose of the consultation process provided in Article 10(4) of Directive 2004/39/EC and a centralised list of those contact persons should be maintained by the European Securities and Markets Authority (ESMA).

- (3) Consultation procedures containing clear timing constraints should be set up in order to ensure the timely and efficient cooperation between competent authorities. A clear cooperation procedure should include a preliminary notice to be sent by the requesting authority to the requested authority, to inform the requested authority of the ongoing assessment.
- (4) The procedures should also aim at ensuring that competent authorities cooperate and work towards the improvement of the process by promoting the exchange of feedback on the quality and relevance of the information received.
- (5) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data²¹ applies to the processing of personal data by the Member States in the application of this Regulation.
- (6) Regulation 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data applies to the processing of personal data by ESMA in the application of this Regulation.
- (7) This Regulation is based on the draft implementing technical standards submitted by ESMA to the Commission.
- (8) ESMA did not publicly consult or analyse the potential related costs and benefits of introducing the standard forms, templates and procedures for the consultation process between relevant competent authorities, as this was considered disproportionate in relation to their scope and impact. In addition, ESMA has informed the Securities and Markets Stakeholder Group that it would not request its formal opinion due to the urgency to deliver the technical standards to the Commission by 1 January 2014, in accordance with Article 37(1) of Regulation (EU) No 1095/2010 of the European Parliament and of the Council.²²
- (9) Directive 2014/65/EU was published in the Official Journal on 12 June 2014, entering into force on the twentieth day following its publication. Article 12(9) of Directive 2014/65/EU replace Article 10a(8) of Directive 2004/39/EC and contain empowerments to ESMA for the development of implementing technical standards which are identical to those provided for under Article 10a(8) of Directive 2004/39/EC. Furthermore, the content of Articles 10b(4) and Article 10(4) of Directive 2004/39/EC is also respectively identical to the content of Article 13(4) and Article 11(2) of Directive 2014/65/EU. In accordance with Article 94(1) of Directive 2014/65/EU, Directive 2004/39/EC will be repealed with effect from 3 January 2017. The submission of the draft technical

²¹ OJ L 281, 23/11/1995, p. 31.

²² Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority) (OJ L 331, 15.12.2010, p. 84).

standards to the European Commission in accordance with Article 10a(8) of Directive 2004/39/EC should also be considered in compliance with Article 12(9) of Directive 2014/65/EU, without the need for any further amendment. Reference to Articles of Directive 2004/39/EC in this act shall be construed as references to the equivalent Articles of Directive 2014/65/EC,

HAS ADOPTED THIS REGULATION:

Article 1
Subject matter

This Regulation lays down the standard forms, templates and procedures for the exchange of information during the consultation process between the competent authority of the target entity (the 'requesting authority'), and the competent authority of the proposed acquirer or of an authorised entity which is either a subsidiary of or controlled by the proposed acquirer (the 'requested authority') for the purposes of Article 10(4) of Directive 2004/39/EC.

Article 2
Designated contact persons

1. Competent authorities designated in accordance with Article 48 of Directive 2004/39/EC shall designate contact persons for communication for the purposes of this Regulation and shall notify ESMA of those persons.
2. ESMA shall maintain and update the list of the designated contact persons for the use of the competent authorities referred to in paragraph 1.

Article 3
Preliminary notice

1. A requesting authority shall send a preliminary notice to the requested authority within three working days of the receipt of a notification by the proposed acquirer in accordance with Article 10(3) of Directive 2004/39/EC.
2. The requesting authority shall send the preliminary notice by filling in the template set out in Annex I and shall include all the information set out therein.

Article 4
Consultation notice

1. A requesting authority shall send a consultation notice to the requested authority as soon as possible after receipt of a notification by the proposed acquirer in accordance with Article 10(3) of Directive 2004/39/EC and not later than 20 working days after receipt of such notification.
2. A requesting authority shall send a consultation notice in writing by post, facsimile or secure electronic means, and address it to the designated contact person of the requested authority unless otherwise specified by the requested authority.
3. A requesting authority shall send a consultation notice by filling in the template set out in Annex II, identifying in particular issues relating to the confidentiality of information

that may be obtained by the requesting authority, and specifying details of the relevant information that the requesting authority asks from the requested authority.

4. The consultation notice shall contain all essential information on the proposed acquisition in accordance with Article 10(4) of Directive 2004/39/EC.

Article 5

Acknowledgement of receipt of a consultation notice

The requested authority shall send an acknowledgement of receipt of a consultation notice, within two working days of receiving it, including the contact details of a designated contact person and, where possible, an estimate date of response.

