

04 March 2026

EBF Response

Consultation Paper on Draft RTS on the minimum information to be provided, the common assessment methodology of assessment criteria and process applicable to the notification and the prudential assessment of acquisitions of a material holding, material transfer of assets or liabilities, mergers and divisions under Article 27b(7) of Directive 2023/36/EU, and amending Commission Delegated Regulation (EU) No 2022/2580

Draft Implementing Technical Standards on common procedures, forms and templates for the consultation process between the relevant competent authorities under Article 27c and 27k of Directive 2013/36/EU

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Main Overview

While acknowledging the objective of enhancing supervisory consistency and strengthening prudential oversight, we raise a number of concerns regarding proportionality, legal certainty, and alignment with the Level 1 legislative framework. In several instances, the draft RTS are considered to extend beyond the mandate set out in CRD VI by introducing additional procedural requirements, expanding the scope of certain provisions, or imposing information obligations that are duplicative, commercially sensitive, unavailable at the notification stage, or already held by competent authorities.

A central theme across the responses is the need to ensure that the RTS remain proportionate to the nature and materiality of the transaction and do not create unnecessary administrative burdens without corresponding prudential benefits. Particular emphasis is placed on avoiding duplicative assessments where transactions are already subject to existing regulatory regimes (such as the qualifying holding framework), excluding purely intragroup restructurings that do not change control or influence, and limiting information requirements to what is strictly necessary for prudential evaluation. We also highlight the importance of clearer procedural rules, defined timelines, and improved coordination among competent authorities, including enhanced reliance on information already available within supervisory systems.

Overall, there is support for the supervisory objectives underlying the RTS, but we recommend targeted amendments and clarifications to ensure that the framework remains legally grounded in CRD VI, operationally workable for institutions, and consistent with the principle of proportionality.

The RTS should integrate the conclusions from the judgement of the European Court of Justice of 19 September 2024 (Fininvest/ECB) (ECLI:EU:C:2024:774), that changes in intragroup holdings do not entail acquisitions that require an assessment.

The RTS should be based on the principles embedded in Directive 2007/44/EC (the Antonveneta Directive) for the acquisitions of qualifying holdings as included in art. 22-27 of Directive 2013/36/EU. The banks stress it is important to further build upon the harmonization that was achieved for the qualifying holdings regime and not open up broad possibilities for local deviation and duplicative processes for the prudentially relevant operations of art. 27a-27l CRDVI which are covered by the RTS.

We appreciate that the part on process of the RTS significantly leverage on the process applicable to the assessment of proposed acquisitions and increases of qualifying holdings in the financial sector (the Joint Guidelines). We note nevertheless that the processes included in the RTS still deviate from the Joint Guidelines without there being a rationale for these deviations.

Banks request that EBA includes a transition period between the application date of CRDVI (11 January 2026) and the application date of the RTS. The national transposition of CRDVI is delayed in almost all member states at the moment of the consultation of the RTS. This means the new supervisory tools are not applied yet and it's unsure when they

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will become applicable. The process for obtaining approval for prudentially relevant operations that are currently being prepared and carried out, will not immediately be in place at the moment the national implementation rules of CRDVI do enter into force. A transition period is necessary to ensure the continuity of prudentially relevant operations as the assessment period for approval of these transactions normally takes several months.

Banks suggest that transactions which take place within a period of e.g. 3 or 6 months after 31 December 2026 or alternatively within a period of 3 or 6 months after national transposition do not need to be assessed under the new regime. We assume all member states will have transposed the provisions of CRDVI into national law ultimately 31 December 2026.

Please note that for the purposes of this reaction, the following abbreviations will be used:

- The 'Directive' means Directive 2013/36/EU
- 'CRDVI' means (EU) Directive 2024/1619 of 31 May 2024 amending Directive 2013/36/EU

Question 1. Do you agree with the methodology laid down in Article 1(2) on the determination of the materiality threshold?

We acknowledge EBA's intention to promote a prudent and coherent framework for the determination of the materiality. However, the RTS introduces an anti-circumvention clause requiring aggregation of multiple transactions over a 12-month period, which is not foreseen in the Directive. This addition significantly broadens the scope of article 27a CRD and creates uncertainty, making it difficult for banks to know in advance whether a transaction is caught under Article 27a CRD. The RTS should not alter the scope or nature of the threshold set by the legislator and must remain within the clear limits of the Directive.

We respectfully observe that such an aggregation criterion does not appear to be expressly contemplated by the provisions of CRD VI. This approach may have the effect of introducing additional obligations for prospective acquirers which extend beyond the parameters envisaged by the Level 1 legislation.

In particular, the requirement to aggregate transactions that are individually non-material may give rise to increase operational complexity and a degree of legal uncertainty for institutions pursuing measured, incremental acquisition strategies, notwithstanding the absence of any single transaction that would, in isolation, warrant prudential classification as material.

In light of the foregoing, we would welcome clarification on the legal basis for this aggregation approach and encourage the EBA to consider whether a more proportionate application, or additional guidance on its use, could better align the draft standard with the original intent of CRD VI while still achieving the supervisory objectives.

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Moreover, it should be clarified which ‘ratios’ should be set against each other, is the following meant here: “the higher of...

