Draft Guidelines (Reference made to the Consultation Paper)	Comments Received	3L3 Committees' Analysis	Amended text
General Comments			
	1. Proportionality - The proportionality principle should be applied in the case of: o intra-group transactions and acquisitions by regulated financial institutions or their subsidiaries and o up-stream mergers of indirect shareholders, where there is no real change in the shareholding of the financial institution, but only in the location of an existing shareholder's holding within the group. The application of lower standards of evidence is strongly encouraged where investors do not intend to control the target company.	Information should be provided to the supervisory authorities. Nevertheless, no assessment should be needed as long as there is no real change in the shareholding. The text could be clarified on this point. Due consideration is already provided in part II of the information list to the intensity of the involvement of the shareholder within the targeted financial institution.	**New para § 19**. For instance, the proportionality principle implies that in the case of intra-group transactions within the group of an existing shareholder without any real or substantial change in the direct or ultimate shareholding of the financial institution, adequate information should be provided to the target supervisor. On the other hand, the shareholder's group should not be re-assessed since the transaction does not affect the influence it exercises over the financial institution.
	2. Proportionality - Investment management companies - While these companies (e.g. UCITS or fund managers) may occasionally have a holding of 10% or more in a financial institution, they would do so purely for the investment returns from those holdings, not in order to merge, acquire or control that company: their sole business is to achieve long-term investment value for their clients and funds. Moreover, asset managers based within the EU are regulated entities, appropriately authorised and supervised. Furthermore, UCITS management companies and funds are explicitly prohibited by the UCITS Directive (see Art. 25) from exercising significant influence over an issuer, and client mandates for discretionary portfolios often contain the same requirements. Therefore, the holding of shares by asset or fund managers would have no impact on the management of the target company, nor would the asset or fund manager wish to have any influence on that firm. Thus the suitability or financial soundness of the proposed acquirer should be moot, rendering irrelevant the requirement to assess against the criteria. The Directive also impacts the activities of discretionary investment managers who invest in shares of financial institutions for client portfolios with a long-term investment horizon but do not do so for the purpose of controlling a company.	The guidelines contain elements of proportionality that could be applied to asset managers, but the specific case of asset managers could be clarified by adding a new paragraph.	**New § 20**. The proportionality principle also applies in the following manner when the proposed acquirer is an asset manager who manages the shareholdings of his clients (UCITS or private portfolio owners): ▪ usually, notification and prudential assessment will not be required since: o existing rules prevent each UCITS individually or the asset manager acting for the account of the common funds he manages from exercising a significant influence on the issuers (see Art. 25 of the UCITS Directive); o asset managers are only required to aggregate the voting rights they exercise in the name of their clients when they are free to decide on their own the way to exercise these voting rights, i.e. when they have not received specific mandates from each client specifying the way to exercise his voting rights; o even when they are free to determine on their own the way to exercise voting rights belonging to their clients, the objectives pursued in the framework of asset management activity and a sound diversification of portfolios will usually ensure that asset managers do not cross the thresholds for notification or gain control of an issuer; ▪ if they are nevertheless required to notify the crossing of a threshold: o the extent of the required information (see in particular part II of the information list in the annex) may be tailored to the level of the holding to be acquired and the involvement in the management of the target financial institution; o if the asset manager is regulated and supervised within the EEA or in an equivalent third country, the target supervisor may exempt him from providing some information according to the procedures described in footnote 18.
	3. Calculation of indirect shareholdings - Calculation of indirect shareholdings is not harmonised within the EU. We hope that harmonisation will be achieved by the transposition of the Acquisition Directive. Lack of harmonisation leads to legal uncertainty with regard to acquisitions, which in the case of cascading shareholdings affect several Member States. If this is not the done, as appears to be the case, we recommend that supervisors publish information on the calculation of indirect shareholdings together with the list of information required for the assessment.	Indeed, national differences in the understanding of "indirect qualifying holding" are not abolished by the Directive since the latter does not define this notion precisely; "indirect qualifying shareholding" must thus be interpreted in the light of the applicable national laws. Nevertheless, § 13 could be clarified.	**§ 13.** If significant shareholdings are held indirectly through one or more third parties, the Directive requires that, where a threshold is crossed, all persons in the chain of holdings should be assessed against the five assessment criteria. These requirements may be satisfied by assessing the person at the top of the chain and those who hold shares in the target financial institution directly, unless the target supervisor has doubts about intermediate holders.

	4. Status of the Guidelines - The maximal harmonisation approach sets these guidelines apart from other CEBS guidelines by introducing a constitutional component, which is to be resolved by each Member State's (MS) legislative branch, e.g. by empowering supervisory bodies to issue statutory instruments.	In our view, the nature of the Directive (maximum harmonization) only impacts the transposition work of Member States (no gold-plating) but does not have an impact on the nature of the related Level 3 Guidelines.	NA
	5. Public offer - In the event of an acquisition proposed by means of a public offer for a listed entity, it is not possible to gather in advance the required information with respect to issues such as the level of control after acquisition, the costs of acquisition, changes in boards or committees, changes in policies and IT systems. This all depends on the outcome of the offering process and possibly even on rival bids by other companies. If a public offer results in a qualifying holding that does not confer any actual control, certain changes would not take place.	In cases of a public offer, the acquirer has the intention of obtaining control. He has to communicate this information and his plans regarding the target company. This information can be completed or modified once he has more information available. This could be clarified in the text.	**New § 21** Under some circumstances, like in the case of acquisitions by means of a public offer, the acquirer may encounter difficulties in obtaining information which is needed to establish a full business plan. In these cases, the acquirer shall indicate these difficulties to the target authority and point out the aspects of his business plan that might be modified in the near term (see also footnote 26). On the other hand, in such circumstances the proportionality principle will be applied in the sense that the proposed acquisition should not be refused on the sole basis of the lack of some required information that can be justified by the nature of the transaction, provided that the partial information appears sufficient to understand the probable outcome of the acquisition for the target financial institution and that the proposed acquirer commits himself to providing the missing information as soon as possible after the closing of the acquisition. ***Footnote 26:*** *"Under some circumstances, like in the case of acquisitions by means of a public offer, the acquirer may encounter difficulties..."*
	6. Scope - It should be explicitly stated that the guidelines apply equally to cross-border mergers (where the latter would result in a change of ownership).	Cross-border mergers are only concerned if, as a result of the merger, the new entity crosses the thresholds (otherwise, it is part of ongoing supervision)	NA
	7. Terminology used for senior management - Terms such as "directors", "senior management" and "manager" have not been defined at European level and are interpreted in various ways across Member States. The Guidelines should instead use the expression "persons who effectively direct the business" which is the terminology used in European Directives. We would suggest that Member States be encouraged to create and publish a list of all the categories of persons which fall under the expression "persons who effectively direct the business" in their respective jurisdictions. In any case, this should not refer to levels below the Board and/or Executive Committee.	Agreed. Reference is now made to the "persons who effectively direct the business". As for harmonization of categories of concerned persons, this is beyond our scope and mandate.	*Paragraphs 29, 47, 49, 50, 52, 53 and 54 of the Guidelines and items (11) and (21) of Appendix II, Part I, are modified accordingly.*
	8. Third countries - Competent authorities in third countries should be strongly encouraged to align their prudential assessment rules with the ones in effect in Europe to help achieve equal access to investment worldwide. Competent authorities within the EEA should especially strive to implement the same standards in their respective bi/multilateral MoU's with their third-country counterparts.	This is beyond our scope and mandate.	NA
	9. Disaggregation - (1) Disaggregation should benefit discretionary investment managers where they do not propose to invest for the purpose of controlling the financial institution in question; (2) Directive 2007/44/EC remains silent on disaggregation for non-EU asset managers provided for by Art 23(6) of the Transparency Directive. An extension in the Guidelines of such exemption from aggregation to investment managers with a parent company or subsidiaries in third countries would be welcome (similarly to Art. 23(6) of the TD). As an alternative, we suggest that it should be left to local regulators to apply the disaggregation principles to non-EU investment managers. At the very least, if disaggregation is not available for non-EU asset managers, the proportionality principle mentioned in §18 of the guidelines should be applied.	Since the Directive does not refer to Article 23 (6) of the Transparency Directive, this disaggregation cannot be applied for the purpose of prudential assessment. Neither the 3L3 committees nor the Member States have the power, or are allowed, to introduce general disaggregation rules that are not provided by the Directive 2007/44/EC. Nevertheless, the specific case of asset managers can be considered in accordance with the proportionality principle as described above.	*[see new article 20 above]*