Article 6

Response from a requested authority

1. A response to a consultation notice shall be made in writing by post, facsimile or secure electronic means. It shall be addressed to the designated contact persons unless otherwise specified by the requesting authority.
2. The requested authority shall provide the requesting authority as soon as possible and not later than 20 working days of receipt of the consultation notice with:
 - (a) the relevant information requested in the consultation notice, including any views or reservations in relation to the acquisition by the proposed acquirer;
 - (b) any other essential information that could materially influence the assessment, on its own initiative.
3. Where the requested authority considers it likely not be able to meet the time limit set out in paragraph 2, it shall inform the requesting authority of this circumstance, indicating the reasons for the delay, and an estimated date of response, and shall provide regular feedback as to progress. Any delay shall be limited to justified cases of necessity.

Where the requested authority is not able to meet the time limit set out in paragraph 2, it shall provide the information in a manner which ensures that any necessary action may proceed expediently, whilst respecting the time limit set out in the second subparagraph of Article 10a(1) of Directive 2004/39/EC.

After receiving a consultation notice, the requested authority shall inform the requesting authority of any doubt as to the precise information requested.

4. In providing information in accordance with paragraph 2, the requested authority shall use the template set out in Annex III.

Article 7

Procedures for consultation

1. The requesting authority and the requested authority shall communicate in relation to a consultation notice and the response using the most expedient means from among those set out in Article 4(2) and 6(1), taking due account of confidentiality considerations, correspondence times, the volume of material to be communicated and the ease

of access to the information by the requesting authority. In particular, the requesting authority shall respond promptly to any clarifications requested by the requested authority.

2. If the information requested is or may be held by an authority of a Member State other than the requested authority of the same Member State, the requested authority shall collect the information promptly and transmit it to the requesting authority in accordance with Article 6.
3. The requested authority and the requesting authority shall cooperate to resolve any difficulties that may arise in executing a request, including resolving any cost issues if the costs of providing assistance are estimated to be burdensome on the requested authority.
4. The requested authority and the requesting authority shall provide feedback to each other on the outcome of the assessment in relation to which the consultation occurred and, where appropriate, on the usefulness of information or other assistance received or any problems encountered in providing such assistance or information.
5. Where new information or a need for further information arises during the assessment period, the requesting authority and the requested authority shall cooperate to ensure that all essential and relevant information is exchanged. The templates set out in Annexes II and III may be used for this purpose.
6. By way of derogation from Articles 4(2) and 6(1), where information is being exchanged within the last 15 working days before the end of the assessment period referred to in the second subparagraph of Article 10a(1) of Directive 2004/39/EC, it may be provided verbally. In such cases it shall subsequently be confirmed in accordance with Articles 4(2) and 6(1) unless the competent authorities involved agree otherwise.

Article 8
Entry into force

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

This Regulation shall be binding in its entirety and directly applicable in all Member States.
Done at Brussels,

For the Commission
The President
Jean-Claude Juncker



ANNEX I

Preliminary notice template

[Article 3 of the Commission Implementing Regulation (EU) No .../...]

Preliminary notice

Reference number:

Date:

General information

FROM:

Member State:

Requesting Authority:

Legal address:

(Contact details of the designated contact person)

Name:

Telephone:

Email:

TO:

Member State:

Requested Authority:

Legal address:

(Contact details of the designated contact person)

Name:

Telephone:

Email:

Dear *[insert appropriate name]*

In accordance with Article 3 of the Commission Implementing Regulation (EU) No .../... of XXX laying down implementing technical standards with regard to standard forms, templates and procedures for the consultation process between relevant competent authorities in relation to the notification of a proposed acquisition of a qualifying holding in an investment firm in accordance with Directive 2004/39/EC, a preliminary notice is made in relation to the matters set out in further detail below.

Information on the proposed acquisition

Identity of the proposed acquirer:

.....
.....

[for natural persons, please include the information referred to in Article 3(1)(a) of [Commission Delegated Regulation (EU) No .../...of XXX on [...] supplementing Directive 2004/39/EC 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]; for legal persons, please include the information referred to in Article 3(2)(a) of [Commission Delegated Regulation (EU) No



.../..of XXX on [...] supplementing Directive 2004/39/EC 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

Name of relevant authorised entity(/ies) in the requested authority's Member State and relationship to proposed acquirer:

.....
.....
.....

[where the proposed acquirer is an authorised entity as referred to in Article 10(4)(a) of Directive 2004/39/EC, the name of the proposed acquirer is sufficient. Where the proposed acquirer falls under one of the categories defined under Article 10(4)(b) or (c) of Directive 2004/39/EC it is also necessary to explain the relationship of the proposed acquirer to the relevant authorised entity established in the requested authority's Member State]

Identity of the target entity:

.....
.....
.....

[please insert the information referred to under Article 7(1)(a) of [RTS]]

Size of the current and intended holding of the proposed acquirer in the target entity:

.....
.....
.....