- The ratio between the purchase price of the material holding and the proposed acquirer’s eligible capital, and
- The ratio between the book value of the material holding and the proposed acquirer’s eligible capital?”

Question 2. Do you consider that proportionality is well embedded in this Chapter 1, in particular regarding the list of information laid down for specific cases of material acquisitions referred to in Article 7(3)?

Although we appreciate attention has been given to the principle of proportionality, we have several objections against the approach taken.

A. Intragroup transactions cannot qualify as ‘the acquisition of a material transaction’ and should thus be out of scope for notification

The European Court of Justice (ECJ) concluded in its judgment of 19 September 2024 (Fininvest/ECB) (ECLI:EU:C:2024:774) that the legal structure of a holding does not determine the existence of a holding. The Court determined that altering the legal structure of an already-existing holding does not constitute a new acquisition” if:

1. The percentage of ownership stays the same
2. The level of control or influence over the credit institution does not increase

What is important is the possibility to attain a particular level of control or influence over the relevant entity. The judgment means that the change of a legal structure cannot automatically trigger a complex supervisory approval process. The regulatory framework must look at substantive control as intragroup transactions e.g. mergers cannot be regarded as ‘an acquisition’ and do not constitute a change of control.

B. Notifications for the acquisition of a material holding that also qualify as the acquisition of a qualifying holding should consist of a simple notification

Art. 22(8) of the Directive states that no requirements shall be imposed for notification to, or approval by, the competent authorities of direct or indirect acquisitions of voting rights or capital that are more stringent than those set out in the Directive . This principle should also be considered for the transactions in scope of these RTS so art. 22(8) is not undermined.

This means that a transaction that triggers both the qualifying holding regime (art. 22-27 of the Directive) and one of the other new regimes (art. 27a-27l CRDVI) should not lead to multiple assessments. More than one assessment of the same transaction does not add any value from a prudential, including an AML/CFT, perspective.

We suggest that the notification of the acquisition of a material holding that also qualifies as a qualifying holding, consists of a very simple notification i.e. only including the name

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of the proposed acquirer with a reference to the notification that will be submitted on the basis of art. 22 of the Directive.

C. Information requested is not available at the moment of the transaction and/or information required is overly prescriptive

We note the RTS include information to be provided that is not available at the time of (notification of) the transaction and/or the collection whereof would be unreasonably cumbersome. We suggest striking these information requirements from the RTS.

- *(art. 3(1)) Confirmation that the target entity, the members of its management body or the ultimate beneficial owner(s) are not subject to restrictive measures adopted by Union law.*
- *(art. 3(1)) An indication of any information at individual, consolidated and sub-consolidated level (where applicable) including statement or reports demonstrating that the proposed acquirer made reasonable steps to understand if the target entity and any member of the management body of the target entity, is, or has been, subject to any AML/CFT related supervisory measures, sanctions or penalties, or any criminal convictions for AML/CFT related in the past 10 years;*
- *Where the target entity is part of a group, where available, a detailed chart of the group structure with indication of the share of capital and voting rights of shareholders or members with holdings in the group entities enabling to exercise control, as well as identification of any financial sector entity within the group and information on the activities currently performed by the group entities and the related geographic outreach;*

The information mentioned above cannot be verified by the acquirer while it is not clear what steps need to be reasonably taken to verify this information. In addition, we note that the AML/CFT supervisor will already have a view on these topics.

We note the following information on the financing of the transaction is overly prescriptive and the details asked can also generally not be delivered at the time of the notification. Moreover, the details are not required to carry out a prudential assessment. We suggest liming the list to the details mentioned under Art 3(5)(f) i.e. an indication of the financing of the proposed transaction.

- *(art. 3(3)) Details on any assets which are to be sold to finance the proposed acquisition, such as conditions of sale, price, valuation methodology for their determination and relevant available documentation.*
- *(art. 3(3)) Details on access to equity or debt sources and financial markets, including description and terms of financial instruments to be issued to finance in whole or in part, the proposed acquisition.*
- *(art. 3(3)) In case of use of borrowed funds, including in case of intra-group financing, at least the following information: (i) the name of relevant lender(s), and details of the facilities granted, including maturities, interests, terms, pledges and guarantees, hedging agreements; (ii) description of the financing structure*

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including the location of the debt and all the intermediate steps, including intra-group loans; (iii) the debt repayment plan, with the various sources which would be used to pay back the debt including any reliance on dividend distribution by the target entity.

As to the requirement under art. 3(5) we do not understand the reason for imposing additional information requirements if the competent authorities involved are not the same. The assessment to be carried out should in all cases be a prudential assessment while we consider that this information can be shared by the authority that possesses the information.

Likewise, proportionality should also be applied to material holdings acquisitions' cases where obtaining the information depends on one party that is not willing to collaborate (like a hostile or unsolicited takeover). There should be an explicit exemption to recognize the significant limitations that proposed acquirers face in these specific situations given that without cooperation from the target entity, it is not feasible to provide some of the key information required.

D. Information unrelated to a prudential assessment

We suggest striking the following information requirements because the information mentioned is predominantly of a commercial nature and bears no relation with a prudential assessment of the transaction.

