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BanqueNationaleBank DE BELGIQUE VAN BELGIË
Eurosystem

Communication

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Communication to persons intending to acquire, increase, reduce or dispose of a qualifying holding in the capital of a financial institution and to persons owning a qualifying holding

Scope

All natural or legal persons intending to acquire, increase, reduce or dispose of a qualifying holding in the following financial institutions (hereinafter collectively referred as "financial institutions"):

- credit institutions governed by Belgian law
- stockbroking firms governed by Belgian law
- insurance companies governed by Belgian law
- reinsurance companies governed by Belgian law
- payment and electronic money institutions governed by Belgian law
- custodian banks, central securities depositories and institutions providing support to central securities depositories governed by Belgian law
- financial holding companies governed by Belgian law
- investment holding companies governed by Belgian law
- insurance holding companies governed by Belgian law
- mixed financial holding companies governed by Belgian law

as well as all natural or legal persons owning a qualifying holding in one of these institutions who are subject to ongoing control.

Summary/Objectives

This communication is an update to communication NBB_2017_22 which specifies the procedure to be followed by persons intending to acquire, increase, reduce or dispose of a qualifying holding in a financial institution. Its purpose is to update the applicable regulatory reference framework and to inform such persons that the National Bank of Belgium (NBB) has decided to review and digitise its notification and disclosure forms.

As regards the regulatory reference framework, the Joint Guidelines of the European Supervisory Authorities of 5 May 2017 on the prudential assessment of acquisitions and increases of qualifying holdings in the banking, insurance and securities sectors continue to apply. These guidelines have recently been supplemented, as far as credit institutions are concerned, by a guide published by the European Central

Bank (ECB) in May 2023 on qualifying holding procedures. More specific attention is also now being paid to assessing the criterion relating to the absence of any suspicion of money laundering or terrorist financing.

The notification and disclosure forms for qualifying holdings have been thoroughly revised and simplified wherever possible. Their scope has also been extended to payment and electronic money institutions, taking proportionality into account. The division of tasks between the NBB and the ECB has also been clarified.

This communication applies with immediate effect. The updated digitised forms will be available from 1 October 2024.

Statutory references

- Act of 25 April 2014 on the legal status and supervision of credit institutions: Articles 3(28), 18, 46-54 and 212;
- Act of 20 July 2022 on the legal status and supervision of stockbroking firms: Articles 4(72), 6, 14, 45-54 and 83;
- Act of 13 March 2016 on the legal status and supervision of insurance and reinsurance companies: Articles 15(44), 39, 64-73 and 443;
- Act of 11 March 2018 on the legal status and supervision of payment institutions and electronic money institutions: Articles 10, 19, 25-33, 174 and 183;
- Regulation (EU) No 909/2014 on central securities depositories: Article 27a;
- Royal Decree of 26 September 2005 on the legal status and supervision of settlement institutions and entities treated as settlement institutions: Article 14; and
- Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories: Article 30.

Structure

Dear Sir or Madam,

From a prudential point of view, it is essential that persons who are capable of exercising influence over the management of financial institutions due to their direct or indirect holdings in the capital of such institutions have the qualities necessary for the supervisor to consider that they will exercise this influence to promote the sound and prudent management thereof.

Not only is this prudential requirement a prerequisite to obtain authorisation, but it continues to apply afterwards, notably via the need to perform a prudential assessment of the qualities of natural or legal persons that have decided to acquire or significantly increase a holding in the capital of a financial institution. This prudential assessment must, however, be performed in such a way as to not unduly hinder acquisitions in the financial sector.

This communication updates communication NBB_2017_22, which specifies the procedure to be followed by persons intending to acquire, increase, reduce or dispose of a qualifying holding in a financial institution. The main changes concern an in-depth revision of the NBB's notification and disclosure forms and their digitisation.

1. Background

From a prudential point of view, it is essential that shareholders holding a qualifying stake in a financial institution have certain qualities to ensure that they exercise their influence in the pursuit of sound and prudent management of the financial institution as well as development centred on its continuity.

This prudential requirement is not only a prerequisite for obtaining authorisation, but also continues to apply in the exercise of the financial institution's activities. In particular, it translates into a mandatory prudential assessment of the qualities of natural and legal persons that decide to acquire a qualifying holding in the capital of a financial institution or to significantly increase their holdings.

