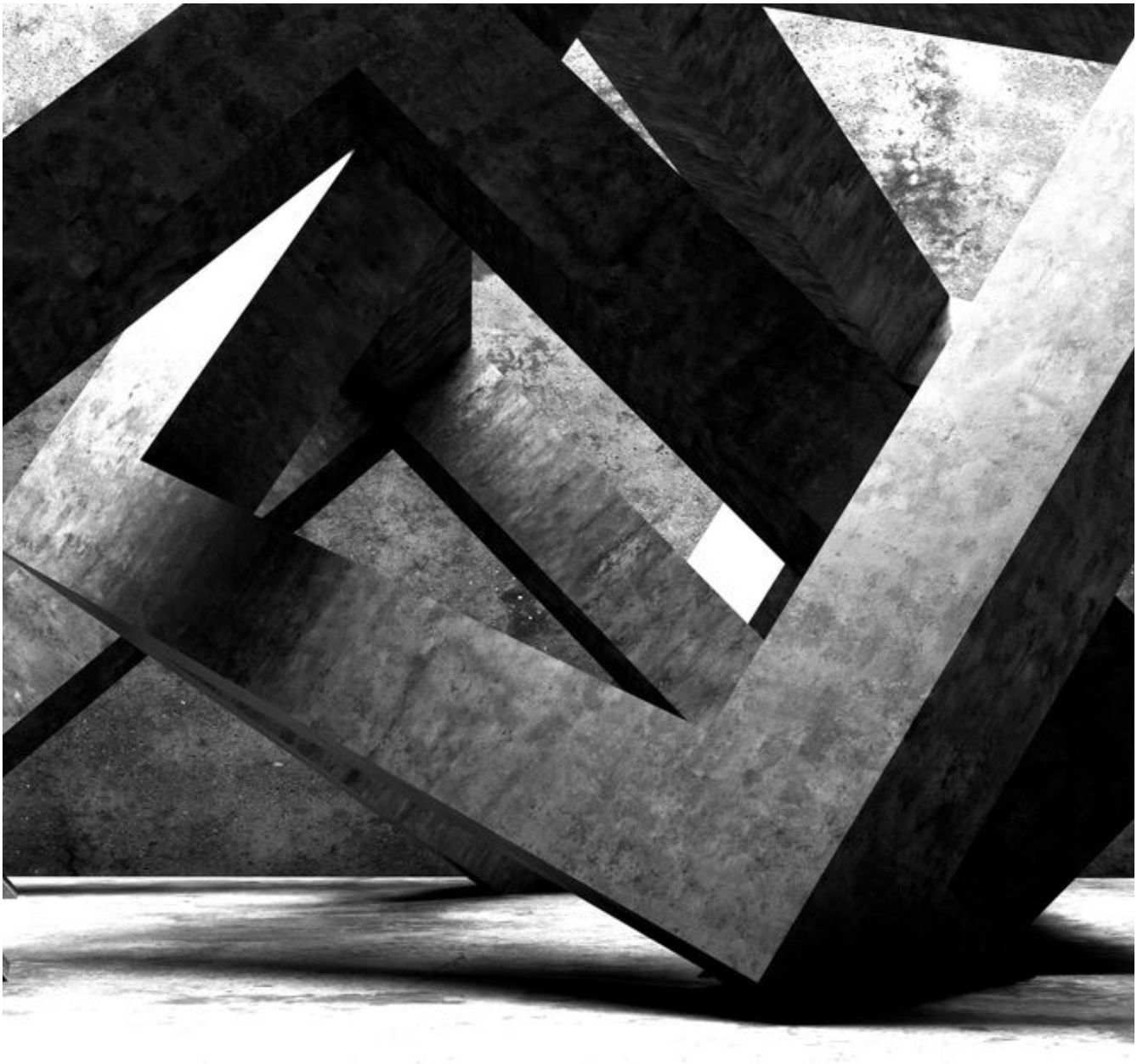
CRD VI consequences for M&A transactions