	10. Investment in listed groups with financial subsidiaries - Many major listed companies have subsidiaries that are regulated as financial institutions in Member States and are covered by the Directive; that may thus have the unintended consequence of deterring investment by assets managers in these top-tier operating companies. The Guidelines should clarify that in these cases no assessment needs to take place, as investment in the parent company would have no impact on the management of the financial subsidiary, nor could the investment manager exercise any direct influence on it. Listed companies may, in their groups, have numerous regulated subsidiaries across Europe. Identifying these and complying with multiple, differing methods for calculating thresholds and notification and consent requirements is a major and growing burden.	We disagree. It may be that a change in the shareholders of the parent company (listed or not) of a financial institution would have no impact on the management of the financial subsidiary, but the opposite can also occur. This is precisely the reason why indirect holdings are also to be assessed when crossing a threshold. Concerning the notification and assessment requirements on the part of the assets managers, see above.	*[see new article 20 above]*
	11. Applicable law - Any acquisition should be governed only by the laws and regulations of the home country of the main issuer, to the exclusion of any rules applicable in any third country where non-listed subsidiaries of the issuer are located (in order to avoid having the same transaction subject to multiple, and sometimes conflicting, notification/approval regimes in various jurisdictions).	The 3L3 Committees cannot intervene in defining the applicable laws (beyond their scope and mandate). Moreover, the Directive itself provides for a multi-level assessment (see Recital 10), which implies that the authorities will exchange information as necessary.	NA
	12. Consistency with the Transparency Directive / Notification exemptions The Directive refers to various notification exclusions set out in the Transparency Directive: see Articles 9 and 10 of Directive 2004/109 (as cross-referenced in the Directive). The proposed guidance needs to distinguish between different kinds holdings by following the principles established in the earlier Transparency Directive. This concerns: • holdings of a custodian on behalf of clients; • holding companies engaging in market making and trading activities; • underwriting of rights issues by regulated firms. Similarly, fund management companies and portfolio managers should be able to use the systems designed to monitor compliance with the Transparency Directive to monitor their compliance with the shareholding limits under the sectoral Directives.	The guidelines aim mainly at defining cooperation arrangements among supervisors and at establishing a common information list on the basis of a common understanding of the assessment criteria. It seems unnecessary to repeat in the guidelines all the rules set out in the Directive that obviously apply, including its exemption provisions (provided of course that the conditions of such exclusions are effectively met). Considering that the rules set out by the Directive concerning the methods of calculating the percentages of voting rights (including cases of disaggregation) are mainly defined by reference to the Transparency Directive, there should normally be no difficulty in using the same tools or systems to monitor compliance with both Directives.	NA
	13. List of information – First, the list is too detailed and a number of items of information are irrelevant to the assessment and/or superfluous. Secondly, the list should be truly exhaustive, without the possibility for national supervisors to expand the list of data to be requested or to further specify the request.	Regarding the level of information required, the exhaustive nature of the list makes it necessary to cover all possible cases and does not leave much room for significant reduction of information requirements. The Committees also wish to underline the fact that proportionality had already been taken into account by splitting the list into two sets of requirements, the second of which is restricted to limited cases. However, to accommodate the comments received, further streamlining has been conducted, which inter alia has led to clarification of the cases where supervisors may/must grant exemptions. Regarding the exhaustive nature of the list of information, it should be borne in mind that this does not prevent the supervisor from asking for supplementary information, since this is provided for in the Directive, as long as it is needed for an adequate prudential assessment.	Please see amendments to Appendix II
	14. List of information / exemptions / Direct vs indirect acquisitions - The guidelines should distinguish more clearly between the kind of information needed in cases where the acquirer is focusing on the financial services firm and in cases where the financial services firm in the group is not the target of the acquisition. Thus the comprehensive list of	We do not agree with the statement that when acquiring a group this will not affect the regulated entity within that group. A clear distinction has been made between cases where there is a change of control and where there is not (cf Appendix II – Part II). Furthermore, the text provides that the supervisor may on a case by case basis exempt the acquirer from certain information requirements.	NA

	information to be provided should clarify the information that the competent authorities would not need in the latter case. Specifically, a distinction has to be made between transactions where the acquirer is taking a controlling or strategic stake and those where no such influence is intended.		
	15. Standardized processes – Implementing Measures - Lead supervisor • It would be beneficial to develop a form in one language that could be applied throughout all Member States (a simplified form for straightforward acquisitions as well as a more comprehensive form for acquisitions that require more scrutiny). • Supervision should rest with the lead supervisor of the firm at the top of the group. The lead supervisor would be responsible for cascading down to other relevant supervisors to obtain their views but would be responsible for the final decision on approving the transaction. • It is of utmost importance that the supervisors concerned make early contact with each other. The initial discussions between cross-border supervisors need to establish the practical lines of communication (i.e. determining language) as well as setting the framework for the sharing of confidential information about mergers and acquisitions.	• The establishment of a common information list is aimed at helping proposed acquirers to have certainty about the information they are required to provide to the target supervisor if the target financial institution is located in the EEA. • The Directive explicitly gives responsibility to the host supervisor for the assessment of the acquirer. • The guidelines explicitly encourage early contacts between supervisors (see § 99).	NA