2. Reference framework

The main reference document on qualifying holdings is the Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the banking, insurance and securities sectors published on 5 May 2017 by the European Supervisory Authorities or "ESAs" (i.e. the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA)).

These guidelines have been in force since 1 October 2017. They provide guidance on the effective assessment of acquisitions, increases, reductions and disposals of qualifying holdings in all financial institutions governed by Belgian law.

In addition, as far as credit institutions are concerned, the ECB has published a Guide on qualifying holding procedures, which aims to harmonise the criteria applicable to the assessment of qualifying shareholders and the prudential practices common to participating Member States. The latest version of the guide dates from May 2023. It can also be considered a reference document for the banking sector. The ECB and the NBB will use this guide as a basis for the assessment of qualifying holdings in credit institutions governed by Belgian law, financial holding companies governed by Belgian law and mixed financial holding companies belonging to a Belgian banking group.[1]

[1] The ECB's Guide on qualifying holding procedures and forms apply to both significant and less significant credit institutions as they form part of the "common procedures" for which the ECB has sole authority in accordance with Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank, national competent authorities and national designated authorities (the "SSM Regulation").

The ESA Joint Guidelines and the ECB Guide are set out in Annexes 1 and 2 to this communication and form an integral part hereof.

3. Division of tasks between the NBB and the ECB

The NBB is responsible for assessing qualifying holdings in all financial institutions covered by this communication, with the exception of qualifying holdings in significant (SI) and less significant (LSI) credit institutions, financial holding companies governed by Belgian law at the head of significant credit institutions,[2] and mixed financial holding companies belonging to a Belgian banking group, for which the ECB is responsible.

The acquisition or increase of a qualifying holding is a "common procedure" in accordance with Council Regulation (EU) No 1024/2013 of 15 October 2013 entrusting the European Central Bank with specific tasks concerning policies relating to the prudential supervision of credit institutions ("SSM Regulation"). As a result, the ECB is responsible for the prudential assessment of such transactions, not only for SIs subject to its direct supervision but also for LSIs subject to supervision by the NBB as well as for financial holding companies governed by Belgian law and mixed financial holding companies belonging to a Belgian banking group. The ECB will nevertheless act on the basis of a substantiated decision by the NBB.

For all other financial institutions, the NBB is responsible for the prudential assessment of qualifying holdings.

4. Definitions

- Supervisor:
  - for stockbroking firms governed by Belgian law, insurance or reinsurance companies governed by Belgian law, payment and electronic money institutions governed by Belgian law, custodian banks, central securities depositories and institutions providing support to a central securities depository governed by Belgian law, insurance holding companies governed by Belgian law, investment holding companies governed by Belgian law and mixed financial holding companies belonging to a Belgian investment or insurance group, the National Bank of Belgium;
  - for credit institutions governed by Belgian law, financial holding companies governed by Belgian law and mixed financial holding companies belonging to a Belgian banking group, the National Bank of Belgium or the European Central Bank (ECB) depending on the division of powers laid down in or pursuant to the SSM Regulation with regard to the supervision of credit institutions.

- European Supervisory Authorities (ESAs): (i) the European Banking Authority (EBA), (ii) the European Insurance and Occupational Pensions Authority (EIOPA) and (iii) the European Securities and Markets Authority (ESMA).

- Joint Guidelines: the Joint Guidelines of the European Supervisory Authorities for the prudential assessment of acquisitions and increases of qualifying holdings in the banking, insurance and securities sectors, published on 5 May 2017.

- Qualifying holding: a direct or indirect holding of at least 10% of the capital of a company or the voting rights attached to its securities, or any other possibility to exercise a significant influence on the management of a company in which such a stake is held; voting rights are calculated in accordance with the provisions of the Act of 2 May 2007 on the disclosure of major holdings and its implementing decrees; no account is taken of voting rights or shares held as a result of the underwriting of financial instruments and/or the placing of financial instruments on a firm commitment basis, provided, on the one hand, these rights are not exercised or otherwise used to intervene in the management of the

2 It should be noted that the NBB is the competent authority to assess qualifying holdings in financial holding companies at the head of less significant credit institutions (institutions that do not meet the size criteria referred to in the SSM Regulation), in accordance with Article 212 of the Act of 25 April 2014 on the legal status and supervision of credit institutions.

issuer and, on the other, that they are disposed of within one year from their acquisition (Article 3(28) of the Act of 25 April 2014 on the legal status and supervision of credit institutions, Article 4(72) of the Act of 25 April 2014 on the legal status and supervision of stockbroking firms, Article 15(44) of the Act of 13 March 2016 on the legal status and supervision of insurance and reinsurance companies, Articles 10 and 19[3] of the Act of 11 March 2018 on the legal status and supervision of payment institutions and electronic money institutions, Article 14 of the Royal Decree of 26 September 2005,[4] and Article 30 of Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories).