[please insert the information referred to under Article 7(1)(c)(i), (ii) and (iii) of [RTS]]

Please note that the assessment procedure* will expire on [insert date]. We will communicate further the consultation notice, which will contain all essential information on the proposed acquisition, and it will include any relevant information that we would like to receive.. However, in the meantime, if you are aware of any essential information in relation to the acquisition, or if you have any views or reservations, we would be grateful if you could provide them at the earliest opportunity and at the latest within 20 working days of receipt of the consultation notice that will follow this preliminary notice.

*in accordance with second subparagraph of Article 10a(1) of Directive 2004/39/EC.

Yours sincerely,

[signature]



ANNEX II

Consultation notice template

[Article 4 of the Commission Implementing Regulation (EU) No .../...]

Consultation notice

Reference number:

Date:

General information

FROM:

Member State:

Requesting Authority:

Legal address:

(Contact details of the designated contact person)

Name:

Telephone:

Email:

TO:

Member State:

Requested Authority:

Legal address:

(Contact details of the designated contact person)

Name:

Telephone:

Email:

Dear [*insert appropriate name*]

In accordance with Article 4 of the Commission Implementing Regulation (EU) No .../... laying down implementing technical standards with regard to standard forms, templates and procedures for the consultation process between relevant competent authorities in relation to the notification of a proposed acquisition of a qualifying holding in an investment firm in accordance with Directive 2004/39/EC, a consultation notice is made in relation to the matters set out in further detail below.

Please note that the assessment procedure* will expire on [*insert date*], therefore we would be grateful if you could provide the requested information and any other relevant and essential information by [20 working days from receipt of this letter] or, if that is not possible, an indication as to when you anticipate being in a position to provide the assistance which is sought, taking into account the mentioned deadline for the assessment procedure.

*in accordance with second subparagraph of Article 10a(1) of Directive 2004/39/EC

Information on the proposed acquisition

Subject matter.....

.....

.....
.....
[please set out that information here or make reference to the relevant annexes containing the information]

Details of the proposed acquisition.....
.....
.....

[please set out that information here or make reference to the relevant annexes containing the information]

Details of any other supervisory authorities involved
.....
.....

[please set out that information here or make reference to the relevant annexes containing the information]

Further to.....
.....
.....

[if applicable, please insert details of the previous request in order to enable it to be identified]

Type of assistance request
Information sought [if any]:
.....
.....
.....

[please insert a detailed description of the specific information sought, including any relevant documents requested, with reasons why that information will be of assistance. Examples include:

- The shareholding structure of the proposed acquirer or of the relevant authorised entity, and the main characteristics of its shareholders;
- The most recent assessment of the suitability (fitness and propriety) of the proposed acquirer or of the relevant authorised entity;
- The most recent assessment of the financial soundness of the proposed acquirer or of the relevant authorised entity, with related public or external audit reports (where relevant);
- The most recent assessment by the requested authority of the quality of the management structure of the proposed acquirer or of the relevant authorised entity, and its administrative and accounting procedures, internal control systems, corporate governance, group structure etc.]

Additional information provided by the requesting authority.
.....
.....



.....
.....
[Whether the requesting authority has been or will be in contact with any other authority or law enforcement agency in the Member State of the requested authority in relation to the subject matter of the request or any other authority which the requesting authority is aware that has an active interest in the subject matter of the request]

Yours sincerely,
[signature]



ANNEX III

Response from requested authority template
[Article 6 of the Commission Implementing Regulation (EU) No .../...]

Response from requested authority

Reference number:

Date:

General information

FROM:

Member State:

Requested Authority:

Legal address:

(Contact details of the designated contact person)

Name:

Telephone:

Email:

TO:

Member State:

Requesting Authority:

Legal address:

(Contact details of the designated contact person)

Name:

Telephone:

Email:

Dear [*insert appropriate name*]

In accordance with Article 6 of the Commission Implementing Regulation (EU) No .../... laying down implementing technical standards with regard to standard forms, templates and procedures for the consultation process between relevant competent authorities in relation to the notification of a proposed acquisition of a qualifying holding in an investment firm in accordance with Directive 2004/39/EC, your consultation notice dated [dd.mm.yyyy] with reference [insert reference number] has been processed by us.

Where applicable, please explain any doubt you have in relation to the precise information requested or to any other aspect of this assessment:

.....
.....
.....
.....

If the information requested has been gathered, please set out that information here or provide an explanation of how it will be provided, or make reference to the relevant annexes containing the information requested:

.....
.....
.....
.....

If there is any other relevant or essential information, please provide that information here or provide an explanation of how it will be provided, or make reference to the relevant annexes containing that information:

.....
.....
.....
.....

[please provide, on your own initiative, any essential information that could materially influence the assessment, such as group structure or the most recent assessments of the financial soundness of the proposed acquirer or of the relevant authorised entity]

.....
.....
.....
.....

Yours sincerely,
[signature]