Specific comments			
Introduction			
§ 2	A reference to the second Recital would be welcome, as the objective set in this recital ("supply legal certainty, clarity and predictability with regards to the assessment process, as well as to the result thereof") should in the final analysis be beneficial to potential acquirers.	We agree with the suggestion	**§ 2** The main objectives of the Directive are to provide the necessary legal certainty, clarity, and predictability with regard to the assessment process, as well as to the result thereof, by: i° harmonising the conditions under which the proposed acquirer of a holding in a financial institution is required to provide notification of its intent to the competent authority responsible for the prudential supervision of the target financial institution; ii° defining a clear and transparent procedure for the prudential assessment of the proposed acquisition by the competent authorities, including setting the maximum period of time for completing the process; iii° specifying clear criteria of a strictly prudential nature to be applied by the competent authorities in the assessment process; and iv° ensuring that the proposed acquirer knows what information he will be required to provide to the competent authorities in order to allow them to assess the proposed acquisition in a complete and timely manner.
§ 6	Where a proposed acquisition is opposed, the guidelines should clarify that the competent authorities should demonstrate that the acquirer does not fulfil the criteria or has not fully provided the necessary information, thereby justifying the decision to reject the proposed transaction.	This is expressly provided for by the Directive	NA
	Supervisors should be encouraged to make requests for supplementary information as early as possible in the assessment process to avoid reaching a situation where supervisors would only have limited time to assess the additional information. Moreover, the demand for any supplementary information should be restricted to exceptional cases.	We agree	**Inserted in § 9: The [target] supervisor** is encouraged to transmit such a request for supplementary information as soon as possible during the assessment process.
	As the approval procedure is an ex-ante procedure, we consider the timeframe provided by the Directive to be overly long from the perspective of an asset or fund manager. We would therefore welcome wider recognition that early notification benefits all concerned; that is, firms would be encouraged to provide the relevant regulator with a statement regarding an acquisition they are considering in the course of their investment activities and that would trigger a notification requirement. Another change that could be beneficial would be to encourage the competent authorities, through the 3L3 Guidelines, to inform the acquirer of their decision as soon as it is made, ideally within a week, rather than to wait until the full period allowed has expired. This should apply, particularly, where a regulated company is proposing to hold an interest of between 10% and 20% in the target financial institution.	1. It is not within our mandate to amend the Directive. 2. §§ 16 and 17 encourage early and preliminary contacts between a proposed acquirer and the target supervisor with the aim of facilitating and shortening the assessment process whenever possible. 3. Supervisors can finalize their assessment before the deadline and we can recommend that they reply to the acquirer as soon as possible.	**new § 10:** When possible, target supervisors are encouraged to inform the proposed acquirer of the absence of objections against a proposed acquisition as soon as possible after they have made their decision, without waiting unnecessarily until the end of the assessment period..
§ 7	The language in which the information has to be provided and the format of the requested documents (whether or not they should be submitted in their original format or in a format in which the authenticity and the accuracy of their content may be substantiated) should be made explicit.	Such requirements regarding the format of documents are to be considered in the light of the applicable national law. This issue is beyond the scope and mandate of the 3L3 Committees.	
	Paragraph 7 points out that the list of information necessary to carry out the assessment, contained in Appendix II of the Guidelines shall be considered an exhaustive list. However, according to paragraph 9,	Indeed, the list of information requirements is exhaustive, in the sense that it includes all the information that must be provided to the target supervisor together with the notification.	See § 9 regarding the possible request for additional information

	there are cases in which the target supervisor may consider that some additional information is necessary for the assessment of the acquisition and may request in writing that the proposed acquirer provide it. Since such a request triggers the beginning of the interruption period, the possibility for supervisory authorities to request additional information should be kept to a minimum and be used exceptionally. The list contained in Appendix II should in principle be considered as exhaustive.		
§ 8	Supervisors should publish a list of cases in which they generally do not require all the information listed in Appendix II to be provided, e.g. intra-group transactions and acquisitions by regulated entities within the financial sector or their subsidiaries.	Such exemptions can only be decided on a case by case basis.	**§ 8**. In some cases, the target supervisor may not need the acquirer to provide all of the information that appears on the published list: for example, if the supervisor already possesses some information or can obtain it from another supervisory authority. In such cases, the target supervisor should expressly exempt the acquirer from providing certain pieces of information. ***Footnote 19*** *- This list is intended to be exhaustive, specifying all of the information that the acquirer must provide to the target supervisor for the purpose of assessing the proposed acquisition. However, the target supervisor may exempt the acquirer from providing some of the listed information if this information does not seem to be necessary for the sound assessment of the acquirer in the specific case. This is the case, for example, if the target authority already holds the information or if the information could easily be obtained from another authority.*
	If the target supervisor can obtain information from another supervisory authority, the acquirer should be exempted from providing it. The current wording should be clarified.	We agree. This should also be clarified in footnote 17.	
§ 9	Paragraph 9 expressly mentions the possibility for the supervisor to request “additional information” that is not on the list. It should be clarified that the additional information which supervisors may request should be strictly related to the list of required information and the prudential assessment criteria. The current wording seems to suggest that additional information requests could open the door to any other piece of information.	This possibility is expressly provided by the Directive and is essential to ensuring that the assessment process can be conducted properly in all circumstances. If necessary, the target supervisor is empowered to request any supplementary information necessary for the prudential assessment without being limited by the list of information that must be initially provided with the notification of the proposed acquisition.	See also new § 6bis above.
§ 10	Proposal to change the sentence "*In the event that some pieces of information are deliberately false or forged,...*"	We disagree with this proposal: responsibility for ensuring that the information he provides is not false or forged remains with the proposed acquirer.	NA
§ 12	What could be the consequences of a decision by the target supervisor to oppose an involuntary crossing of a threshold? Refusing approval without involving the persons concerned would be dubious from a constitutional point of view.	In case of an involuntarily crossing of the threshold without providing any information to the supervisor, the first action by the latter will be to request the concerned shareholder to submit the files.	NA
	This seems inconsistent with paragraph 19 of the Guidelines, which states that “the Directive focuses on the prudential assessment of a proposed acquirer only at the time of an acquisition or an increase in a qualifying holding in a financial institution”.	In case of a decrease in the participating interest, the aim of the process is only to obtain updated information on the shareholding after the transaction. In such a case, there will be no assessment of the shareholder that decreases its stake, but there may be one of the proposed acquirer of the shares that are sold. This could be clarified in a new footnote.	**§ 12** Notification is also required if the acquirer involuntarily crosses a threshold, or when persons are acting in concert [4], or in the case of a decrease in an existing shareholding [4bis]. ***Footnote 4*** *: “involuntarily crossing a threshold” and “action in concert” are defined in the Glossary* ***Footnote 5:*** *In cases of decrease of participation, there will be no assessment of the shareholder that decreases its stake, but possibly of the proposed acquirer of the shares that are sold.*
§ 13	It should be clarified in which cases the supervisor is entitled to assess the persons positioned, in the chain of holdings, between the parent company and the direct holder. The expression “has doubts” is too wide and does not in fact provide certainty about its scope of application.	This paragraph is drafted in such a way as to reduce the burden on the institutions (and the supervisors) yet allow supervisors to take the measures that are deemed necessary. Providing greater certainty does not seem possible.	**Revised § 13** If significant shareholdings are held indirectly through one or more third parties, all persons in the chain of holdings should be assessed against the five assessment criteria where a threshold is crossed. These requirements may be satisfied by assessing the person at the top of the chain and those who hold shares of the target financial institution directly, unless the target supervisor has doubts about intermediate holders.
§ 14	This paragraph could be interpreted as giving the same responsibility to all supervisors involved, a situation which is bound to create serious practical difficulties in cases of disagreement among supervisors. The Guidelines should better clarify supervisory responsibilities and detail cooperation procedures, and should specify the degree of reliance by the target authority on the acquirer supervisor. Furthermore, the requirement that the acquirer notify each competent authority (including those responsible for the prudential supervision of the subsidiaries) will create practical difficulties in cases of holdings in large financial groups with subsidiaries in many Member States.	§§ 14 and 15 articulate the responsibilities of the supervisors as provided for by the Directive. The text explicitly encourages supervisors to work closely together. We can include a reference to the cooperation within existing supervisory colleges and, once the draft CRD has been approved, to the provisions regarding the establishment and tasks of these supervisory colleges.	**§ 14.** As stated in the 10th Recital of the Directive, “the responsibility for the final decision regarding the prudential assessment remains with the competent authority responsible for the supervision of the entity in which the acquisition is proposed” (the 'target supervisor'). Nevertheless, if the acquirer is a financial institution supervised in the EEA by another supervisory authority (the 'acquirer supervisor'), the target supervisor should take fully into account the opinion of the acquirer supervisor, particularly as regards the assessment criteria directly related to the proposed acquirer. Where appropriate, such cooperation among supervisors could be organized by having recourse to existing supervisory colleges or to such colleges that may be created in the future in accordance with new prudential Directives.