5. Situations where the competent authority must be notified of a decision to acquire or dispose of a holding

a) Notification of an acquisition that gives rise to a prudential assessment

Pursuant to the aforementioned statutory provisions, notification of a decision to acquire shares or partnership rights in a financial institution is legally required, and gives rise to a prudential assessment by the competent authority, when, as a result of this acquisition, the acquirer

- will have a "qualifying holding" in the financial institution; or
- will increase an existing qualifying holding in such a way that causes the percentage of voting rights or capital held to reach or cross the thresholds of 20%, 30% or 50%, or the financial institution to become its subsidiary.

The notification and the prudential assessment to which it gives rise must, by law, take place prior to the actual acquisition of the shares or partnership rights.

The concept of a "qualifying holding" is defined by law and set out above. It should be emphasised that, in view of the criterion of significant influence over management, the acquisition of a holding representing less than 10% of the capital or voting rights may give rise to a notification obligation and a prudential assessment of the proposed acquisition. The concept of significant influence is explained in paragraph 5 of the ESA Joint Guidelines included in Annex 1. Reference is therefore made to that provision.

Reference is also made to paragraph 7 of the Joint Guidelines with regard to the information to be taken into account when assessing whether an acquisition decision has been taken and the involuntary crossing of a threshold.

b) Notification of disposals of partnership rights constituting a qualifying holding

The statutory provisions also require any person owning a qualifying holding to notify the competent authority of a decision to reduce its holding in such a way that it is no longer a qualifying holding, the percentage of voting rights or capital held falls below the thresholds of 20%, 30% or 50%, or the financial institution ceases to be its subsidiary.

This notification is required regardless of the terms and conditions of the transaction. In particular, it is irrelevant whether the transaction is carried out against payment or free of charge.

As in the case of the acquisition or increase of a qualifying holding, this notification must be made prior to the actual transfer that forms the object of the shareholder's decision. The transferor must inform the competent authority of the identity of the transferee. The purpose of this notification is to inform the

3 For payment and electronic money institutions, the definition of a qualifying holding is set out in Articles 10 and 19 of the Act of 11 March 2018, which refer to Article 5(1)(M) of the Payment Services Directive (PSD2, Directive EU 2015/2366), which in turn refers to Article 4(1)(26) of Regulation (EU) 575/2013.

4 For institutions providing support to a central securities depository ("support institutions"), it is noted that the reference threshold for a holding requiring the approval of the National Bank of Belgium is 5% (instead of 10%), pursuant to Article 14 of the Royal Decree of 26 September 2005. This definition should therefore be read in a manner consistent with this 5% reference threshold.

competent authority of the proposed change in the shareholder structure of the financial institution concerned and to enable it to carry out, where necessary, a prudential assessment of the modification.

c) Notification for information purposes only of acquisitions or disposals of partnership rights (5% threshold)

In addition to the aforementioned notification obligation entailing a prudential assessment of the proposed acquisition, the relevant legislation also requires the acquirers of non-qualifying holdings to notify the competent authority of such an acquisition, for information purposes only, as soon as the percentage of voting rights or capital held reaches or crosses the 5% threshold.

Similarly, any person holding shares or partnership rights in an institution that confer or represent more than 5% of the voting rights or capital and which do not constitute a qualifying holding is required to notify the competent authority of any disposal of all or some of these shares or partnership rights that causes the percentage of the capital or voting rights held to fall below the 5% threshold.

Unlike the notifications referred to above, which give rise to a prudential assessment, notifications solely for information purposes of acquisitions and disposals of partnership rights that cause the 5% threshold to be crossed do not have to be made prior to effective completion of the acquisition or disposal. By law, the acquirer or transferor has 10 working days in which to do so.

Notifications for information purposes should, in particular, enable the competent authority to maintain up-to-date knowledge of the composition of the shareholder structure of financial institutions and to ensure, when holdings representing less than 10% of the capital or voting rights are acquired, that they do not constitute “qualifying holdings” within the meaning of the law.