MARCH 03, 2026



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Executive summary

CRD VI (Directive (EU) 2024/1619) introduces a new harmonized regime requiring banks to notify competent authorities of, and in some cases receive prior approval for, M&A transactions generally. This expands on the current regime which relates solely to qualifying holdings in credit institutions, although some EU Member States had previously already implemented similar rules on a national level. CRD VI should have been transposed by Member States by January 10, 2026 and the M&A provisions should apply from January 11, 2026. In practice, the majority of Member States are yet to publish their final implementing legislation, with only a small number having fully transposed CRD VI so far. The new M&A regime will therefore initially apply in a piecemeal way across the EU. However, firms should be ready to comply with their upcoming obligations when contemplating transactions from 2026 onwards.

In-scope firms

In-scope firms (or "supervised entities") required to notify and seek approval for transactions are:

- Institutions, namely credit institutions as defined under CRR (Regulation (EU) No 575/2013) (i.e., banks which take deposits and grant loans and large investment firms which conduct underwriting and dealing on own account);
- Financial holding companies (FHCs) (i.e., financial institutions whose subsidiaries are exclusively or mainly institutions or financial institutions, as defined under CRR); and
- Mixed financial holding companies (MFHCs) (i.e., parent undertakings which are not regulated entities and which, together with their subsidiaries, constitute a financial conglomerate, as defined under the Financial Conglomerates Directive (Directive 2002/87/EC)).

Summary of transactions caught by CRD VI regime

Four key types of transactions, when carried out by in-scope firms, are caught by the new CRD VI rules:

- Acquisition or disposal of a material holding
- Material transfer of assets or liabilities
- Mergers
- De-mergers

The existing regime governing acquisitions or disposals of "qualifying holdings" in a credit institution will continue to apply, with some amendments. CRD VI aligns the assessment process and criteria for qualifying holdings with the new regime for material holdings. The EBA has published a consultation on draft RTS on the minimum level of information to be submitted with qualifying holdings notifications, which closed in September 2025. Notably, the EBA has proposed reduced information requirements in certain cases to avoid re-submission of information where similar transactions have been carried out recently.

A summary of the transactions captured by the new regime is as follows:

NATURE OF TRANSACTION	IN-SCOPE ENTITIES	THRESHOLD	RELEVANT COMPETENT AUTHORITY (CA)	NOTIFICATION TO/ASSESSMENT BY CA
Acquisition or disposal of qualifying holding	Any entity acquiring or disposing of qualifying holding in credit institution target	Crossing over or under 10%, 20%, 30% or 50% of target's capital or voting rights (acting alone or in concert); or Becoming (or ceasing to be) a subsidiary of investor; or Obtaining (or disposing of) significant influence over management of target.	CA of target	Acquisition: notification and assessment Disposal: notification only
Acquisition or disposal of a material holding	Supervised entity acquiring or disposing of "material holding" in any target entity	"Material holding": 15% or more of supervised entity's eligible capital	CA of supervised entity	Acquisition: notification and assessment (except that for intragroup acquisition, notification only) Disposal: notification only
Material transfer of assets or liabilities	Supervised entity involved in "material transfer"	"Material transfer": at least 10% of total value of assets/liabilities of transferor and/or transferee (or 15% if intra-group)	CA of transferor and/or transferee (for whom the threshold is satisfied)	Notification only
Merger	Transfer of all or parts of the assets/liabilities of a supervised entity into a single acquiring entity	Transfer of all or parts of assets/liabilities (upon dissolution of supervised entity)	CA of resulting merged entity	Notification and assessment Except: Notification only for: (i) intragroup merger involving only supervised entities; and (ii) merger resulting in licensing of new credit institution and/or approving FHC or MFHC
De-merger	Transfer of all or parts of the assets/liabilities of a supervised entity into one or more entities	Transfer of all or parts of assets/liabilities (upon winding up or division of supervised entity)	CA of entity carrying out the proposed de-merger	Notification and assessment Except: Notification only for de-merger resulting in licensing of new credit institution and/or approving FHC or MFHC

