

Chapter 2

Commission Delegated Regulation (EU) 2017/1946

Article 5 Additional information relating
to the proposed acquirer that is a legal
person

(1) The proposed acquirer that is a legal person shall also provide the competent authority of the target entity with the following:

(a) information regarding the proposed acquirer, any person who effectively directs the business of the proposed acquirer, any undertaking under the proposed acquirer's control, and any shareholder exerting significant influence on the proposed acquirer as identified in point (e). That information shall include the following:

(1) criminal records, criminal investigations or proceedings, relevant civil and administrative cases, or disciplinary actions, including disqualification as company director or bankruptcy, insolvency or similar procedures, through an official certificate or through another equivalent document;

(2) information on open investigations, enforcement proceedings, sanctions, or other enforcement decisions against the proposed acquirer, which may be provided through a declaration of honour;

(3) refusal of registration, authorisation, membership, or licence to carry out a trade, business or profession; or the withdrawal, revocation or termination of such a registration, authorisation, membership or licence; or expulsion by a regulatory or government body or by a professional body or association;

(4) dismissal from employment or a position of trust, fiduciary relationship, or similar situation of any person who effectively directs the business of the proposed acquirer and of any shareholder exerting significant influence on the proposed acquirer;

(b) information as to whether an assessment of reputation of the acquirer or of the person who directs the business of the acquirer has already been conducted by another supervisory authority, the identity of that authority and evidence of the outcome of the assessment;

(c) a description of financial interests, and non-financial interests or relationships of the proposed acquirer, or, where applicable, the group to which the proposed acquirer belongs, as well as the persons who effectively direct its business with:

(1) any other current shareholders of the target entity;

(2) any person entitled to exercise voting rights of the target entity in any of the following cases or a combination of them:

- voting rights held by a third party with whom that person or entity has concluded an agreement, which obliges them to adopt, by concerted exercise of the voting rights they hold, a lasting common policy towards the management of the target entity in question,
- voting rights held by a third party under an agreement concluded with that person or entity providing for the temporary transfer for consideration of the voting rights in question,
- voting rights attaching to shares which are lodged as collateral with that person or entity, provided the person or entity controls the voting rights and declares its intention of exercising them,
- voting rights attaching to shares in which that person or entity has a life interest,
- voting rights which are held, or may be exercised within the meaning of the first four items of point (c)(ii), by an undertaking controlled by that person or entity,
- voting rights attaching to shares deposited with that person or entity which the person or entity can exercise at its discretion in the absence of specific instructions from the shareholders,
- voting rights held by a third party in its own name on behalf of that person or entity,
- voting rights which that person or entity may exercise as a proxy where the person or entity can exercise the voting rights at its discretion in the absence of specific instructions from the shareholders;

(3) any member of the administrative, management or supervisory body, or of the senior management of the target entity;

(4) the target entity itself and the group to which it belongs;

(d) information on any other interests or activities of the proposed acquirer that may be in conflict with those of the target entity and possible solutions for managing those conflicts of interest;

(e) the shareholding structure of the proposed acquirer, with the identity of all shareholders exerting significant influence and their respective share of capital and voting rights including information on any shareholders agreements;

(f) if the proposed acquirer is part of a group, as a subsidiary or as the parent undertaking, a detailed organisational chart of the entire corporate structure and information on the share of capital and voting rights of shareholders with significant influence of the entities of the group and on the activities currently performed by the entities of the group;

2

(g) if the proposed acquirer is part of a group as a subsidiary or as the parent company, information on the relationships between the financial and the non-financial entities of the group;

(h) identification of any credit institution; assurance, insurance or re-insurance undertaking; collective investment undertakings and their managers or investment firm within the group, and the names of the relevant supervisory authorities;

(i) statutory financial statements, at an individual and, where available, at consolidated and sub-consolidated group levels, for the last three financial periods. Where those financial statements are audited externally, the proposed acquirer shall provide them approved by the external auditor. The statutory financial statements shall include:

(1) the balance sheet;

(2) the profit and loss accounts or income statement;

(3) the annual reports and financial annexes and any other documents registered with the relevant registry or authority in the particular territory relevant to the proposed acquirer;

(j) where available, information about the credit rating of the proposed acquirer and the overall rating of its group.

For the purposes of point (c), credit operations, guarantees and pledges shall be deemed to be part of financial interests, whereas family or close relationships shall be deemed to be part of non-financial interests.

For the purposes of point (i), where the proposed acquirer is a newly established entity, instead of the statutory financial statements, the proposed acquirer shall provide to the competent authority of the target entity the forecast balance sheets and forecast profit and loss accounts or income statements for the first three business years, including planning assumptions used.

(2) Where the proposed acquirer is a legal person which has its head office registered in a third country, the proposed acquirer shall provide to the competent authority of the target entity the following additional information:

(a) a certificate of good-standing or equivalent document from the relevant foreign competent authorities in relation to the proposed acquirer;

(b) a declaration by the relevant foreign competent authorities that there are no obstacles or limitations to the provision of information necessary for the supervision of the target entity;

(c) general information on the regulatory regime of that third country as applicable to the proposed acquirer.

(3) Where the proposed acquirer is a sovereign wealth fund, the proposed acquirer shall provide to the competent authority of the target entity the following additional information:

(a) the name of the ministry or government department in charge of defining the investment policy of the fund;

(b) details of the investment policy and any restrictions on investment;

(c) the name and position of the individuals responsible for taking the investment decisions for the fund, as well as the details of qualifying holdings or the influence as referred to in Article 11(2) exerted by the identified ministry or government department on the day-to-day operations of the fund and the target entity.