Where appropriate, if it appears from the competent authority’s review that, having regard to the capital structure of the financial institution concerned, the terms of the acquisition, the agreements concluded between shareholders or any other relevant circumstances, the acquirer has, as a result of the acquisition or through acting in concert with other persons, significant influence over the management of the financial institution, it will ask the acquirer to provide it as soon as possible with all information necessary to carry out the prudential assessment required by law.

d) Acquisition or disposal of an “indirect” holding

The aforementioned notification requirements apply to both direct and indirect acquisitions and disposals of shareholdings.

Reference is made to paragraph 6 and Annex II of the ESA Joint Guidelines appended to this communication for more information on the tests to be conducted to assess whether an indirect holding can be considered a qualifying holding and the size of that holding (i.e. successive application of a control criterion and, where this does not render it possible to determine whether a qualifying holding was indirectly acquired, application of a multiplication criterion to the holding percentages).

If an indirect holding can be considered a qualifying holding pursuant to application of the abovementioned criteria, the persons acquiring or disposing of the indirect qualifying holding are required to notify the competent authority.

e) Parties acting in concert

When several persons are considered to be acting in concert, the voting rights and shares of capital held by these persons must be added together to determine whether the statutory thresholds have been crossed.

The factors to be taken into account in determining whether persons are acting in concert are set out in paragraph 4 of the appended Joint Guidelines. Reference is therefore made to this provision.

f) The proportionality principle

Paragraph 8 of the ESA Joint Guidelines specifies the implications of the proportionality principle in the context of the prudential assessment of proposed acquirers, particularly in the case of intra-group transactions and acquisitions by means of a public offer. For credit institutions, reference is also made to the ECB guide on qualifying holdings. On this basis, the supervisory authority may grant an exemption with regard to the provision of certain information provided for in the forms.

6. Notification and disclosure forms and procedural aspects

a) Notification and disclosure forms

The notification and disclosure forms to be completed by persons intending to acquire, increase, reduce or dispose of a qualifying holding in a financial institution differ, depending on whether the financial institution concerned is:

- a credit institution, financial holding company or mixed financial holding company belonging to a banking group; or
- a stockbroking firm, a payment institution, an electronic money institution, a custodian bank, a central securities depository, an institution providing support to a central securities depository or a central counterparty.

In the first case, the forms listed in §1 below apply, whereas in the second case, the forms listed in §2 apply.

In all cases, it is recommended that proposed acquirers or transferors contact the supervisor prior to the official notification of their decision to acquire, increase or dispose of qualifying holdings in a financial institution. The purpose of this prior informal contact is to identify the specific information that the proposed acquirer should submit along with the notification, to ensure it is complete.

§1 Forms for credit institutions, financial holding companies and mixed financial holding companies belonging to a Belgian banking group

In view of the division of tasks set out above, the ECB's QLF form (available on the IMAS portal) must be completed for any acquisition of or increase in a qualifying holding in credit institutions (SIs and LSIs), financial holding companies governed by Belgian law that are at the head of a credit institution of significant importance,[5] and mixed financial holding companies belonging to a Belgian banking group, in accordance with the Belgian specificities mentioned therein.

As regards (i) disclosure of a reduction or disposal of a qualifying holding, (ii) disclosures solely for information purposes of an acquisition or disposal of securities that would cause the threshold of 5% of voting rights or capital to be crossed and (iii) new information concerning an existing qualifying shareholder, the NBB forms should be used as there are no specific forms for such disclosures available on the IMAS portal. If, in the future, the ECB decides to include such forms in the IMAS portal, these forms will take precedence and must be used.

In practice, the situation can be summarised as follows:

Form QLF / Disclosure for the purpose of prudential assessment of acquisitions or increases of qualifying holdings in the capital of a credit institution[6]	**IMAS**

5 For financial holding companies governed by Belgian law that head a credit institution of less significant importance, the NBB has jurisdiction, and it is therefore the NBB's Form A (available on OneGate) that must be completed.