Key takeaways

- Timing: Firms will need to build in time to obtain approvals when buying or selling material/qualifying holdings or carrying out mergers and demergers. They should also be prepared to answer additional questions from supervisors efficiently to avoid stalling the assessment.
- Training and policies and procedures: To support interactions with supervisors and ensure compliance, firms may wish to provide training for their internal teams on the requirements of the CRD VI regime. They will likely also need to develop policies and procedures to comply with notification requirements for each relevant transaction. We expect firms will already have policies in place for the qualifying holdings regime, which should be reviewed to reflect the changes under CRD VI and, where appropriate, adapted to capture the broader range of transactions – in particular, the material holdings regime which may overlap with qualifying holdings requirements.
- Communication with supervisors: although CRD VI is aiming for a harmonized approach, Member State jurisdictions are likely to vary in their implementation of the requirements and it remains to be seen how different supervisors will manage their assessment processes. Past experience with the qualifying holdings regime could provide an indication of the approach Member States will take. Where appropriate, firms may want to communicate early with supervisors on their plans and take advantage of any guidance given to ensure processes flow smoothly.
- Ongoing ambiguity: certain aspects of the rules are still ambiguous or subject to ongoing consideration by Member States as part of their transposition process. One such example is whether all mergers/divisions should be in-scope or should be subject to a threshold (e.g., transfer of at least a certain percentage of the supervised entity's assets into the merged or demerged entit(y/ies)). Until Member States or the EBA publish further guidance on such grey areas, firms should ensure they clearly explain the reasoning behind any ambiguous aspects of their notifications and, as above, communicate with supervisors as needed.
- Challenge of local implementation: some of the newly introduced assessment criteria may lend themselves to divergent interpretation across the EU absent effective coordination. Among these, the requirement that the implementation plan for an envisaged merger be "realistic and sound" from a prudential standpoint is likely to attract scrutiny. Once the RTS are finalized, Member States will need to ensure uniform application of these standards. Jurisdictions with established, repeatedly tested regulatory frameworks for mergers and divisions may offer inspiration to support a consistent rollout.

The following sections discuss in more detail the requirements of the regime for each transaction subject to the CRD VI rules.

Acquisition or disposal of a material holding

1. IN-SCOPE TRANSACTIONS

Arts. 27a and 27d of CRD VI apply to the acquisition or disposal by a supervised entity of a "material holding" in any entity (financial sector or otherwise). A "material holding" for these purposes is equal to or more than 15% of the supervised entity's eligible capital.[1] The EBA's draft regulatory technical standards on prudentially material transactions (EBA Draft RTS) (due to be submitted to the European Commission by July 10, 2026) state this threshold should be calculated using the higher of the ratios between the purchase price or book value of the material holding and the investor's eligible capital.

If the supervised entity is an institution (as opposed to an FHC or MFHC), the 15% threshold applies on both an individual basis and on the basis of the consolidated situation of the group. If the supervised entity is an FHC or MFHC, the threshold applies only on a consolidated basis.

TYPE OF FIRM	LEVEL AT WHICH 15% THRESHOLD IS CALCULATED	RELEVANT COMPETENT AUTHORITY FOR NOTIFICATION IF THRESHOLD EXCEEDED
Institution	Individual institution	Institution's Member State competent authority
	Consolidated situation	Group consolidating supervisor
FHC	Consolidated situation	Group consolidating supervisor
MFHC	Consolidated situation	Group consolidating supervisor

2. NOTIFICATION REQUIREMENTS

Acquisition of a material holding

The supervised entity's notification must include the size of the proposed acquisition and any information the competent authority requires to carry out an assessment of the transaction, meaning the required information may vary by jurisdiction. However, CRD VI states that information must be proportionate and appropriate to the nature of the proposed acquisition and the EBA Draft RTS specify the minimum information that a supervised entity should submit to the competent authority at the time of notification, including:

- general information on the supervised entity, e.g., business name, registered office, individual contact details;
- information on the proposed acquisition relating to: the target entity itself; the material holding (type of shares, purchase price, valuation methods etc.); the timeline for payment (including funding needs); the nature of the proposed acquisition;
- financial information on the supervised entity;
- a business plan covering at least the three years following the proposed acquisition;

[1] For these purposes, "eligible capital" is defined under CRR and comprises: (i) Tier 1 capital (being the sum of Common Equity Tier 1 and Additional Tier 1) and (ii) Tier 2 capital to the extent it is equal to or less than one third of the Tier 1 capital under (i), but the deduction under Article 36(1)(k)(i) CRR must not be included (namely the exposure amount for qualifying holdings outside the financial sector).

- in the case of a proposed acquisition which gives control of the target, or where the prudential impact materially exceeds the materiality threshold, a plan of all material changes to the internal governance of the supervised entity in order to support the changes.

The EBA states that consistency with the draft RTS for qualifying holdings has been prioritized in preparing these standards, to avoid adding complexity to firms' reporting obligations. Where the proposed material acquisition requires a qualifying holdings assessment, the two notifications should be submitted to the respective competent authorities at the same time.

Disposal of a material holding

The supervised entity's notification of a disposal should include the size of the proposed holding to be sold. No assessment (or approval) will be required for the sale.

3. ASSESSMENT OF PROPOSED ACQUISITION OF A MATERIAL HOLDING

In the case of an envisaged acquisition of a material holding, the competent authority will assess the proposed transaction and consider the prospect of sound and prudent management by the supervised entity, and the risks to which the supervised entity is or may be exposed after the proposed acquisition. The criteria for this assessment are:

(a) Whether the supervised entity will be able to comply, and continue to comply, with the prudential requirements under CRD (Directive 2013/36/EU) and CRR, and any other applicable prudential requirements under EU law.

(b) Whether there are reasonable grounds to suspect that any money laundering or terrorist financing is being, or has been, committed or attempted under MLD 4 (Directive (EU) 2015/849) in connection with the proposed acquisition.

The EBA Draft RTS set out further detail on assessment of the information submitted as part of the supervised entity's notification.

Grounds for opposing the proposed acquisition

The competent authority can only oppose the proposed acquisition if:

- there are "reasonable grounds" for opposition on the basis of the assessment criteria. A reasonable ground could include a negative opinion by the supervised entity's AML supervisor; or
- the information provided by the supervised entity is incomplete despite a request for further information by the competent authority.

Exclusions

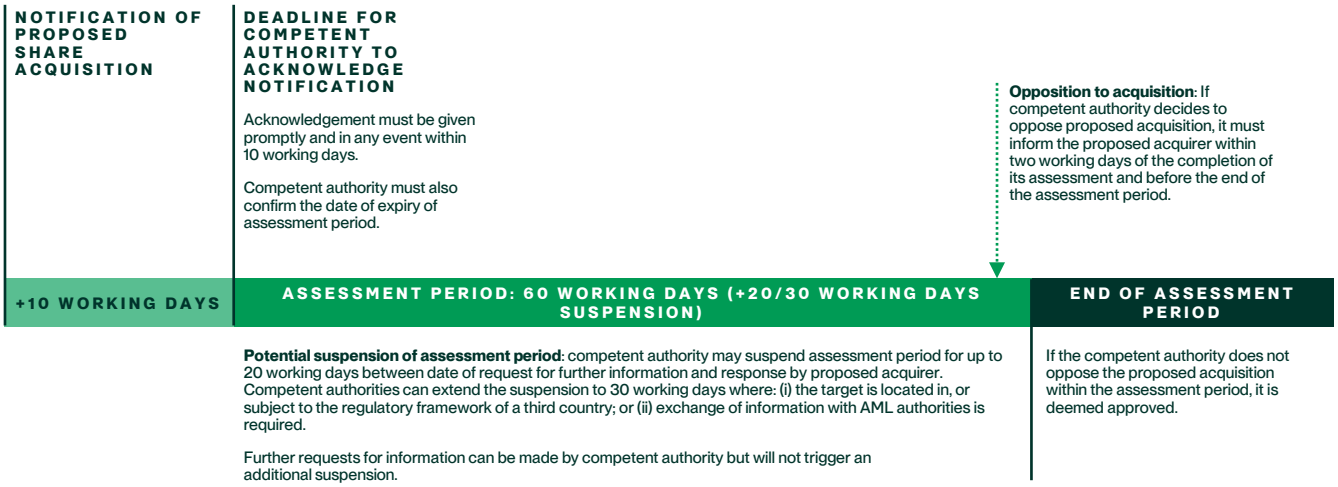
An intra-group acquisition will not be subject to the competent authority's assessment—only a notification is required.