- *(art. 3(2)) The criteria used for the determination of the purchase price (multiples, profitability, other) of the material holding and the explanation of any difference with the market value (where applicable).*
- *(art. 3(2)) Description of the valuation methods used, and, in case the material acquisition provides control of the target entity, the valuation reports of the material holding, where available.*

The internal approval documents mentioned below also bear no relation with the prudential assessment that needs to take place. The information on sales realised in the three years preceding the notification or expected to be realised is unrelated to the proposed transaction and goes beyond the mandate of the competent authorities. In addition, the requirements are overly prescriptive as no threshold whatsoever is included. We suggest therefore also to delete these requirements.

- *(Art. 3(2)) The internal approval documents of the proposed acquisition, including the minutes of the competent decision-making body:*
- *(art. 4) Any realised sale of assets and liabilities since the three financial years preceding the notification or expected to be executed prior to the proposed acquisition.*

E. Lookback periods for AML/CFT-related information (Articles 3(1)(l) and 21(1)(a))

We would suggest reducing the reference period from 10 years to 5 years, in line with Directive (EU) 2015/849, which requires obliged entities to retain AML/CFT-related

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documentation for at least five years. A 10-year lookback period may create practical difficulties in collecting reliable information and documentation.

F. Scope of the information requirements (Article 3.4(c) and Article 5.1 (b))

The requirement of article 3.4(c) that the proposed acquirer to provide a summary of the principal terms of the acquisition agreement that may affect its prudential situation appears excessive. Capital and prudential impacts should already be reflected in the submitted projections. The requested qualitative summary may be difficult to prepare and could create legal uncertainty going forward. We therefore suggest deleting this requirement or alternatively clarifying more precisely the scope and level of detail expected.

The provision in Article 5.1(b) should be qualified, as there may be no changes to the business model in all cases:

“(b) if applicable, the material changes to the business model and risk profile after the proposed acquisition”

G. Allocation of obligations between institutions and competent authorities (Article 3(5))

The RTS states that:

"In the case set out in Article 27c(2), first and second sub-paragraphs of Directive 2013/36/EU (CRDVI) where the competent authorities involved are not the same, the proposed acquirer shall also submit a summary notice with the main terms of the proposed acquisition, including [...]”.

However, Article 27c(2) of CRDVI imposes an obligation on the competent authority, not on the institution, to notify the consolidating supervisor. Accordingly, Article 3(5) of the RTS should be amended to reflect that the summary notice is to be prepared and transmitted by the competent authority rather than by the proposed acquirer.

H. Materiality thresholds and qualitative criteria (Article 5(2))

The concept of transactions “materially exceeds the materiality threshold” is unclear and appears to be a catch-all criterium which does not enhance legal certainty and clarity. In general, we consider that the information included in art. 5(2) should only be required if the proposed acquisition leads to control of the target entity. If EBA considers there are other circumstances in which this information should be provided, it should be clarified when the threshold is reached that this information should be submitted.

I. Information already available if the acquirer and/or entity resulting from the merger/division is an EU authorised institution

The RTS includes information requirements while that information is already in the possession of competent authorities of EU authorized institutions. We consider there should be no need to resubmit information that is already known to the competent authorities, even if different from the consolidating supervisor. The information is already

available and can be reused and/or shared between the competent EU authorities involved in the transaction.

We refer to the following information included in art. 4:

- The statutory financial statements covering the three financial years preceding the notification, including: the annual reports with the financial statements (namely the balance sheet, the profit and loss accounts or income statements and, where available, the cash flow statements), the supplementary notes, and any other document registered with the registry or in possession of the competent authority where different from the consolidating supervisor to which the notification is submitted.
- In any case the paragraph “and any other document registered with the registry” should be deleted as it is disproportionate to require the submission of all documents registered with the registry, particularly where such documents are public and their prudential relevance is unclear. This comment shall also apply to Article 3(1)(j).
- Any realised sale of assets and liabilities since the three financial years preceding the notification or expected to be executed prior to the proposed acquisition. Competent authorities are already aware of any material transactions carried out before the proposed transaction, so this information requirement is superfluous. We note the requirement contains no threshold so if EBA upholds the requirement, it will lead to numerous immaterial transactions having to be reported.

J. Article 7 in relation to EU authorized credit institutions

Duplicative information requirements

Art. 7 states that a proposed acquirer is exempted from submitting information or documents that are already in the possession of the competent authority. Generally speaking, it would be useful to clarify that the RTS regulation also applies in the case where the target company is a credit institution. The article does not offer concrete examples of what information is typically considered ‘already available’. At the same time, the proposed acquirer is to submit a declaration indicating the exact information that has not been submitted because it is already in the possession of the authority, stating such information is true, accurate and up to date.

The European banks that the EBF represents, note that much of the information requested if an proposed acquirer, proposed target and/or entity resulting from a merger/division and/or disappearing as a result of a merger/division is an EU authorised credit institution is *always* already in the possession of (at least) the authority in the member state where the institution is authorized. Moreover, for banks authorized in the Eurozone this information is *always* in the possession of the European Central Bank.

In our opinion there should no longer be a need to resubmit information that is in all cases already known to the competent authorities nor should EU authorized institutions in

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these cases demonstrate that the information is true, accurate and up to date. The information is already available and should be reused and/or shared between the competent EU authorities involved in the transaction based on art. 117 of the Directive.