6 This form contains two items that are specific to Belgian institutions, taken from the IMAS portal:

Form B / "Fit and proper" form for senior managers of a proposed qualifying shareholder that is a legal entity	**OneGate**
Form C / Declaration of a disposal or reduction of a qualifying holding in the capital of a financial institution	**OneGate**
Form D / Disclosure for information purposes of an acquisition or disposal of a holding in a financial institution that crosses the threshold of 5% of the voting rights or capital	**OneGate**
Form E / Disclosure of "new information"	**OneGate**

§2 Forms for financial institutions other than banks

Financial institutions other than banks (stockbroking firms, payment institutions, electronic money institutions, custodian banks, central securities depositories, institutions providing support to central securities depositories or central counterparties, investment holding companies, insurance holding companies, mixed financial holding companies belonging to an investment or insurance group) must complete the following NBB forms, which are available on the OneGate platform:

Form A / Disclosure for the purpose of prudential assessment of acquisitions or increases of qualifying holdings in the capital of a non-bank financial institution[7]	**OneGate**
Form B / "Fit and proper" form for senior managers of a proposed qualifying shareholder that is a legal entity	**OneGate**
Form C / Disclosure of a disposal or reduction of a qualifying holding in the capital of a financial institution	**OneGate**
Form D / Disclosure for information purposes of an acquisition or disposal of a holding in a financial institution that crosses the threshold of 5% of the voting rights or capital	**OneGate**
Form E / Disclosure of "new information"	**OneGate**

These forms have recently been revised. The main substantive changes compared with the forms annexed to communication NBB_2017_22 can be summarised as follows:

- A single Form A is now used for all types of proposed acquirers: natural persons, legal entities, trusts or similar legal arrangements (replacing the old Forms A, B, C and C*bis*). Specific sections for each of these cases have nevertheless been included in the new form.
- Form A has been extended to payment and e-money institutions (replacing the *ad hoc* form developed in 2018).
- Form A has been restructured and simplified along the lines of the ECB model.
- The link between Forms A and B has been clarified. A "fit and proper" form (Form B) must be completed for each senior manager of the proposed acquirer of a qualifying holding when the proposed acquirer is a legal entity, trust or similar legal arrangement.
- Forms C and D have been simplified, mainly with regard to the impact of the acquisition.

- First, where the qualifying shareholder is a legal entity, trust or similar legal arrangement, a Form B must be completed for each senior manager of the qualifying shareholder; the submission of these completed forms is necessary in order for the file to be considered complete. These forms constitute an integral part of the documentation required for the notification of an acquisition or increase of a qualifying shareholding.
- The second is a final question to find out whether the proposed acquirer has any additional information that it deems necessary to provide at their own initiative so that the proposed transaction can be assessed with full knowledge of the facts.

7 It should be noted that where the qualifying shareholder is a legal entity, trust or similar legal arrangement, a Form B must be completed for each senior manager of the qualifying shareholder. The submission of these completed forms is necessary in order for the file to be considered complete. These forms are an integral part of the documentation required to notify an acquisition or increase of a qualifying shareholding.

- Various technical changes have been introduced (changes to the contact details fields, insertion of an LEI code field, addition of a reference to “privacy statements”, etc.).

b) Digitisation of forms

The following information is provided with regard to digitisation of the forms:

- The ECB QLF form “Acquisition of qualifying holdings” has been available in digital format since 27 September 2021; it can be found on the ECB’s IMAS platform (on the “Authorisations” page). The form can be downloaded from the platform for information purposes. Technical questions about this form should be addressed to the ECB.

- The NBB forms (Form A, “Disclosure for the purpose of prudential assessment of acquisitions or increases of qualifying holdings in the capital of a non-bank financial institution”; Form B, “Fit and proper form for senior managers of a proposed qualifying shareholder that is a legal entity”; Form C, “Disclosure of a disposal or reduction of a qualifying holding in the capital of a financial institution”; Form D, “Disclosure for information purposes of an acquisition or disposal of a holding in a financial institution that causes the threshold of 5% of the voting rights or capital to be crossed”; and Form E, “New information”) are currently being digitised and will be available in a digitised format as from 1 October 2024. The old versions of these forms (which remain available on the NBB’s website) can be used until 30 September 2024 (as can the email account acquirers@nbb.be).

- From 1 October 2024, persons intending to acquire, increase, reduce or dispose of qualifying holdings in financial institutions will be required to submit the aforementioned forms systematically and only by electronic means using the NBB OneGate portal. After this date, submissions by post or email (to acquirers@nbb.be) will no longer be accepted (aside from exceptional cases, for example if a file was already under discussion on 1 October i.e. the date of the transition to digitised forms).

- The new forms will also be available in PDF format on the NBB’s website. The NBB stresses that these PDF forms are provided for information purposes only and cannot be used to submit information to the NBB.

