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Final report on

joint ESMA and EBA Guidelines

on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU

Guidelines on the assessment of suitability

Executive Summary

In accordance with the requirements introduced by Directive 2013/36/EU as amended by Directive 2019/878/EU and Directive 2014/65/EU, the European Securities and Markets Authority (ESMA) and the European Banking Authority (EBA) jointly issue Guidelines on the notions of suitability, as required by Article 91 (12) of Directive 2013/36/EU and Article 9 (1) of Directive 2014/65/EU[1], and on the assessment of suitability by institutions and competent authorities.

The directives aim to remedy weaknesses that were identified during the financial crisis regarding the functioning of the management body and its members. The Guidelines aim to further improve and harmonise the assessment of suitability within the EU financial sector, and to ensure sound governance arrangements in institutions.

The Guidelines apply to all institutions, independent of their governance structures (unitary board, dual board or other structures), without advocating or preferring any specific structure as set out in the defined scope of application. The terms 'management body in its management function' and 'management body in its supervisory function' should be interpreted throughout the Guidelines in accordance with the applicable law within each Member State.

The Guidelines specify that all institutions have to assess the members of the management body. Institutions that are subject to Directive 2013/36/EU also have to assess all key function holders that have a significant influence over the direction of the institution under the overall responsibility of the management body. Competent authorities are required to assess all members of the management body. For significant CRD institutions, competent authorities should assess the heads of internal control functions and the chief financial officer (CFO), where they are not members of the management body. This should be done at the highest level of consolidation for significant CRD institutions that are part of a group but not subject to prudential consolidation by a significant consolidating CRD institution, and at the individual level if the significant CRD institution is not part of a group.

The Guidelines provide common criteria to assess the individual and collective knowledge, skills and experience of members of the management body as well as their good repute, honesty and integrity, and independence of mind.

The Guidelines take into account the changes introduced by Directive 2019/878/EU with regard to the consideration of money laundering and terrorist financing risks and criteria for assessing the independence of mind of members of the management body. To ensure that members of the management body commit sufficient time to performing their functions, the Guidelines set a

[1] Directive 2014/65/EU entered into application on 3 January 2018.

framework for assessing the time commitment expected of members of the management body and specify how the number of directorships is to be counted.

It is important to improve the diversity of management bodies to overcome the risk of groupthink; to this end, the Guidelines determine how diversity is to be taken into account in the process for selecting members of the management body. In particular, institutions should take measures to ensure that gender balance is taken into account when selecting members of the management body.

Induction and training are key to ensuring the initial and ongoing suitability of members of the management body; institutions are therefore required to establish training policies and to provide for appropriate financial and human resources to be devoted to induction and training.

Background and rationale

1. Weaknesses in corporate governance, including inadequate oversight by and challenge from the supervisory function of the management body in a number of credit institutions and investment firms, have contributed to excessive and imprudent risk-taking in the financial sector which has led in turn to the failure of individual institutions and systemic problems.

2. Against this background, it has become obvious that the role and responsibilities of management bodies in both their supervisory and management functions should be strengthened in order to ensure sound and prudent management of credit institutions and investment firms, to protect the integrity of the market and the interest of consumers.

3. Directive 2013/36/EU as amended by Directive 2019/878/EU and Directive 2014/65/EU include requirements to remedy weaknesses that were identified during the financial crisis regarding the functioning and composition of the management body and the qualification of its members.

4. The Guidelines are intended to apply to all existing board structures and do not advocate any particular structure. The Guidelines do not interfere with the general allocation of competences in accordance with national company law. Accordingly, they should be applied irrespective of the board structures used (unitary and/or dual board structure and/or other structures) across Member States. The management body, as defined in points (7) and (8) of Article 3(1) of Directive 2013/36/EU, should be understood as having management (executive) and supervisory (non-executive) functions.

5. The terms 'management body in its management function' and 'management body in its supervisory function' are used throughout these Guidelines without referring to any specific governance structure and references to the management (executive) or supervisory (non-executive) function should be understood as applying to the bodies or members of the management body responsible for that function in accordance with national law.

6. In Member States where the management body delegates, partially or fully, the executive function to a person or an internal executive body (e.g. chief executive officer (CEO), management team or executive committee), the persons who perform those executive functions on the basis of that delegation should be understood as constituting the management function of the management body. For the purposes of these Guidelines any reference to the management body in its management function should be understood as including also the members of the executive body or the CEO, as defined in these Guidelines, even if they have not been proposed or appointed as formal members of the institution's governing body or bodies under national law.

7. The management body is empowered to set the institution's strategy, objectives and overall direction, and oversees and monitors management decision-making. The management body in its management function directs the institution. Senior management is accountable to the management body for the day-to-day running of the institution. The management body in its supervisory function oversees and challenges the management function and provides appropriate advice. The oversight roles include reviewing the performance of the management function and the achievement of objectives, and monitoring and ensuring the integrity of financial information as well as the soundness and effectiveness of the risk management and internal controls.