Fit and proper information

We specifically note that competent authorities as a matter of policy require detailed information on the suitability of members of the management body of EU regulated institutions for incidental transactions, while these persons (1) have already been assessed in accordance with the joint ESMA and EBA Guidelines on suitability and moreover (2) are subject to ongoing suitability requirements. Considering the suitability requirements under the Directive, we consider that information on the suitability of members of the management body should never need to be (re)submitted for prudentially relevant transactions by EU regulated institutions.

In this context, it would be good that:

- There is also guidance on what ‘up to date’ information effectively means and that this requirement is applied proportionately; and
- Competent authorities maximise information and data sharing or confirm compliance across borders

In addition, we point out that requiring resubmission of personal data (such as passport copies or criminal records extracts that were already filed at the time of the initial fit and proper assessment) that competent authorities already possess is generally not compliant with the General Data Protection Regulation. If EU competent authorities want to doublecheck members of the management body have indeed been assessed, we propose the authorities liaise with the competent authority that is responsible for the ongoing suitability requirement.

Intragroup transactions

We appreciate the reduced information requirements for intra-group operations but consider this list still not reflecting the full outcome of the judgement of the European Court of Justice of 19 September 2024 (Fininvest/ECB) in particular as it pertains to the intragroup acquisition of material holdings.

One example of the situation where the relevant information is already held by competent authorities are intragroup restructuring where one or more credit institutions are situated in the same Member State and are permanently affiliated to a central body. Competent authorities which supervise them, and which are established in the same Member state could, partially or fully, waive the application of the requirements set out in this Regulation if the conditions in paragraph 1 of Article 10 of Regulation (EU) 575/2013 are met.

K. Information to be used for the prudential assessment of proposed material acquisitions

Article 8.2(a) provides that the competent authority shall base its assessment on supervisory findings and other information exchanged with consulted authorities,

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including ongoing investigations or proceedings relating to material AML/CFT deficiencies. From a prudential and legal certainty perspective, we consider that the assessment of a proposed material acquisition should primarily rely on concluded investigations, proceedings or supervisory actions. Ongoing investigations are, by definition, provisional and subject to change, and may therefore lead to incomplete or potentially misleading conclusions regarding the actual AML/CFT risk and its impact on the proposed transaction.

Furthermore, given that competent authorities already have access to reliable and substantiated information through their own supervisory activities and formal exchanges with other authorities, we question the necessity of including point (d) of paragraph 2. Publicly available information or reports issued by international organizations or standard setters may not always be sufficiently case-specific for prudential decision-making and could lead to inconsistencies when weighed against supervisory findings.

L. The level of detail required for the business plan and projections appears excessive and not proportionate.

Regarding Article 6 of the draft RTS we suggest adopting a more principle-based approach, similar to that set out in Banco de España Circular 5/2010, allowing greater flexibility depending on the nature and impact of the transaction:

“1.2 An estimate of the financial statements of the entity subject to the acquisition for a three-year period, both at individual and consolidated level, including: (i) a forecast balance sheet and profit and loss account, (ii) a forecast of solvency, liquidity, operational or other applicable ratios, (iii) information on the level of risk exposure (credit, market, operational etc.) [...]”.

- Article 5(1)(f) and 5(2) appear to require the inclusion in the business plan of detailed changes to AML/CFT systems and controls, internal governance, internal control functions, risk management frameworks, and contractual arrangements with third-party providers. In our view, this goes beyond the level of detail currently provided at the notification stage and may delay the filing if the assessment period does not commence until such elements are fully developed. Many of these matters are typically refined between signing and closing and may evolve following supervisory feedback. We suggest clarifying that, at the time of notification, a high-level description of the intended approach should be sufficient, with detailed implementation measures to be developed in the post-signing phase. This would ensure proportionality and avoid unnecessary delays in initiating the assessment process.
- Article 6(3) appears to require that projections be based on macroeconomic assumptions issued by “Unions/ Public institutions”. In practice, institutions often rely on internally developed macroeconomic scenarios, which are regularly subject to supervisory review and are generally aligned with publicly available sources. We suggest clarifying that internally developed macroeconomic assumptions may be used, provided they are credible and well-documented, in order to avoid unnecessarily restricting institutions to specific external sources.

- Articles 6(1) and 6(5) appear to require that the acquirer carries out a stress test to assess whether it can continue to comply with prudential requirements on a baseline and on a stress scenario basis for a period of at least three years from the acquisition of the material holding. We request EBA clarifies what the purpose of this requirement is and how this can be effectuated exactly. We put forward that stress testing usually takes place in separate processes and not in relation to ad hoc processes such as one-off transactions. The ability to continue to comply with prudential requirements is the core assessment that should be made by the competent authority based on the information available to the authority via the notification and ongoing supervision.
- Articles 6(7), 10(e) and 6(10)(g) require the business plan to include an assessment of both financial and non-financial risks, including cyber security, third-party providers, ESG, AML/TF, concentration risk and large exposures.

The requirement to provide detailed assessment across all these areas at the notification stage may create operational challenges and lead to disproportionate administrative burden, as input from multiple specialised functions would be required. In practice, certain non-financial risk assessments may need to be further developed or refined as part of the integration process and may only be material depending on the specific features of the transaction.

Clarifying the level of detail expected should be proportionate to the nature and materiality of the operation, and that only risks that are relevant and potentially impacted by the transaction should be required to be reflected in the business plan.