- For more information on the OneGate portal, please visit the NBB’s website (FAQ New Reporting - OneGate | nbb.be).

c) Specific submission procedures - joint disclosures and notification through an agent

§1 Parties acting in concert

For persons acting in concert, the statutory notification obligation applies to each one. However, the competent authority recommends that these persons appoint an agent to make a single notification in their name and on their behalf, covering all shares or partnership rights concerned by the action in concert.[8]

This joint notification should include information relating, on the one hand, to all shares or partnership rights that form the object of the concerted action and, on the other hand, identification details for each person taking part in the concerted action and information on any holdings concerned by that action which are held

8 This joint notification option also applies to disclosures for information purposes of acquisitions or disposals of partnership rights exceeding the 5% threshold.

individually by any of these persons and which reach or exceed 5% of the capital and/or voting rights of the financial institution.

Where applicable, if any such person also holds, directly or indirectly, shares or partnership rights in the same financial institution, which they may use freely outside the action in concert, they should submit this information separately and at the same time to the competent authority, unless this information has been provided in the joint notification of the persons acting in concert.

§2 Indirect holdings

For indirect holdings, the statutory notification obligation applies in principle to each entity in the shareholding chain as determined based on the criteria set out in paragraph 6 of the ESA Joint Guidelines in Appendix 8.

However, in the context of applying the control criterion, where there is a direct or indirect acquisition of control over an existing holder of a qualifying holding, paragraph 6.4 of the aforementioned Joint Guidelines provides that the latter is not required to submit a prior notification.

Furthermore, all individual obligations of entities in the shareholding chain may be fulfilled by the submission of a notification by a single entity, provided each entity in the chain in whose name and on whose behalf the notification is made to the competent authority is clearly identified. However, such a joint notification assumes that each entity concerned has authorised the notifying entity to do so in its own name and on its behalf.

Such a joint notification may be made by the person or persons at the top of the qualifying shareholding and control chain. It may, moreover, also be sent to the competent authority by the proposed acquirer of a direct holding in the financial institution, for all entities which, through this direct holding, will hold an indirect stake in the financial institution.

In any event, such a joint notification shall provide relevant information concerning the chain of qualifying holdings and controlling interests through which a qualifying holding will be indirectly held. This information may be provided in the form of a diagram indicating, for each holding mentioned, its percentage and the number and type of securities concerned.

It should also be noted that, in this case, the competent authority may consider that all intermediate entities in the chain meet the statutory criteria for a prudential assessment if the entity at the top of the chain and the entity that will hold the direct holding in the financial institution meet these criteria (see paragraph 6 of the Joint Guidelines). Prior contact between the reporting person and the supervisor is particularly appropriate when the reporting person would like the competent authority to implement this procedure.

§3 Possibility of notification through an agent

Persons subject to the notification obligation may appoint an agent to submit the notification in their name and on their behalf. In such cases, the agent should attach to the notification a copy of the authorisation granted to them by the persons in whose name and on whose behalf they are acting.

7. Assessment by the supervisor

In accordance with the supervisory legislation, the acquisition and increase of a qualifying holding in a financial institution governed by Belgian law, on the one hand, and the disposal thereof, on the other, are subject to two different regimes: in the case of an acquisition or increase, prior authorisation by the competent authority and, in the case of disposal, prior notification to the competent authority.

7.1. Prior authorisation for the acquisition or increase of a qualifying holding

7.1.1. Procedure

For the acquisition or increase of a qualifying holding, the proposed shareholder must complete Form A (the ECB or NBB form, as applicable).

a) Acknowledgement of receipt of notifications of an acquisition or increase

Upon receipt of a notification and the completed form, the competent authority shall verify whether all required information has been submitted along with the notification, without conducting at this stage an exhaustive substantive analysis.

If the notification is not complete, the competent authority shall provide the proposed acquirer with a list of the missing information. In such cases, the statutory assessment period does not yet start to run.

Once the competent authority has established that the file accompanying the notification of the decision to acquire or increase a qualifying holding is complete or has been adequately completed, it shall acknowledge receipt thereof within **two working days**, in accordance with the statutory provisions, and indicate in this acknowledgement of receipt the expiry date of the assessment period.

b) Assessment period

The rules governing the assessment period are defined in the supervisory legislation listed at the beginning of this communication and specified in paragraph 9 of the ESA Joint Guidelines (appended to this communication as Annex 1).