§ 15	Suggestion to amend the 1st sentence as follows: "*On the other hand, if the target institution directly concerned by the proposed acquisition in turn directly or indirectly controls subsidiaries that are financial institutions subject to the supervision of other EEA competent authorities,* and if the target institution would be controlled by the acquirer*, each of these subsidiaries shall also be considered indirectly as 'target financial institutions'".*	We disagree: even in situations where a person proposes to acquire a qualifying holding in the target financial institution without gaining control of the latter, the national authorities competent for each of its subsidiaries remain competent to assess the acquirer, depending on the definition of "indirect shareholding" provided by their legislation.	NA
	It would not be acceptable that "indirect" target supervisors be able to block a proposed transaction occurring at the level of the parent financial institution.	First, the cooperation among supervisors is aimed at formulating as far as possible identical or consistent decisions regarding each of the financial institutions concerned by an acquisition proposed by the parent financial institution. Moreover, even if an authority competent for a subsidiary of the financial group cannot agree with the joint decision made by the others, this national authority can only exercises its powers over this subsidiary, not over the group. This is what is meant by the words "as regards the institution which it supervises". It seems unnecessary to elaborate further on this in the text.	NA
	With regards to considering subsidiaries and respective "target supervisors" among other EEA competent authorities, the proportionality principle should be exercised on a case-by-case basis to avoid any unduly burdensome reporting.	This is taken into consideration in § 8 and footnote 17 as modified (see above).	NA
§ 16	We would seek guidance and clarification as to whether any target supervisors have the authority to prevent commencement of the formal timetable for considering an acquisition if they have suspicions about the acquirer's motives that may warrant further investigation.	This seems not to be justified insofar as the complete information requirements are provided to the supervisors.	NA
§ 18	Suggestion to amend this paragraph as follows: "*The Directive applies the principle of proportionality to the assessments. This principle, which is mentioned in recitals 5, 8, and 9, applies both to the composition of the required information and to the assessment procedures. The type of information and the documentation required from the acquirer may be influenced by the particularities of the acquirer (legal vs. natural person, supervised financial institution vs. other entity, etc.), the particularities of the proposed transaction (intra-group vs. "external" transaction, etc.), the degree of involvement of the acquirer in the management of the target financial institution, or the level of the holding to be acquired."* Restructuring within a group will, as a rule, be a case where the proportionality principle leads to less stringent requirements. It should also be mentioned that the type of information required from the acquirer may be influenced by whether the acquirer is an institution supervised in the EEA or a third-country institution.	We can add some additional examples to demonstrate the proportionality principle. On the other hand, since requirements concerning the form of the documents to be provided remain at the discretion of national legislation, it does not seem appropriate to mention this aspect under this paragraph.	**§ 18.** The Directive applies the principle of proportionality to the assessments. This principle, which is mentioned in recitals 5, 8, and 9, applies both to the composition of the required information and to the assessment procedures. The type of information required from the acquirer may be influenced by the particularities of the acquirer (legal vs. natural person, supervised financial institution vs. other entity, whether or not the financial institution is supervised in the EEA or an equivalent third country, etc.), the particularities of the proposed transaction (intra-group vs. "external" transaction, etc.), the degree of involvement of the acquirer in the management of the target financial institution, or the level of the holding to be acquired.
§ 19	'This should be amended to be consistent both with Article 20 of the Directive and paragraph 12 of the Guidelines as follows: "The Directive focuses on the prudential assessment of a proposed acquirer only at the time of an acquisition, or an increase in or a reduction of a qualifying holding in a financial institution".	This paragraph is intended to clarify that a clear difference must be made between the assessment of shareholders at the time of an acquisition, and those made in the course of on-going supervision. In case of a decrease in the participating interest, the process is intended only to obtain updated information on the shareholdings after the transaction. In the latter case, there will be no assessment of shareholders who decrease their stake.	NA

First assessment criterion – Reputation of the proposed acquirer			
para 20 (case of a financial acquirer established and supervised outside the EU)	One respondent suggested extending the scope of facilitation mentioned in Recital 8 of the Directive to include foreign acquirers if their entity is supervised by a comparable regulator of another major financial centre [eg by the Fed].	The situation described is facilitated by cooperation with the competent supervisory authority when assessing the equivalence of the regulation concerning reputation (par. 47 of the Guidelines)	No changes needed
	One respondent expressed concern that excessive requirements might act as a disincentive to acquire equity interests in financial companies	The requirements are established by the Directive itself when it details the list of the criteria to be assessed with a view to ensuring the sound and prudent management of an acquisition.	No changes needed.
Para. 22 and 28	In relation to the integrity of the proposed acquirer, the 3L3 Committees should urge their members to be as convergent as possible in the interpretation of the concept of absence of negative records, at least in connection with the appraisal of the suitability of the proposed acquirer and the financial soundness of the proposed acquisition. This would increase legal certainty for market operators and avoid cases of "forum shopping", i.e. business decisions being taken depending on the applicable national legal framework. Likewise, and to the same extent, convergence is required in relation to para. 28 which outlines that Member States may judge the relevance of criminal records differently, based on their different national legal frameworks.	The Guidelines aim at enhancing convergence in the interpretation of the suitability of the acquirer when they describe situations which may cast doubt on the trustworthiness of the acquirer. To reinforce this objective, the reference to the national legislation in para. 28 could be deleted; coherently, "the Member States" should be modified in "the supervisory authority".	Target supervisors may judge the relevance of criminal records differently, according to the type of conviction, the level of appeal (definitive vs non-definitive convictions), the type of punishment (imprisonment vs less severe punishments), the length of the sentence (more vs less than a specified period), the phase of the judicial process reached (conviction, trial, indictment), the effect of rehabilitation.
Para. 24	In order to provide both supervisors and market players with certainty and clarity, it should be clarified that for criminal offences to be relevant, these should always (and anyway) be listed amongst the criminal records. It would be advisable to state that legal decisions must have been made, hence guaranteeing the existence of responsibility further to criminal, administrative or any other proceedings. An exemption to this principle would be applicable in cases where the proceedings were initiated by the supervisors themselves or the office of the public prosecutor as in these cases there is no doubt about the veracity of the accusations. In addition the paper should clarify how to handle criminal or administrative records that have been expunged. A possible practical solution would be to require information relating to facts which have taken place within a certain number of years.	Par. 28 offers to the supervisors the possibility of considering the relevance of criminal records according to different situations, among these situations is the phase of the judicial process.	See amended § 31
Para. 25	Investigations should be relevant to the integrity assessment only in so far as they lead to proceedings against the acquirer being started.	Proceedings may have not been started just for technical reasons (prescription) and the supervisors should be able to assess the relevance of this situation. An investigation concerning a serious offence under the law governing banking, securities and insurance activity should be assessed by the supervisors.	No changes needed.
Para. 25	It would be more efficient to examine fewer situations. We would propose to retain only administrative fines of 1 million euros and above, and to limit the 'look back'	It would not be appropriate to set a limit such as 1 million euros to judge the relevance of a fine considering that the relevance of this limit may be very different among Member States. Nor would it be	No changes needed.