4. TIMELINE OF NOTIFICATION AND ASSESSMENT OF PROPOSED ACQUISITION

The timelines below provide a high-level overview of how the approval process operates on an individual and consolidated basis. If the proposed acquisition also triggers the qualifying holdings rules discussed above, the timeline will end when the later of the assessment periods under each regime expires.

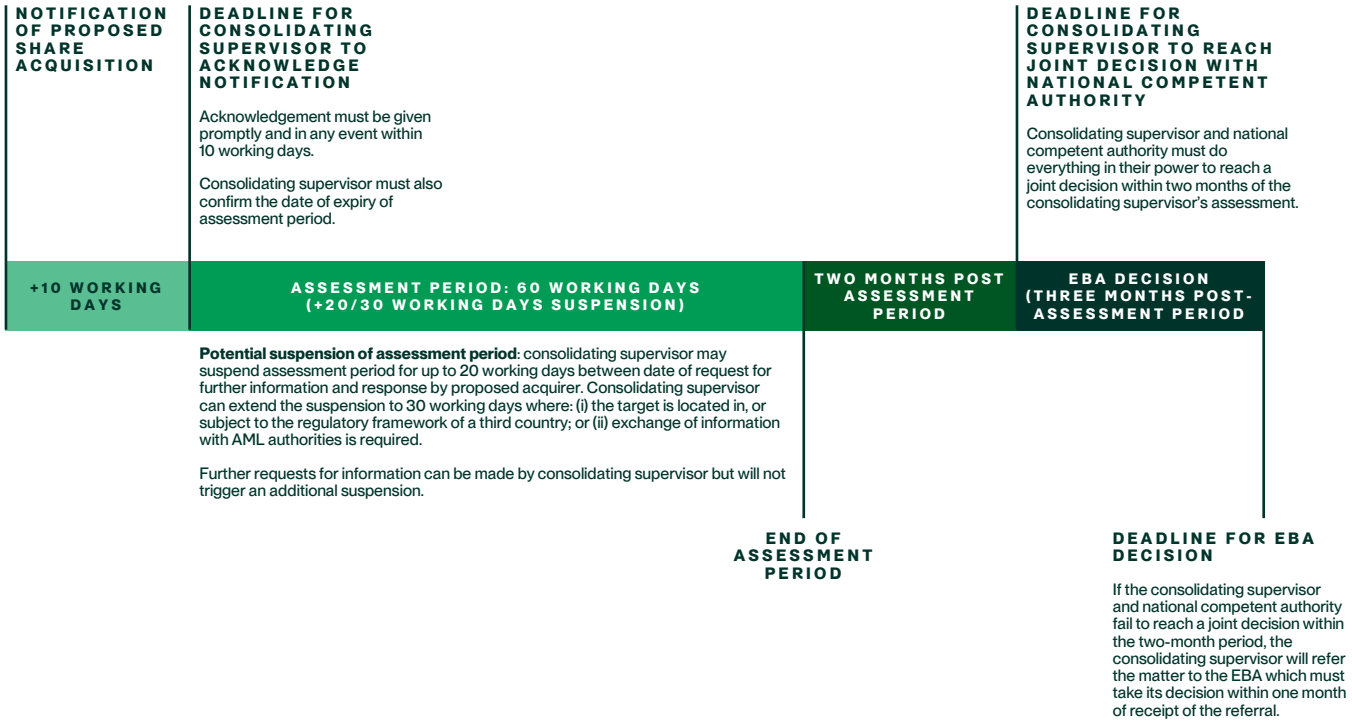
Timeline 1—approval for material acquisition by an individual institution with no separate consolidating supervisor