In brief, except where the competent authority requires the proposed acquirer to provide additional information (see below), the assessment period is set by law at **60 working days** from the date of the acknowledgement of receipt of the notification by the competent authority. The expiry date of the assessment period, thus calculated, shall be indicated in the competent authority's acknowledgement of receipt of the notification from the proposed acquirer (see above).

c) Additional information and suspension of the assessment period

At any time during the assessment procedure, the competent authority may request in writing from the proposed acquirer any additional information it deems necessary, in light of the initial information provided, to enable it to carry out with full knowledge of the facts its prudential assessment of the proposed acquisition having regard to the prudential criteria stipulated by law.

It should be noted that requests for additional information generally relate to items that are not included in the list of initial required information and are generally aimed at enabling a better understanding or evaluation of this information.

The proposed acquirer should promptly provide the additional requested information promptly in order to avoid an excessive lengthening of the transition period. It should also be emphasised that failure by the proposed acquirer to provide the additional information requested by the competent authority may lead the latter to oppose the acquisition, provided the additional information is necessary to enable it to assess the proposed acquisition in the light of the statutory assessment criteria.

When the additional information is sent to the competent authority, the latter shall acknowledge receipt and specify in the acknowledgement of receipt the new expiry date of the assessment period, taking into account the suspensive effect of the request for additional information.

Where the competent authority requires the proposed acquirer to provide additional information pursuant to the statutory provisions, the assessment period shall be suspended from the date of the request for additional information to the date of receipt of this information, provided the request is made **no later than the fiftieth working day** of the assessment period.

As a general rule, the period of suspension may not exceed **20 working days.** However, the competent authority may decide to extend the suspension period to **30 working days** if the proposed acquirer is established outside the European Economic Area (EEA) or if, although established in the European Economic Area, it is not subject to financial sector prudential supervision legislation in the EEA. In this case, the request for additional information sent by the competent authority to the proposed acquirer shall also mention the competent authority's decision to extend the suspension period to 30 working days.

It should be noted that the competent authority may send a second request for additional information or send a request after the fiftieth day of the assessment period. In such cases, however, the request for additional information does not suspend the assessment period. However, the competent authority may only make an additional or late request on an exceptional basis, when it considers the additional information to be essential in order to carry out a correct prudential assessment of the proposed transaction. It is therefore also in the interest of the proposed acquirer to respond correctly and promptly.

7.1.2. Assessment criteria

In order to guarantee the sound and prudent management of the institution, the competent authority shall carry out a prudential assessment of the proposed acquisition exclusively on the basis of the following criteria defined for this purpose by the statutory provisions:

a) the reputation of the proposed acquirer;
b) the reputation and experience of any person that will manage the activities of the financial institution following the proposed acquisition;
c) the financial soundness of the proposed acquirer;
d) the ability of the financial institution to continue to meet the prudential obligations arising from its status following the proposed acquisition; and
e) the absence of any suspicion of money laundering or terrorist financing in connection with the acquisition.

The competent authority shall refer to paragraphs 10 to 14 of the Joint Guidelines appended to this communication and, where applicable, to the ECB Guide on qualifying holding procedures. These paragraphs provide a common understanding of the precise scope of each of these five prudential criteria.

It is noted that particular attention is now paid to the fifth criterion relating to the absence of suspicion of money laundering or terrorist financing. The competent authority will check in particular: (i) the source and chain of financing of the transaction and (ii) the impact of the transaction, from the point of view of the fight against money laundering and terrorist financing, on the business plan of the financial institution and on its management and organisational structure. In this respect, insofar as the supervisory authority has neither investigative powers nor powers of enquiry with regard to breaches of the legislation on money laundering and terrorist financing, it will rely on the information provided by the competent authorities and the judicial authorities. However, the supervisory authority will also make its own assessment of this information from a prudential point of view. Please refer to the reference documents for more information on this subject.

7.1.3. Decision of the competent authority and appeal

a) Notification of the decision of the competent authority to the proposed acquirer

Where, on the basis of its analysis of the information in its possession, the competent authority decides to oppose the proposed acquisition, it is obliged to substantiate its decision and inform the proposed acquirer thereof within two working days, and in any case no late than the expiry date of the assessment period, taking into account, where appropriate, any suspension thereof.