	period to one that should not significantly exceed two years. Practically speaking, the acquirer will often not be able to deliver such information if it dates back too many years.	appropriate to set a time limit in the past as it would be very difficult to set this limit irrespective of the type of criminal records (a serious criminal offence should be considered even if very dated).	
Para. 26	The evaluation of the absence of correctness in past business dealings should be based on objective grounds able to reasonably undermine the integrity and reputation of the acquirer. In particular, supervisors should not focus on the “refusal”, “revocation, withdrawal, or termination”, “expulsion”, “dismissal” or “resignation” themselves but rather on the grounds on which they have been based (e.g. an authorization may have been refused due to the fact that one of the documents submitted was not notarized, as requested).	The guidelines indicate situations which the supervisors should pay attention to; this does not mean that the grounds on which revocation, refusal etc have been based should not be considered by the supervisors, having in mind the aim of the assessment (the correctness of business dealings).	
Para. 30	As the acquirer is not necessarily aware of investigations carried out against him, it would be helpful to clarify that the statement referred to should be made to the best of the acquirer's knowledge. Similarly, if the acquirer is formed by a large group of people, only a subjective statement for the group should be filed which is based on ‘the best knowledge’ of the group.	An acquirer may be or not aware of investigations against him depending on the kind of investigations and the legislative framework existing in the Member States concerning the individual rights in judicial proceedings. A statement which is incomplete just because an acquirer is unaware of investigations could never call into question the approval of the acquisition (but the investigations could well call into question the approval); in the case of a group, an acquirer who is the parent company of a group should be aware of the situation concerning all companies in the group. The proposal can however be accepted.	See amended para. 33: But in all cases, the acquirer himself should attest in a statement that none of the situations described in points 24 to 26 occurs or has occurred in the past to his best knowledge. A delayed, incomplete, or undelivered declaration will call into question the approval of the acquisition.
Para. 30	Many respondents have asked the Level 3 Committees to define the lay out and content of a standard document containing the information on the reputation of the acquirer. This would avoid the target supervisors rejecting a document developed by the acquirer itself e.g. because it does not conform to their own standards. A template developed at European level would moreover facilitate exchanging this information amongst the respective supervisory authorities and provide a harmonized format that could be used by any supervisor.	The list of information concerning the acquirer in par. 2, a) 10, is very close to the template required. On the other hand, the Member States may need to adapt the format, e.g. to their own company law.	No changes needed
Para. 30	It should suffice that only an attestation of ‘good conduct’ is required as the production of evidence of ‘good conduct’ is impossible to provide. It would also be helpful for the supervisor to provide a checklist of “wrongdoings” to guide the proposed acquirer in the disclosure of any business failings, regulatory breaches or criminal offences (this is the approach adopted, eg, in the UK under the FSMA when the FSA assesses whether persons should be approved to undertake specified controlled functions within firms).	The guidelines ask for a statement by the acquirer attesting that none of the situations described in par. 24-26 has occurred. The acquirer is not required to give evidence of good conduct unless the supervisor has need to verify the statement. A list of general wrongdoings has been given in par. 24-26.	See also amended § 33
Para. 33	The requirement that "the persons who effectively direct the business” must meet the reputation criteria is not specifically mentioned in the Directive; it is only stated that the “acquirer” shall meet these requirements; it would be appropriate for supervisors to prepare an official list of functions falling under the definition contained in the Directive and whereby the 3L3	The reference to the persons who direct the business is necessary to verify the reputation of an acquirer which is a company (in many Member States only physical persons may be charged with criminal offences). A list of officials falling under the definition would be difficult to identify, given the different company laws and governance structures existing in the Member States.	No changes needed

	Committees could monitor the use of such criteria.		
Para. 33	It has been noted that it would be safe to assume at least for companies subject to supervision that the business managers are reliable	The reputation of the persons who direct the business of a supervised entity is generally presumed (para.44, second bullet point)	No changes needed
Para. 34	It should be clarified which family/business relationships are considered relevant; in addition, the 3L3 Committees should help the industry to understand in more depth under what circumstances a person may appear to have a family or business relationship with the acquirer.	The guidelines identify general categories of a relationship which may be relevant with respect to the integrity of the acquirer. In footnote 7 some examples of business relationships are given. Family relationship could be restricted to the "relevant family relationship"	When assessing the integrity of the acquirer, [….]or appears to have a relevant family or business relationship with the acquirer.
Para. 36-37	It would be helpful to specify the means that the acquirer may have available to substantiate compliance with the requirement of professional competence.	These means are included in the list of information (description of the activities performed by the acquirer, companies controlled etc.)	No changes needed
Para. 41	It would be helpful to clarify what is meant by "decisive influence", particularly as compared to "significant influence".	To avoid confusion, reference is now made to "any" influence and clarification is to be found in footnote 9.	See amended § 44
Para. 41	It would be appreciated if the proportionality principle could be applied to the professional competence requirements, and that significantly lower standards of evidence will be required of them. As the acquirer is a regulated entity, the target supervisor should be able to rely on the opinion of the acquirer's supervisor with regard to this criterion.	The proportionality principle is explicitly stated in para. 44. The supervisor is able to rely on the opinion of the supervisor of the acquirer (see par. 47 of the Guidelines)	No changes needed

Second assessment criterion - Reputation and experience of those who will direct the business			
	The term “directors or managers” is unclear as it varies across the EU. This term should be replaced by “persons who effectively manage the business”.	Accepted	See par. 52,53, 54,55 as amended
	The second criterion would be unlikely to apply to asset and fund managers. It may, of course, be applicable where their group takes over another financial firm.	The acquisition of control following a take over is the only situation in which the 2° criterion applies if the acquirer has the intention of appointing new directors.	No changes needed
	The possibility for a target supervisor to reject a proposed acquisition solely because the person who is intended to effectively direct the business is considered not to be fit and proper is disproportionate. It has been suggested that in such cases the acquirer be informed of the situation and allowed to make changes to remedy it.	It is the Directive which states that an authority may oppose the acquisition if the persons who will direct the business are not fit and proper. This does not prevent the acquirer from modifying his initial plans concerning these persons, by appointing new persons in order to obtain the authorisation, if needed.	No changes needed