- The reference to Article 6(9) in Articles 15 and 16 seems to be incorrect and should be reviewed.
- Article 6(10)h requires that the business plan reflect changes related to IRB models where relevant, in practice, changes to IRB models including the authorisation to use internal models following a change of control are subject to a separate supervisory approval process under the CRR framework.

In previous transactions, IRB model approvals have been handled through a distinct filing process running in parallel to the change of control procedure. It would therefore be helpful to clarify whether the draft intends to link or align the timelines of change of control assessment and IRB model approvals, or whether these processes are expected to remain formally and procedurally separate

- Clarification should be provided that separate projections at all prudential reporting levels are not required where differences between consolidation perimeters are not material.
- There is uncertainty as to what Article 6(10)(f) of the RTS refers to when it requires “forecast calculation of the impact on any additional quantitative measures applicable to the proposed acquirer”. This provision should be clarified. If intended as a catch-all provision, it should be deleted to ensure legal certainty.

- Articles 22(2)(b) and 22(3) require detailed information on planned changes to governance, internal control functions, risk management, AML/CFT systems and outsourcing arrangements in the context of mergers.

The comments made in relation to Article 5(1)(f) and 5(2) apply mutatis mutandis. In particular, requiring fully developed integration measures at the notification stage may go beyond current practice, introduces aspects of ongoing supervision in incidental transactions and could delay the filing process, as these elements are typically further refined between signing and closing. A high-level description of the intended approach should therefore be sufficient at the time of notification, in line with the principle of proportionality.

Question 3. Does Article 13 on process sufficiently encompass the different use-cases on material acquisitions?

A. The role of the AML/CFT supervisor

Art. 11(5) states that in case of a negative opinion of the AML/CFT supervisor, the competent authority shall assess the prudential impact of the ML/TF risk assessed on the proposed acquirer/entity resulting from the merger/division and the opportunity and adequacy of mitigation measures.

We note that the competent authority carrying out the prudential assessment should not be able to use the transaction to impose requirements, including AML/CFT requirements, that replace or supersede on-going prudential supervision and other relevant provisions to which the institution involved in the transaction has been already subject to since its own initial authorisation.

In our opinion the process for assessing material acquisitions is overly complex and inconsistent with existing EU rules. The RTS introduces procedures that differ from the established Joint Guidelines, creating unnecessary duplication and confusion. The role given to prudential supervisors in response to AML/CFT issues could allow them to impose additional requirements that should remain within the remit of AML supervisors and ongoing supervision, rather than being addressed through transaction approvals.

B. Procedural clarity and timelines (Article 13)

Further clarity is requested on whether a formal pre-filing phase is envisaged, particularly given that completeness is assessed only after formal submission. The meaning of “within a reasonable time” in Article 13(2), should be replaced with a defined maximum time limit to enhance legal certainty.

C. Procedural simplicity: one notification and one assessment per operation with seamless cooperation between relevant competent authorities

In deviation of the exhaustive regime applicable for the acquisition of a qualifying holdings, CRDVI introduces in several instances the obligation to file multiple notifications for one operation. We refer to the notification requirements for the

acquisition and divestiture of material holdings. In addition, EBA appears to introduce multiple notifications for a material transfer of assets and liabilities. This system of multiple notifications comes on top of the probability that in many instances the regimes for the acquisition of a qualifying holding and the new prudentially relevant operations will overlap. For institutions that are authorized in the EU, CRDVI will consequently result in new barriers to perform activities in the EU. This runs counter to the European Commission's goal to remove excessive red tape, complex regulation, market fragmentation, divergent practices of supervisory authorities, licensing and freedom of doing business, and overly burdensome or repetitive reporting requirements.

We appreciate EBA is bound by the level 1 text but call upon EBA to take stock of overlapping requirements in CRDVI and where possible, only focus on prudentially relevant risks and reduce the administrative burden to the minimum. We elaborate on our request as follows.

Art. 27(a) requires institutions to assess the threshold for a transaction to be considered 'material' on both an individual basis and on the basis of the consolidated situation of the group. If the threshold is exceeded on an individual basis and on the basis of the consolidated situation of the group, the proposed acquirer shall notify:

- a. the supervisor of the individual entity; and
- b. the consolidating supervisor.

Both supervisors will carry out an assessment. It is uncertain what kind of assessment the consolidating supervisor will carry out as this supervisor will not be involved in the day-to-day operations of the subsidiary and/or operationally involved in the preparation of the transaction.

For EU based banking groups, the rules of art. 27(a) mean it is possible two different supervisors are required to assess one proposed acquisition. The 'double' assessment will not apply to banking groups based outside the EU because their consolidating supervisor is not located in the EU and thus not subject to the Directive.

The same system of double supervision applies in case of the divestiture of a material holding. Both the consolidating supervisor and the individual supervisor should be notified. In addition, in the RTS EBA have included notification obligations on both transferors and transferees in case of a material transfer of assets and liabilities.

We point out that these kinds of multiple filings and assessments will result in unnecessary procedures without clear added value from a prudential perspective. For large international banking groups multiple filings will moreover result in high costs and set up barriers to perform activities cross border in the EU. We stress that a single substantive notification per transaction should be sufficient with relevant competent authorities coordinating with each other and relying on information that is already available with other EU authorities.