Competent authorities must acknowledge receipt of a notification within ten working days and at the same time confirm the date when the assessment period for the transaction will expire. The competent authority then has 60 working days (i.e., 12 weeks) to make its assessment. It may request further information from the firm in question and can suspend the assessment period for up to 20 working days while awaiting receipt of the complete information (or up to 30 working days in certain circumstances). The competent authority must notify the firm of its opposition to the acquisition within two working days of reaching such a decision. If no opposition is made, the acquisition is deemed approved.



Timeline 2—approval for material acquisition on an individual and consolidated basis where supervisors are different

Where an assessment needs to be made by the supervised entity's consolidating supervisor, and that supervisor is different to the supervised entity's national competent authority, both authorities must work together in consultation. The consolidating supervisor will undertake the initial assessment. It then has a period of two months to agree that assessment with the supervised entity's Member State supervisor. If no agreement can be reached the decision must be referred to the EBA, which must take a decision within one month of receipt of the referral.



5. PENALTIES

Failure to notify a proposed acquisition or divestiture in advance, or acquisition of a material holding despite opposition by a competent authority, will result in "appropriate measures" (i.e., penalties) to be defined by each Member State.

At a minimum, Member States' penalties for a failure to notify must include:

- administrative penalties of up to 10% of the supervised entity's total annual net turnover, or up to twice the amount of profits gained or losses avoided because of the breach;
- periodic penalty payments of up to 5% of the supervised entity's average daily net turnover, which will have to be paid until compliance (up to a period of six months); and
- other administrative measures, including public censure or a temporary ban on a member of the management body from carrying out a function in an institution.

If an acquisition is made despite opposition by a competent authority, Member States must, again at a minimum, provide for corresponding voting rights to be suspended or votes cast to be declared null and void.

Material transfer of assets or liabilities

1. IN-SCOPE TRANSACTIONS

Article 27f of CRD VI applies to a material transfer of assets or liabilities by a supervised entity, including intra-group transfers. A "material transfer" is one equal to at least 10% of a supervised entity's total assets or liabilities or, if the transfer is between entities of the same group, equal to at least 15% of total assets or liabilities.

Both entities involved in the proposed transfer are captured, so the material transfer threshold should be applied to each in-scope entity (whether buyer or seller) to determine whether a notification is necessary.

For FHCs and MFHCs, the percentages apply on the basis of their consolidated situation. For individual institutions, the percentages apply only at the individual level.

Excluded assets and liabilities

The following assets and liabilities are not included when calculating the material transfer threshold:

(a) transfers of non-performing assets;

(b) transfers of assets for the purposes of being included in a cover pool as defined under the EU Covered Bonds Directive (Directive (EU) 2019/2162);

(c) transfers of assets to be securitized; and

(d) transfers of assets and liabilities in the context of the use of resolution tools under the EU BRRD (Directive 2014/59/EU).

Valuation of assets and liabilities

The EBA Draft RTS state this threshold should be calculated using the greater of: (i) the ratios between the **purchase price** of the **transferred** assets or liabilities and the **book value** of the **total** assets or liabilities; or (ii) the ratios between the **book value** of the **transferred** assets and liabilities and the **book value** of the **total** assets or liabilities.

2. NOTIFICATION REQUIREMENTS

Each in-scope entity for which the proposed transfer is material should notify their own competent authority in writing in advance.

The competent authority must acknowledge the notification promptly and in any event within ten working days after receipt. No approval is required.

The EBA Draft RTS specify the minimum information that an entity contemplating a material transfer should submit to the competent authority at the time of notification, including:

(a) general information on the notifying entity, e.g., business name, registered office, individual contact details as well as certain details of the other entity involved in the transaction, including an overview of its business activities (if it is not part of the notifying entity's group);

(b) information on the proposed transaction, including a description of the assets and liabilities to be transferred;

(c) a description of how the materiality threshold was determined.