Third assessment criterion – Financial soundness of the proposed acquirer			
Definition and scope 54	One respondent suggested that information about strategy was only information about a change in the strategy of the target company and not about the strategy of the acquirer.	It is not relevant to evaluate the overall coherence of the project without knowing the strategy of the acquirer, especially in the case of a change in control. In fact, in the list of information required, the information about strategy is detailed in the case of a change in control. In the others cases, the strategy is almost summed up by the overall aim of the acquisition.	See amended § 57: First, "the financial soundness of the proposed acquirer" can be understood as the capacity of the acquirer to finance the proposed acquisition and to maintain a sound financial structure for the foreseeable future. This capacity should be reflected in the overall aim of the acquisition and the policy of the acquirer regarding the acquisition, but also - in case of a change in control - in the forecast financial objectives, consistent with the strategy identified in the business plan.
55	A few respondents noted that the requirement that the acquirer should produce financial soundness forecasts for three years would be excessively onerous for investment managers who invest in the target company for purely financial reasons and suggested that despite para. 59 about the proportionality principle, where an acquisition has purely financial investment purposes, a clause equivalent to that in Para. 50 should provide an exception to this criterion.	cf. general comments. Para. 50 deals with the non- application of the 2nd criterion in certain cases, on the other hand, the assessment of the 3rd criterion is compulsory in all cases at least about the capacity of the acquirer to finance the acquisition. The assessment then depends on the influence of the potential acquirer in accordance with the principle of proportionality. Moreover, financial forecasts for three years are not required in cases of a purely financial transaction (only in the case of a change of control and sometimes of a qualifying holding).	See amended § 58: *Thus this assessment criterion allows supervisory authorities to determine whether the financial soundness of the proposed acquirer is strong enough to ensure the sound and prudent management of the target financial institution for the foreseeable future (usually three years), in accordance with the principle of proportionality (nature of acquirer, nature of the acquisition).*
	One respondent noted that : o Criteria with regard to the financial soundness of the acquirer which go beyond the ability to meet the group solvency requirements after the completion of the transaction should not be established. o Especially, the approval of the transaction should not depend on an improvement in the group's financial situation due to the acquirer's financial strength. o The Directive does not require such improvement.	No. If the acquirer is a regulated entity, the acquirer must be compliant with regulation, including the capital adequacy ratio for banks, or the equivalent for insurance; both before the acquisition and after the acquisition, the group (acquirer + targeted entity) must be compliant with regulation.	No modification
56	One respondent suggested that the test on the implementation of the business plan should be limited to the core principles of such business plan related directly to the target company and should not be extended to the overall business plan (including strategy, market position, etc.).	Information about the strategy of the potential acquirer is relevant to assess the overall coherence of the project and information about strategy is detailed in the case of a change of control. In the other cases, the strategy is summed up by the overall aim of the acquisition. Otherwise, in a case of supervised group, information may be limited to a presentation of the global organization and details about the core business affected by this project (for example, detailed presentation on retail banking in the case of a participation in an entity specialized in this business).	Please see new footnote 27 in Appendix II: part II A/ change in control I. (e) about the group structure of the acquirer: *For institutions supervised in the EEA, information about the group structure of the acquirer could be reduced to information about parts of its group structure which are concerned by the transaction (for example Retail Departmentof the acquirer for the acquisition of a entity whose activities are only retail ones).*
Proportionality 59	One respondent suggested that the Guidelines explicitly noted that the depth of the assessment should be lower in the case of an acquirer subject to supervision in the EEA.	According to Recital 10, the competent authority should take into full account the opinion of the competent authority responsible for the supervision of the acquirer and competent authorities work in close cooperation. This is already reflected in para 63.	No changes needed.

62	One respondent asked for the meaning of “full financial information” and “full assessment”.	This paragraph was only intended to reflect the situation where by default all information required in the list has to be provided. To avoid any confusion, it has been deleted.	Old § 62 deleted.
63	One respondent suggested that in the case of a discrepancy between the assessment of the target supervisor and the analysis of the acquirer supervisor a system of conflict resolution would have to be introduced.	cf. general comments about cooperation between supervisors.	

Fourth assessment criterion – Compliance with prudential requirements			
	One respondent o noted that interpretation of the 4th criterion presented in the guidelines (especially with respect to §73) may hinder the clarity of the supervisory assessment as the concerns in question are already addressed by existing prudential requirements. Article 12(3) of Directive 2006/48/EC, indeed, does not authorise group structures, which prevent "the effective exercise of supervisory functions"; Article 143 of the same Directive states that a credit institution may not become part of a third-country group which is not subject to consolidated supervision equivalent to that implemented in the EU. o Suggested that in the guidelines, this criterion should be interpreted against the afore-mentioned CRD provisions and, in application of the proportionality principle, not to impose additional requirements when the latter have already been complied with by the acquirer and the target institution.	First, the guidelines must be necessarily be compliant with Directive 2006/48 (including article 143). However, article 143 especially deals with the control of a credit institution and criterion 4 is relevant in all cases (increase in holdings and acquisition), even if this criterion is mainly relevant to a change of control. So, there is no contradiction between the meaning of "to exercise effective supervision" and article 143 of Directive 2006/48. Second, in criterion 4, prudential requirements are formulated as follows: "prudential requirements based on this Directive and, where applicable other Directives" : so, this criterion is interpreted against the afore-mentioned CRD provisions, and others. Prudential requirements include CRD, liquidity, large exposures, internal control..... Then, the criterion is formulated as "will comply and continue to comply". It could be difficult to specify that authorities cannot impose additional requirements when the latter have already been complied with by the acquirer and the target institution because this point depends on the prudential situation of the acquirer and of the target institution at the moment of the assessment and on the situation of the group after the acquisition. For example, in a crisis situation, prudential requirements could be stronger to improve the prudential situation of the acquirer. Nevertheless, in general there will be no additional requirements.	
Definition and scope **65**	A few respondents noted that in accordance with para 65, this criterion should only be applied where the target firm is to become part of the acquirer's 'group' and where an acquisition is for purely financial investment purposes there should be no requirement for a business plan, as stated in Para.68. The requirement in Para. 76 that the business plan should cover at least the next three years seems unworkable, inapplicable and irrelevant where the acquisition is made for purely financial investment purposes.	The criterion is mainly relevant in the case of a change of control or qualifying holding. Nevertheless, except for criterion 2 which is applied only if the acquirer intends to appoint new directors, the criteria listed in the Directive are applied in all cases according to the principle of proportionality. Then, the notion of "purely financial investment" seems to be difficult to put into the document without information about the level of holding (10%, 20% or 30%). Even in these cases, the acquirer could influence the management in order to improve the profitability of its investment.	To add a sentence at the end of new para 79 : *On the other hand, in cases of qualifying holdings of less than 20 % information requirements are downscaled.*
68	A respondent noted on the possibility of the acquirer backing its intentions towards the target with commitments, that it is important that this remains a possibility and does not become an obligation, and asked the Committees to delete the list of examples of commitments. It noted that, when used, this option should not lead to new commitments but be based on existing ones. In addition, it suggested that commitments should not be used in cases of purely financial acquisitions.	In accordance to Recital 3, commitments are a possibility and not an obligation. Keeping the list of examples provides more precision about the scope of commitments. In the assessment of the operation, commitments are based first on existing ones but they depend on the situation of the target entity and the acquirer or group at the time : for example, the commitments before and after the operation could be different according to the nature of the vendor and the acquirer (a industrial company or a financial company). In fact, commitments could be a way for the competent authority to avoid having to refuse an acquisition and to give time for the new group to improve the organization of its internal control, for example. Moreover, according to the situation of the target entity, even when the acquisition is not a change of control, commitments could be requested by the authority, especially with regard to financial support.	No modification
	A few respondents suggested that: o the guidelines should recognise that there are cases	It is correct that in few cases, the focus of the acquisition is not really to obtain control of a regulated business. However, a regulated entity	