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The above would for example mean that in case of an acquisition of material holdings the individual competent authority would be designated as the lead authority while the notification to the consolidating supervisor consists of a simple one-sided notification.

D. Material acquisition as resolution tool

The draft RTS do not consider that the use of resolution tools can also involve a material acquisition or a merger. In these cases, reduced information requirements and/or exemptions should apply (and this should be considered in the spirit of simplification).

Question 4. Do you agree with the list of information to be submitted in case of a material transfer of assets or liabilities, in particular the differentiation between transferee and transferor?

The RTS go beyond the requirements of CRDVI in respect of the material transfer of assets or liabilities so we kindly request EBA to strike several draft requirements.

A. Imposing obligations on both transferor and transferee is duplicative and adds no value

We consider imposing notification obligations on both the transferor and the transferee for the same transfer to be duplicative and without added value. We point out that:

- Art. 27f(1) states institutions should notify their competent authority of any material transfer of assets or liabilities which ‘they execute either through a sale or any other type of transaction’ i.e. it is the institution that sells or otherwise transfers assets and liabilities that should do the notification. Art. 27f does not introduce obligations for the institutions that acquirers or buys assets.
- the threshold of 10 or 15% of assets and liabilities is calculated on the basis of the transferor’s balance sheet so the transfer will in many cases not be material for the transferee.
- If the transfer is material for the transferee, there is a significant overlap with art. 27a of CRDVI so an assessment of the transaction will anyhow occur.
- If the transfer is material for the transferor, there is significant overlap with art. 27d.

We suggest EBA takes a pragmatic approach and minimizes the introduction of duplicative requirements that add no clear value. If EBA insists on introducing requirements for the transferee, we suggest EBA keeps the obligations to a minimum i.e. only introduces requirements that under no circumstances overlap with other obligations.

B. A material transfer is not subject to an assessment

The material transfer of assets or liabilities is subject to a notification only and does not require an approval or assessment. As a result, the notification should not lead (directly or indirectly) to a transferor or transferee that is an EU authorized institutions being

required to provide the competent authorities with information of a forward-looking nature or information that adds to on-going prudential supervision requirements.

We refer to information such as forecast information and prudential information to demonstrate the viability and the on-going sustainability of the transferee's business model, and its capability to continue to comply with the applicable prudential requirements on a baseline as well as a stress scenario basis for a period of at least three years from the proposed operation.

We stress that only factual, existing information can be required for a notification as this notification does not include an assessment or approval. Any concerns the competent authority has, can be addressed in ongoing supervision.

Question 5. Do you consider that proportionality is sufficiently reflected in the threshold and cases covered by Article 24(2) and (3) as regards the requested set of reduced information and the related proportionate assessment set out in Articles 25 to 27?

A. Proportionality criteria

We again appreciate EBA taking a proportionate approach for mergers and divisions. We note that Article 24 establishes 3 separate proportionality criteria which result in reduced information requirements:

1. Absolute criteria being (a) the total asset of the disappearing entity is equal to or lower than EUR 1 billion or (b) the sum of the total assets of all entities involved in the merger is equal to or lower than EUR 5 billion.
2. The proposed merger taking place in the prudential consolidation perimeter; and
3. The value of the disappearing entity is below the higher of the ratios of the purchase price or book value of in relation to 15% of the eligible capital of the resulting entity.

We would appreciate EBA making clear the three thresholds apply separately to avoid misunderstandings; we have noticed that the European Central Bank clusters threshold 2 and 3 in the relevant notification form, which would lead to certain mergers wrongfully being out of scope of the reduced information regime.

In addition, we consider that further clarification is required as regards the scope of Article 24(3). Pursuant to Article 24(3), reduced information requirements apply where the merger concerns either (i) credit institutions permanently affiliated to a central body and supervised as a group, or (ii) entities, including financial stakeholders, belonging to the same consolidation group. We respectfully submit that this provision should be clarified to confirm that the reduced regime also applies to mergers involving entities that are part of the same balance sheet consolidation group, even where not all entities qualify as financial stakeholders or are subject to supervisory law. What is the definition of 'financial stakeholder' in this context?

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EU Transparency Register / ID number: 4722660838-23

Furthermore, the information requested under Article 24(3) a), referring to articles 18 to 21, does not seem appropriate for intra group transactions. Review and clarification is needed in this area as well.

B. Information requested is not available at the moment of the transaction and/or is overly prescriptive and/or not related to a prudential assessment

We note that the information requested is in several instances not available at the moment of the notification and/or is overly prescriptive and/or not related to a prudential assessment. We refer to the following requirements:

- (art. 19) The due diligence report. We consider that this requirement would be overly prescriptive, given that this report is not relevant to assess the prudential criteria necessary for an acquisition while the main contingencies will have already been included in the filing (for example, the business plan and assumptions for the different scenarios). Therefore, we suggest deleting the reference to the due diligence report. As well as, amending Article 19 paragraph 1 (b) as follows: “a chart with the description of the proposed merger indicating the entities involved in the merger ~~and, where applicable, the groups they belong to, before and after the proposed merger [...]~~”.
- (art. 22) The communication plan, the staffing and retention plan (including information on the integration of human resources), the commercial plan (including details on cross-selling activities) is not related to a prudential assessment and appears disproportionate and of limited prudential relevance. We would suggest reconsidering or deleting this requirement.
- (art 22) The detailed information on the service agreements that have been agreed to be continued with the third-party service providers of the entity being merged is generally not yet available at the time of a notification. Moreover, the many details asked in relation to the IT integration plan supersede on-going prudential supervision and other relevant provisions to which the merging entity is already subjected.
- (art 23) the requirement that the continuity to comply with the applicable prudential requirements on a baseline and on a stress scenario basis for a period of at least three years from the proposed merger should be demonstrated, appears excessive. We refer to our comments above in relation to art. 6.
- (art. 23) A business plan that must include a comparison of forecast financial metrics computing the proposed merger and without computing the proposed merger, including e.g. details on envisaged sources of revenues, fixed and variable costs (notably labour, ICT, third-party arrangements, transaction and integration costs), a forecast of the growth rates of the activities benefitting from the synergies of the proposed operation, as used in the business plan with an explanation of the associated assumptions as well as a forecast of provisional intra-group transactions is overly prescriptive for a prudential assessment, will be not only be highly elaborate to draw up but moreover be based on so many variables that the added value of the plan is unlikely to be high.

Question 6. Do you agree with the flexibility developed under Articles 23 and 27 in relation to badwill, Pillar 2 requirements and the assessment of systemic importance?

We acknowledge the EBA's efforts to introduce flexibility in the prudential treatment of mergers under Articles 23 and 27 of the draft RTS.

A. Badwill

With respect to badwill, the draft RTS provide that where the prudential recognition of badwill has a material impact on the ability of the merging entity to comply with prudential requirements, the competent authority may assess the adequacy of potential mitigation measures. We note that the draft RTS does not sufficiently clarify the legal basis, scope, or limits of the supervisory measures that may be imposed in such circumstances. In particular, it should be made clear that the mere existence of prudentially relevant badwill should not, in itself, justify the imposition of additional supervisory requirements beyond those already available under the existing supervisory framework, absent a clearly identified and transaction-specific risk.

In the context of the competent authority's assessment of the combined entity's compliance with prudential requirements, the draft RTS require the competent authority to coordinate with the relevant macroprudential authorities to assess potential changes in the systemic importance following the merger. For significant banks, this means such assessment must take place every time they materially merge extra-group. It is expected that this requires a lot of time and most likely results in a considerable delay in the transaction planning. We note the involvement of the macroprudential authority is not included in the prudential assessment that takes place on basis of the Joint Guidelines. We reiterate the prudential assessment under the Joint Guidelines and the prudential assessment under the RTS should in principle not be very different. In cases where a macroprudential view appears necessary, we suggest the competent authority reaches out to the macroprudential authority, but we see no room under CRDVI for a formal role of the macroprudential authority. We suggest deleting the reference.

B. Pillar 2 Requirements

As regards Pillar 2 requirements, we consider that the draft RTS should more explicitly recognise that Pillar 2 capital guidance and requirements are part of ongoing, institution-specific supervision and should not be recalibrated automatically or systematically as a consequence of a merger. Any adjustment to Pillar 2 requirements following a merger should remain firmly anchored in the established supervisory review and evaluation process (SREP) and be based on a holistic assessment of the merged entity's risk profile, rather than being driven solely by the transaction itself.

C. Assessment of Systemic Importance

We are concerned that the RTS may lead to an automatic or routine reassessment of systemic importance for significant institutions each time they engage in an extra-group merger. Such an approach risks introducing substantial procedural complexity and

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delays into transaction planning, even in cases where the merger is unlikely to materially alter the institution's systemic footprint. We suggest striking this reference. Any assessment of systemic footprint should be included in ongoing supervision and not be part of the assessment of incidental transactions.

Question 7. Do you think the draft RTS is sufficiently clear, comprehensive and suitable for each material operation / adequate for a smooth proceeding?

We refer to our comments above.

A. AMF/CFT assessments in relation to prudential assessments

We specifically ask EBA to ensure that the assessment by the AML/CFT authority is included seamlessly in the process. We refer to the Joint Guidelines that find the AML/CFT assessment is part of the prudential assessment. We consider that the assessment of the new prudentially relevant operations in scope of this RTS should not become extra complex because separate AML/CFT authorities have been set up. These authorities have been set up to further harmonisation, and their establishment should not result in further complexity.

B. One single notification/assessment per merger/division

A proposed merger needs to be notified to the competent authority which will be responsible for supervising the entities resulting from a merger. Taking as a starting point that the merger will only need to be assessed once, we assume that only the entity that will result from the merger is required to do a notification i.e. there is no notification obligation for the disappearing entity. The same methodology applies in case of divisions.

Art. 29 of the RTS seems to indicate that the two merging stakeholders or the two entities involved in a division should file a notification. We assume this is an error.

If it is EBA's intention to have indeed both relevant entities file a notification we deem this requirement to go beyond CRDVI and in practice also not add any value. Information on the disappearing entity or other entity involved in a division is included already in the notification.

C. Assessment period for non-intragroup mergers

Consideration(3) of the ITS states that the 60 working-day assessment period applies only to intra-group operations, while no specific timeline is set out for merges or for divisions. However, pursuant to Article 30(1) of the RTS, the general notification and prudential assessment framework applies mutatis mutandis to mergers and divisions, which includes the time limits laid down in Article 27i of CRDVI. Article 30(2) merely specifies the starting point of the assessment period for intra-group mergers.