3. PENALTIES

Failure to notify a proposed material transfer in advance will result in "appropriate measures" (i.e., penalties) to be defined by each Member State.

At a minimum, Member States' penalties for a failure to notify must include:

- administrative penalties of up to 10% of the entity's total annual net turnover, or up to twice the amount of profits gained or losses avoided because of the breach;
- periodic penalty payments of up to 5% of entity's average daily net turnover, which will have to be paid until compliance (up to a period of six months); and
- other administrative measures, including public censure or a temporary ban on a member of the management body from carrying out a function in an institution.

Merger

1. IN-SCOPE TRANSACTIONS

Article 27i applies to any of the following forms of merger:

(a) asset transfer by one or more companies to a surviving entity with shares and, where applicable, cash exchange;

(b) asset transfer by one or more companies to a surviving entity without any issuance of new shares;

(c) asset transfer by two or more companies to a newly formed entity with shares and, where applicable, cash exchange;

(d) asset transfer to a sole shareholder.

Exclusion

Mergers which arise by virtue of an action taken under BRRD are not caught by the rules.

2. NOTIFICATION REQUIREMENTS

CRD VI (as supplemented by the EBA Draft RTS) requires the proposed merger to be notified by the resulting merged entity (known as the "merging financial stakeholder") to the competent authority which will supervise it.

The notification should be made after the draft terms of the proposed merger have been adopted but before it is complete.

Member States must publish a list of the information that they require to carry out their assessment of the proposed merger. In any case, the information required must be proportionate and appropriate to the nature of the proposed acquisition. The EBA Draft RTS specify the minimum information that the in-scope entities should submit to the competent authority at the time of notification, as well as the process applicable for notification. This would include (amongst others):

- the draft terms of the proposed merger;
- the envisaged timeline for the merger;
- a description of the financing of the proposed merger;
- the date from which the transactions of the entity being merged will be treated as those of the merging financial stakeholder for accounting purposes.

3. ASSESSMENT OF PROPOSED MERGER

The competent authority will issue a positive or negative opinion based on an assessment of the proposed merger. It will consider the soundness of the prudential profile of the "financial stakeholders" (i.e., in-scope firms involved in the merger) after the merger and the risks to which they and the resulting merged entity might be exposed. The criteria for this assessment are:

(a) The reputation of the financial stakeholders involved in the proposed merger.

(b) The financial soundness of the financial stakeholders involved in the proposed merger, particularly in relation to the merged entity's proposed business post-merger.

(c) Whether the implementation plan for the proposed merger is prudentially realistic and sound.

(d) Whether the merged entity will be able to comply, and continue to comply, with the prudential requirements under CRD and CRR, and any other applicable prudential requirements under EU law.

(e) Whether there are reasonable grounds to suspect that any money laundering or terrorist financing is being, or has been, committed or attempted under MLD 4 (Directive (EU) 2015/849) in connection with the proposed merger.

The EBA Draft RTS set out further detail on assessment of the information submitted as part of the acquirer's notification.

Grounds for opposing the proposed transaction

The competent authority may only issue a negative opinion in respect of the proposed merger if:

- the assessment criteria are not met; a negative opinion by the financial stakeholders' AML supervisor could constitute reasonable grounds for a negative opinion to be issued in this case; or
- the information provided to the competent authority is incomplete despite a request for further information.