In the absence of a decision by the competent authority upon expiry of the assessment period, the proposed acquisition shall be deemed to have been approved.

b) Acquisition carried out prior to notification of the competent authority's decision or before expiry of the assessment period

In the event a proposed acquirer fails to make the necessary prior notifications or proceeds to acquire or increase a qualifying holding despite an opposing decision by the competent authority, the latter is empowered by law to initiate proceedings before the president of the business court, ruling as in summary proceedings, with a view to taking the measures provided for by Article 7:84 §1 of the Code of Companies and Associations.

These measures may include:
1. formal suspension of the exercise of all or some of the rights attached to the securities concerned, for a period of up to one year;
2. suspension of the holding of a general meeting that has already been called, for a period it shall determine;
3. ordering the sale, under its supervision, of the securities concerned to a third party that is not linked to the current shareholder, within a period it shall determine and which may be renewed.

In addition, the competent authority may request the cancellation of all or some decisions of general meetings held after the acquisition date.

Furthermore, it should be noted that it is a criminal offence for a proposed acquirer to knowingly fail to make the notifications required by law or to disregard the competent authority's objection.[9]

Where circumstances require that the terms and conditions of the agreement between the transferor and the acquirer be set down in writing without awaiting notification of the competent authority's decision or expiry of the assessment period, it is strongly recommended that this agreement be made subject to the condition precedent of the absence of an objection by the competent authority notified within the time limits set by law.

c) Appeal of an opposing decision

Where the competent authority is the NBB, an appeal may be lodged with the Council of State against approval decisions taken by the NBB, pursuant to Article 28 of the Act of 22 February 1998 establishing the organic statute of the National Bank of Belgium.

If the competent authority is the ECB, an appeal may be lodged with the Court of Justice of the European Union. Please refer to the SSM Supervisory Manual for more information.[10]

7.2. Prior notification in the event of the disposal or reduction of a qualifying holding

In the event of a disposal or reduction of a qualifying holding, the shareholder must send the competent authority the completed Form C.

In this case, the competent authority's prior approval is not required. However, the competent authority may check that the transaction does not go against the conditions for such approval.

8. Power of the competent authority to conduct ongoing supervision

In addition to the statutory provisions that make plans to acquire, increase or dispose of all or part of qualifying holdings subject to supervision by the competent authority, the prudential legislation also confers on the competent authority powers it may exercise independently of any change in the shareholding

9 See in particular Article 348 §1(3) of the Banking Act of 25 April 2014 and Article 605 §1(3) of the Insurance Supervision Act of 13 March 2016.

10 See https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssm.supervisory_guides202401_manual.en.pdf.

structure, against the shareholders of financial institutions it has reason to believe exert an influence likely to compromise the management of those institutions.

In order to be able to carry out this ongoing supervision of shareholders, new information that could have a material impact on the competent authority's assessment of the five criteria set out in paragraph 7.1.2 above must be communicated to the competent authority without delay.

To this end, the competent authority shall make available to natural or legal persons holding, directly or indirectly, a qualifying holding in a financial institution covered by this communication, the attached Form E for the purpose of notifying this information.

As soon as the competent authority becomes aware of information that raises doubts as to a shareholder's ability to comply with the criteria set out in paragraph 7.1.2 above, it shall proceed immediately with a more detailed analysis and, if necessary, a new assessment.

If, based on this analysis, the supervisor finds that the influence exercised by the shareholder in question is such that it is liable to jeopardise the sound and prudent management of the financial institution concerned, it may take the prudential measures provided for in the statutory provisions governing supervision, namely (i) suspension of the exercise of the voting rights attached to the shares or units held by the shareholder in question or (ii) the issuance of an order instructing the shareholder to dispose of its partnership rights within a fixed period.

9. Entry into force

This communication repeals and replaces Communication NBB_2017_22 with immediate effect (except for the old forms annexed to the latter communication which remain valid until 30 September 2024). Communication NBB_2021_19 of 1 September 2021 is also partially repealed as the digitisation of the ECB QLF form "Acquisition of qualifying holdings" is now included in this communication. However, Communication NBB_2021_19 will continue in effect with respect to the "freedom to provide services" and "freedom of establishment" forms.

Yours faithfully,

Pierre Wunsch
Governor

Annexes:

1) *Joint Guidelines for the prudential assessment of acquisitions and increases of qualifying holdings in the banking, insurance and securities sectors, published by the ESAs (EBA, EIOPA and ESMA) on 5 May 2017*
2) *ECB Guide on qualifying holding procedures*
3) *PDF versions, for information purposes only, of Forms A, B, C, D and E (please note that only digitised forms will be taken into account)*