	where the acquisition of a group may include a financial services entity which is not driving the acquirer's decisions (especially if the financial subsidiary is only a small operation) and in such cases the requirements should be applied proportionately. Where the focus of the acquisition is not really to obtain control of a regulated business, the information notification and approval requirements should be suitably downscaled. o the guidelines provided examples for supervisors, where one or more regulated entities happen to be a small part of what is in effect a largely unregulated group. An example would be an oil and gas producing business that happened to have a small investment firm within its group to undertake commodity derivatives business.	has more obligations than a commercial entity. So, even in the case of a small regulated entity in a non-regulated group, information must be required in order to ensure that the entity will comply and will continue to comply with the prudential requirements and to understand the intentions of the acquirer about the regulated entity.	
Prudential requirements 71	One respondent asked for clarification of ineffective information exchange.	Para. 73 provides an explanation of "to exercise effective supervision" and gives examples of cases when the conditions of a transaction would render information exchanges ineffective.	
74	One respondent noted that to the extent that the acquirer may be subject to different rules of organisation and transparency from those applicable in the Member State of the target entity, it should be established that these demands may not extend beyond the provisions established in the Directives applicable to each case	meaning of "each case" ? The acquirer must be compliant with the rules and laws of its country and the target entity with the ones of its own country. The assessment of criterion 4 takes account of the nature of the acquirer (supervised or not supervised, EEA, equivalent or not equivalent), and, with this acquirer, the ability of the targeted entity to be complaint with prudential requirements.	
76	One respondent suggested that as far as institutions supervised in the EEA are concerned, the acquirer should not be required to present its whole group structure but only details of that part of its group structure which is affected by the transaction.	Agreed. cf comments under para 56	See new footnote 27 in Appendix II, part II A/ change in control I. (e) about the group structure of the acquirer: *For institutions supervised in the EEA, information about the group structure of the acquirer could be reduced to information about parts of its group structure which is concerned by the transaction (for example Retail Department of the acquirer for the acquisition of a entity whose activities are only retail ones).*
	Another respondent suggested that para 76 dealing with financial support is not relevant in a case of purely financial investment.	In cases of crisis, the financial support of all shareholders could be necessary. So, the ability of the acquirer to provide the target institution with financial support is relevant in all cases.	

Fifth assessment criterion - Suspicion of money laundering or terrorist financing			
Definition and scope	A few respondents asked for a list and a reference to the 3rd Money Laundering Directive. Other comments asked for clarification of some terms. The term "reasonable ground" allows for the assessment of the circumstances surrounding the acquisition including the nationality of the acquirer (as well as origin of funds, chains of financial institutions...).	The term "reasonable ground" allows the supervisors to assess the circumstances surrounding the acquisition including the nationality of the acquirer (as well as origin of funds, chains of financial institutions...).	
80	One respondent suggested that the 3L3 Guidelines should make reference to countries deemed to have equivalent AML regimes for the purposes of the 3rd Money Laundering Directive, rather than referring to the FATF.	In fact, para 80 is based on the methodology developed by FATF as well as on national legislation based on the EU-AML/CMFT Directives.	
84	Respondents asked for clarification of this para.	Agreed.	See amended § 86 :*The target supervisor can also oppose the acquisition even when there are no criminal records or where there are no reasonable grounds to doubt the integrity of the proposed acquirer, if the context of the acquisition would increase the risk of ML/TF.…/…*
85	Respondents asked for this para to be clarified and for it to make a reference to the list agreed by the EU Member States have recently reached a common understanding about countries/territories which can be considered to have an AML/TF-framework equivalent to the EU ("EU equivalency list").	Countries that are not on the equivalency list set up by the CPMLTF should not necessarily be considered to be non-equivalent. Therefore in the context of para 85, reference to this list would be misleading. .	No changes needed.

Guidance to facilitate coordination and exchange of information between supervisory authorities			
91	One respondent felt it would be helpful to incorporate a general provision that the cooperation mechanism should have the fundamental aim to "provide legal security, clarity and foreseability to the assessment process and its result", simplifying the obligations and lowering the costs of compliance involved in the acquisition, without this prejudicing the appropriate exercise of competences on the part of the supervisors	This is implicit in the existing statement.	
92	In the case of cascading holdings, where the target supervisor has no objections to the acquisition, one respondent felt it would be helpful if the target supervisor confirm this to the acquirer as soon as practicable, allowing it to show such confirmation to supervisors of the target's subsidiaries, which will be likely to be inclined to follow the target supervisor's decision.	Further elaboration is not necessary. Supervisors can finalise their assessment before the deadline and we recommend them to revert to the acquirer as soon as possible.	
96	One respondent sought clarification of how the respective roles of the acquirer supervisor and the target supervisor would be clearly defined (for example, through MoUs, supervisory colleges, Level 3 guidelines, a Level 2 Directive?)	Whilst it is entirely possible that such roles may be developed through, for example, colleges of supervisors, the wide range of possible acquisitions - especially in the current economic climate - make flexibility of such an approach of paramount importance	
98	One respondent felt it was important to ensure an objective determination of "equivalent supervision", to guard against protectionism, and sought clarification from the Committees as to how such a determination might be made.	It is for each competent authority to determine which third countries shall be considered equivalent, and that this shall be done on an objective basis.	
99	One respondent observed that the current drafting was not firm enough; and that communication lines should rather be enshrined through guidelines or MoUs.	The co-operation provisions in the Directives should make the conclusion of MoUs unnecessary, although the current wording can be strengthened to address the concerns raised.	Supervisory authorities should open preliminary dialogue with each other as soon as evidence of a serious proposal for an acquisition or for an increase in shareholding, or when a constructive dialogue has begun between the proposed acquirer and the target supervisor.
101	This was generally supported, although it was suggested that the contact lists to be maintained by each of the Level 3 committees should be the very minimum framework to facilitate exchange of information amongst supervisors.	The comments are noted.	
103	One respondent felt that this was not sufficiently binding on supervisory authorities, and that communication lines should rather be enshrined through guidelines or MoUs.	The co-operation provisions in the Directives should make the conclusion of MoUs unnecessary. Flexibility, rather than prescription, should allow for effective exchange of information, respecting differences in national legislation.	
106	One respondent felt that this paragraph should be aligned with the Directive's provisions and paragraph 6 (ii), replacing "as soon as possible" with "within two working days".	This may be too prescriptive to be achievable by all supervisors in all situations.	