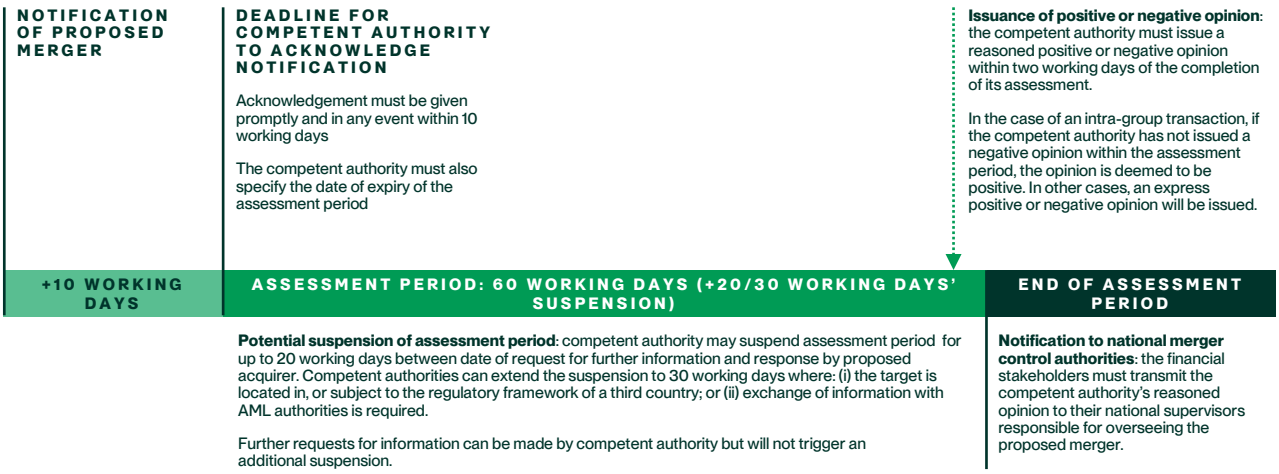
Exclusions

- Competent authorities are *not required* to carry out an assessment where the intra-group merger involves only institutions, FHCs or MFHCs from the same group.
- Competent authorities *will not* carry out the assessment if any of the entities involved in the merger requires authorization or approval as a credit institution, FHC or MFHC prior to completion of the merger.

4. TIMELINE OF NOTIFICATION AND APPROVAL PROCESS

The proposed merger cannot proceed until the competent authority has issued a positive opinion, which may specify a limited period within which the proposed merger must then be carried out.

The competent authority must comply with the following timeline:



5. PENALTIES

Failure to notify a proposed merger in advance, or completion of the merger without a positive opinion by a competent authority, will result in "appropriate measures" (i.e., penalties) to be defined by each Member State.

At a minimum, Member States' penalties for a failure to notify must include:

- administrative penalties of up to 10% of the merged entity's total annual net turnover, or up to twice the amount of profits gained or losses avoided because of the breach;
- periodic penalty payments of up to 5% of the merged entity's average daily net turnover, which will have to be paid until compliance (up to a period of six months); and
- other administrative measures, including public censure or a temporary ban on a member of the management body from carrying out a function in an institution.

De-merger

1. IN-SCOPE TRANSACTIONS

Article 27i applies to any of the following forms of de-merger:

(a) asset split among multiple entities with shares and, where applicable, cash exchange;

(b) asset split among multiple newly formed entities with shares and, where applicable cash exchange;

(c) asset split combining both situations described above;

(d) partial asset split among multiple entities with shares and, where applicable, cash exchange;

(e) partial asset split with share exchange.

Exclusion

Divisions which arise by virtue of an action taken under BRRD are not caught by the rules.

2. NOTIFICATION REQUIREMENTS

CRD VI (as supplemented by the EBA Draft RTS) requires the firm that is being divided to notify the proposed transaction to the competent authority which supervises it.

The notification should be made after the draft terms of the proposed de-merger have been adopted but before it is complete. The contents of the notification are as for mergers, above.

3. ASSESSMENT OF PROPOSED DE-MERGER

The assessment of the proposed de-merger will be as for mergers, above.

Exclusions

Competent authorities will not carry out a prudential assessment if any of the entities involved in the de-merger requires authorization or approval as a credit institution, FHC or MFHC prior to completion.

4. TIMELINE OF NOTIFICATION AND APPROVAL PROCESS

The timeline for the notification and approval process is as for mergers, above.

5. PENALTIES

The penalties regime is as for mergers, above.

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