

AMF position

Prudential assessment of acquisitions and increases of qualifying holdings in the financial sector – DOC-2017-10

References: Articles L. 532-9 and L. 532-9-1 of the Monetary and Financial Code and Articles 312-5, 312-11 to 312-14, 317-4 and 317-10 to 317-14 of the AMF General Regulation

On 4 July 2017, the AMF informed the ESMA that it intended to comply with the European supervisory authorities' joint guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector (JC/GL/2016/01).

The guidelines describe the procedural rules and the assessment criteria that the competent authorities must apply for the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector if an entity's ownership structure changes during its lifetime.

Chapter 1 of title II of the guidelines provides clarifications particularly of certain "general concepts", such as the notions of person acting in concert (Paragraph 4). For instance, it provides a list of factors to be considered to determine whether people are acting in concert. The same chapter also presents a non-exhaustive list of criteria for assessing whether a proposed acquirer exercises a significant influence over the management of a financial sector entity (Paragraph 5). Paragraph 6 of the guidelines sets out the conditions for assessing acquisitions and increases of indirect qualifying holdings. A qualifying holding is defined as a direct or indirect holding in a financial sector entity that represents 10% or more of its capital or voting rights, or which makes it possible to exercise a significant influence over its management¹.

Chapter 2 of title II, for its part, describes the procedure for notifying the competent authority of a proposed acquisition (for example, stating the time within which it must acknowledge receipt of the notification). It also presents a recommended list of the information that the competent authorities should request when assessing acquisitions and increases of qualifying holdings (Paragraph 9).

Finally, chapter 3 lists the assessment criteria that competent authorities should use to assess proposed acquisitions or increases of qualifying holdings. The guidelines propose five assessment criteria and describe their content. These are:

- The reputation of the proposed acquirer, including their integrity and professional competence (Paragraph 10);
- The reputation and experience of the managers of the target undertaking's business (Paragraph 11);
- The financial soundness of the proposed acquirer (Paragraph 12);
- Compliance with the prudential requirements by the target company after the deal's completion (Paragraph 13); and
- The examination of the proposed acquirer to identify any grounds for suspecting money laundering or terrorist financing (Paragraph 14).

Incorporation within the AMF's regulatory practices

This position, incorporating the European supervisory authorities' joint guidelines, is applicable as of 27 November 2017.

The European supervisory authorities' joint guidelines are available at the following addresses:

- In French: Orientations communes relatives à l'évaluation prudentielle des acquisitions et des augmentations de participations qualifiées dans des entités du secteur financier

JC/GL/2016/01:

https://esas-joint-committee.europa.eu/Publications/Guidelines/JC_QH_GLs_FR.pdf

- In English: Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector

JC/GL/2016/01:

https://esas-joint-committee.europa.eu/Publications/Guidelines/JC_QH_GLs_EN.pdf

¹ In accordance with Article 92 of Directive 2001/34/EC.