Appendix I - Glossary			
Acting in Concert	Several respondents queried the source and clarity of the definition of “acting in concert”, as it appeared to them to be neither derived from the Directive, nor from the underlying sectoral Directives. For the sake of clarity and consistency there was a strong suggestion that the definition would benefit from borrowing text from one of the previous Directives covering this concept – either the Transparency Directive or the Takeover Directive. Additionally, one respondent felt that the current wording would result in any form of alliance that is formed in the future being *retrospectively* judged against this definition.	This definition was developed during the first MA transposition meeting between competent authorities and the Commission to ensure a common understanding of the concept of "acting in concert" as the Directive text did not contain such a definition. In arriving at this definition due account was taken of the Takeover and Transparency Directives. Given the level of feedback on this definition, an alternative definition has been developed which takes fully into account the comments made, while preserving the wording agreed at the transposition stage. The Commission has previously clarified that it is not just when the concerned parties "exercise" but <u>when</u> they decide to exercise their rights. So, in the interest of anti-avoidance a retrospective notification would be necessary.	A common understanding of 'acting in concert', as also provided for in other Directives (please see the “Transparency” Directive 2004/109/EC, and Directive 2004/25/EC on takeover bids), shall be natural or legal persons who cooperate with each other on the basis of an agreement or arrangement, either express or tacit, either oral or written, with respect to the acquisition, holding or disposal of shares or other interests in an undertaking or who cooperate on such a basis to act together in exercising their voting power in relation to that undertaking. In the particular context of Directive 2007/44/EC, persons are ‘acting in concert’ when each of them decides to exercise his rights linked to the shares he acquires in accordance with an explicit or implicit agreement made among them. Target supervisors may presume the existence of such an agreement if the agreement appears only de facto. Notification of the voting rights held collectively by these persons will have to be made to the competent authorities by each of the parties concerned or by one of the parties on behalf of the group of persons acting in concert.
Crossing a threshold involuntarily	A number of respondents commented that notification to the target supervisor should only be required after the acquirer becomes aware of crossing a threshold, and that a “knowledge test” be applied, in order to define the point of notification as immediately after the point of discovery.	Agreed	Shareholders may cross a threshold ‘involuntarily’ as a result of the repurchase by the financial institution of shares held by other shareholders, or in the event of an increase in capital in which other existing shareholders do not participate. In such cases they must notify the competent authorities immediately they become aware of such crossing of a threshold, even if they intend to reduce their level of shareholding so that it once again falls below the threshold level.
Qualifying holding	One respondent remarked that in the case of ‘indirect’ qualifying holdings, such as cascading holdings that span different Member States, the immediate acquiring institution must notify each of the jurisdictions, while responsibility for the final decision rests with the competent supervisor of the entity in which the acquisition is proposed. Similarly, another respondent thought the decision making process in such cases was unclear. For example, did competent authorities of other “cascading holdings” have the power to directly influence the final decision?	National differences in the understanding of "indirect qualifying holding" are not abolished by the Directive since the latter does not define this notion precisely; "indirect qualifying shareholding" must thus be interpreted in the light of the applicable national laws.	No changes needed in the Glossary. See amended § 13.
Significant influence	One respondent considered the definition to be too broadly formulated. The possibility of appointing one representative to the board of directors is not, in its view, sufficient to conclude that the acquirer has a significant influence, and that reference to the 10% threshold would avoid a subjective assessment.	Reference to the appointment of a representative to the board of directors is just one example of how the definition may be applied. Ultimately, each situation will be dealt with by the target supervisor on a case-by-case basis.	No changes needed.
Third Countries considered as equivalent	A number of respondents thought it would be helpful to have a list published on a central website of the third countries that (a) are considered as equivalent and (b) have adequate arrangements for supervisory exchanges of information (e.g. an MOU for mutual cooperation and if no laws in the third country prevent the exchange of information).	It is for each competent authority to determine which third countries shall be considered equivalent.	

Appendix II - List of information required for the assessment of an acquisition			
Editorial Remarks / Clarification of expressions			
Part I, 1. b (3), Part I, 1. b (7), Part I, 1. b (8) and (9)	According to one respondent it is not clear what is meant by “probative evidence” and “identification”.	The appendix focuses on the information needed for conducting the assessment, not on the format of the information to be provided. For clarification the word “identification” will be replaced by “identity”. We understand "probative evidence" as a register statement. As there will be different kinds of public registers for legal persons, the kind of documentation is not explicitly mentioned. We also regard the expression as clear as it stands now.	See amended paragraphs.
Other Comments			
Para 1	One respondent suggested expressing in the principles of Appendix II that, following the principle of proportionality, less information is required if the acquisition is an intra-group transaction or the acquirer is an EEA supervised financial institution.	To require less information lies within the discretionary power of the competent authority. Clarification has been made.	See amended Fn. 19: .../...This is the case, for example, if the target authority already holds the information or if the information could easily be obtained from another authority or the acquisition concerns an intra-group transaction. Please also see new footnote 27.
Part I, 1. b (5)	One respondent wishes to limit the information about entrepreneurial activities in time and to significant activities	To insert the word "significant" could limit the information about the entrepreneurial activities of the acquirer. However the drafting will be amended so as to clarify that only "up to date" information is requested.	See amended paragraph
Part I, 1. b (7), Part I, 2 b (24)	For one respondent it is not clear how the identification of beneficial owners would be done for listed companies. It suggested this information should be obtained from the acquirer’s supervisory authority.	It is not meant to identify all owners of the acquirer but only those persons who exercise ultimate effective control (see Glossary). When the acquirer is a supervised entity within the EEA, the target authority may according to para 8 exempt the acquirer from providing these pieces of information. However, in line with other amendments the word “identification” will be replaced by “identity”.	(7) Identity of all other persons who are 'beneficial owners' of the legal person.
Part I, 2, a (10) and Part I 2, b (20)	According to one respondent it should be clarified that, insofar as relevant “investigations” are concerned, the applicant needs to be aware of these (ongoing) investigations, which is not always the case. Additionally, it suggested inserting “involuntary” as regards withdrawal, revocation or termination.	Basically, knowledge about the investigation is required without explicitly saying so. There might even be voluntary withdrawals which are of interest to supervisory authorities, e.g. in cases when an acquirer withdraws an application due to the fact that his application threatens to fail.	NA
Part I, 2 a (11) and (12) Part I, 2 b (21) and (22)	It is suggested to put a time limit on the requirement to examine whether an assessment has already been conducted and for the period to be agreed on a case-by-case basis.	The question whether there had been an assessment should not be limited in time as a contingently negative outcome in the past still has an impact on the future.	NA
Part I, 2 a (14) and Part I, 2 a (17)	For number 14, one respondent suggested that only ratings of the relevant companies should be provided rather of any company in the group worldwide. The same respondent asked that number 17 should only refer to relevant companies that form part of the group as the amount of information might be enormous and the actual relevance in many cases nil.	We agree that the demands go too far and should focus on the acquirer and companies under its control.	See deletion of old number 14 and amended/displaced paragraph 17 (now 16).
Part I, 2 a (18) and Part I, 2 b	For one respondent the phrase “conflict with the target supervisor” needs further clarification.	We agree that the meaning of this phrase is not self-evident. Based on the information provided it is up to the supervisory authorities to	See deletion of old number (18 and new number (17(e)).

(29)		decide whether some of the acquirer's interests or activities are in conflict with the target financial institution's. However, the acquirer might already be aware of such problems and would possibly like to transmit information to the supervisory authorities about potential solutions it sees for solving these problems. Clarification has been made.	See deletion of number (29) and new number (22(e)).
Part I, 2 b (20)	Some respondents think the scope of this requirement should be limited to the proposed acquirer and any person who effectively directs the business of the acquirer. It should not be extended to all companies in the acquirer's group. They see the risk that this could be an extremely onerous and time consuming exercise.	Agreed. A restriction to relevant companies in the group is useful. But at least, undertakings under direct control should be included in the provision.	See amended paragraph (now number 19).
Part I, 2 b (25) and Part I, 2 b (26)	Two respondents comment that providing a detailed organisational chart for entire groups worldwide is impracticable and/or burdensome in the case of large cross-border financial groups. It is suggested to refer only to parts of the corporate structure that are relevant in relation to the transaction concerned. In the same vein, one respondent also criticizes the requirement of number (26).	An organisational chart of only of one part of the emerging group gives no information about the overall structure of the group. Most of the relevant companies will also be under some kind of financial supervision.	NA
Part I, 3 (34)	One respondent notes that some information on shareholder's agreements is confidential and not relevant for assessing a proposed acquisition.	Confidential information will be kept confidential by supervisors. Agreements with other shareholders might be of great importance for the assessment process.	NA
Footnote 25	One respondent sought clarification of footnote n° 25.	There might sometimes be some information missing from the business plan because the acquirer has not yet got access to full information about the target institution, e.g. in the case of a public offer. In these cases the acquirer should explain where changes might occur to the business plan.	See amended Footnote.