We therefore request confirmation that the 60 working-day assessment period also applies to non-intragroup mergers and to divisions and suggest clarifying this explicitly in Article 30 of the RTS to ensure legal certainty.

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EU Transparency Register / ID number: 4722660838-23

Question 8. Do you agree with the information requested in case of a merger or division requiring the authorisation of a credit institutions via the amendment to Commission Delegated Regulation (EU) No 2022/2580 under Article 35?

The proposed addition of Article 9a to Regulation 2022/2580 would create a de facto assessment of the merger within the authorisation process, even though Article 27i(3) CRDVI explicitly states that no merger assessment shall take place where the merger results in the establishment of a new credit institution requiring authorisation.

CRDVI does not contain a mandate to amend, expand, or qualify this exception through delegated legislation. The proposed information requirements reintroduce the merger assessment that Level 1 had deliberately excluded. We request these requirements are deleted.

Question 9. Do you think the draft RTS is sufficiently clear, comprehensive and suitable for each material operation / adequate for a smooth proceeding?

This question is identical to question 7. We refer to our answers above.

We note that CRDVI was drafted in the period 2012-2024 and predates the European Commission's conclusion that the EU's regulatory landscape should be simplified and modernised. We recognize EBA's efforts to introduce proportionality in the RTS but consider significant changes are needed to simplify the RTS to ensure that the assessment of material operations remains proportionate, risk-based and fit for purpose. We specifically request the avoidance of multiple and concurring notification requirements and assessments for materially one transaction. We refer to our answer under question 3.

Background and rationale (pages 8 et 9): it is indicated that "*intragroup mergers are subject to **discretionary assessment** by the competent authority in accordance with Article 27i(2) CRD*". It should be clarified on what grounds/criteria the authorities will decide to assess the operation.

Amending Article 18 paragraph 2 (e) as follows: "*where it is part of a group, as a subsidiary or as the parent undertaking, a detailed chart of ~~the group structure~~ the entities involved in the merger [...]*".

Question 10. Do you agree with the steps and the timeline for the consultation process between requesting and requested authorities in case of proposed material acquisitions or proposed mergers or divisions?

We reiterate the transactions in scope of the RTS should as much as possible be handled by one authority only, with other authorities being consulted if deemed appropriate by the lead authority to ensure seamless processing of requests and notifications. Under this approach, it is in principle up to the competent authorities involved how to liaise with each other as long as the timelines for the relevant assessment processes are met.

We refer to the comments under question 7 and to the timelines for non-intragroup mergers and for divisions. A timeline of 60 working days should be applicable for these transactions.

As to intragroup acquisitions of material holdings and intragroup mergers we note that CRDVI explicitly provides a derogation (art. 27a(7) and art. 27i(2)): by default, the competent authority is not required to carry out the prudential assessment. Considering these specific derogations included in CRDVI, the fact that intragroup transactions do not introduce new risks in the group as well as the principles of the Fininvest/ECB judgement that no assessment is necessary in cases where ownership/control of an entity remains the same, we consider that no assessment of these intragroup transactions will be the standard and not the exception. We suggest that EBA included criteria for cases where, contrary to the main rule, an assessment is required stressing this would in our view be limited to exceptional cases.

Article 6 sets out how the competent authorities shall cooperate and exchange information during the consultation process on a material acquisition in the financial sector.

In particular, paragraph 3 of Article 6 “Procedure for consultation” is drafted in very general terms, merely requiring that: “[...] the requested authority shall communicate with the requesting authority in a timely manner [...] The requesting authority shall in turn respond promptly [...]”. It could be useful to provide for response timelines on the part of Authority. Introducing a deadline, applicable to the interactions between authorities, could be helpful to include indicative timeframes or reference time thresholds, in order to enhance predictability and provide operational guidance.

We specifically request EBA to consider the practice of banking groups to simplify their organizational structure by merging dormant or non-operative group entities (such as former real estate holding companies) into other group companies, which may themselves be regulated financial institutions. Such group-internal mergers do not alter the group’s risk profile, capital position, or control structure and are typically undertaken for efficiency reasons, as they are quicker and more cost-effective than liquidation.

We consider it essential, in line with the principle of proportionality, that such group-internal mergers between banks and non-regulated group companies always benefit from the derogation of art. 27i(2). This would avoid unnecessary administrative burden

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and time expenditure for both competent authorities and merging entities, without detracting from the effectiveness of prudential supervision.

In addition, we request EBA makes clear within what timeline the competent authority will inform the institution that no assessment will be carried out. This timeline should in any case be shorter than the 60 working days period that applies for cases because an assessment does not take place. The derogations of CRDVI are only effective in practice if banks obtain clarity on an assessment taking place or not within a short period.

Question 11. Do you consider the processes set out in Chapters 2 and 3 in relation to material acquisitions sufficiently clear, comprehensive and adequate for a smooth proceeding?

We refer to our answers in respect of the necessity to refrain from introducing overly burdensome rules and procedures which make operations overly complex, time consuming and unattractive. We reiterate EBA should refrain as much as possible from adding structural obstacles to bank consolidation across the EU and preventing banks from realising synergies across markets.

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