8. Considering all existing governance structures provided for by national laws, competent authorities should ensure the effective and consistent application of the Guidelines in their jurisdiction in accordance with the rationale and objectives of the Guidelines themselves. For this purpose, competent authorities may clarify the governing bodies and functions to which the tasks and responsibilities set forth in the Guidelines pertain, when this is appropriate to ensure the proper application of the Guidelines in accordance with the governance structures provided for under the national company law.

9. Investment firms as defined by and falling under the scope of Directive 2014/65/EU may be set up as limited companies or as other legal forms, including those cases where investment firms are natural persons or investment firms are legal persons managed by a single natural person (as described under Article 9(6) of MiFID II). In some situations, the management body may comprise a small group of individuals who will each perform both executive and supervisory functions. Where these Guidelines refer to the management body in its management and supervisory functions, and, pursuant to national law, these functions are not assigned to different bodies or different members within one body, the activities of both functions should nonetheless be performed by the management body.

10. Branches in a Member State of institutions authorised in a third country are subject to suitability requirements equivalent to those applicable to institutions within Member States. As those branches do not have a management body independent of their head office, such branches and competent authorities should assess the individuals who effectively direct the branch. For the assessment of the suitability of the CFO, the heads of internal control functions and, where identified by branches in a risk-based approach, other key function holders, it is expected that competent authorities apply these Guidelines by analogy.

11. These Guidelines set out the measures for the assessment of the suitability of members of the management body, including the CEO, even when he or she is not part of the institution's governing body or bodies in accordance with national law. The Guidelines also foresee the assessment of the relevant institution's key function holders (i.e. the CFO and the heads of internal control functions where they are not part of the management body and, where identified by relevant institutions in a risk-based approach, other key function holders) who have a significant influence over the direction of the business. These assessments are considered to be proportionate to ensure robust governance arrangements that ensure the

effective and prudent management of institutions as required in particular by Articles 74, 88 and 91 of Directive 2013/36/EU.

12. Where the Guidelines refer to the CEO, CFO, heads of internal control functions and other key function holders, they do not intend to impose the appointment of such persons unless prescribed by the relevant EU or national law. If activities of an internal control function are performed by an outsourcing provider, the management body retains responsibility for the activities performed on behalf of the institution.

13. Other than for the purposes of the legislation applicable to institutions specifically under Directive 2013/36/EU and Directive 2014/65/EU, the Guidelines do not aim to interfere with other legislation such as social, company or labour law, which needs to be complied with by institutions together with other and independently of EU legislation. Those laws in Member States appear to be divergent across the EU and limit the possible level of harmonisation in this particular area.

14. The Guidelines take into account the European Commission's recommendation of 15 February 2005[2] on the role of non-executive or supervisory directors of listed companies and on the committees of the supervisory board, and the results of the EBA's review of its Guidelines on the assessment of the suitability of members of the management body and key function holders of credit institutions.

15. The Guidelines also take into account the changes introduced by Directive 2019/878/EU with regard to the consideration of money laundering and terrorist financing risks and criteria for assessing the independence of mind of members of the management body.

Legal basis

16. To further harmonise the assessment of suitability within the EU banking and securities sector in line with the requirements introduced by Directive 2013/36/EU and Directive 2014/65/EU, a mandate is given to the EBA to issue Guidelines on the notions of suitability jointly with ESMA in line with Article 91(12) of Directive 2013/36/EU and Article 9(1) of Directive 2014/65/EU. The joint adoption of these Guidelines is related to the relevant competences of the EBA and ESMA. Where requirements of the Guidelines apply to institutions that are subject to Directive 2013/36/EU, but not to institutions that are subject only to Directive 2014/65/EU, the Guidelines refer to credit institutions.

17. Article 9(1) of Directive 2014/65/EU specifies that competent authorities granting authorisation in accordance with Article 5 of this Directive shall ensure that investment firms and their management bodies comply with Article 88 and Article 91 of Directive 2013/36/EU. Investment firms that are not directly subject to the requirements of Directive 2013/36/EU

[2] Commission Recommendation 2005/162/EC, available under the following link: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:052:0051:0063:EN:PDF

are also therefore subject to the same suitability requirements as institutions that are subject to Directive 2013/36/EU.

18. Article 9(3) of Directive 2014/65/EU requires that the management body of an investment firm defines, oversees and is accountable for the implementation of governance arrangements that ensure effective and prudent management of the investment firm including the segregation of duties in the investment firm and the prevention of conflicts of interest, and in a manner that promotes the integrity of the market and the interest of clients.

19. Article 16(2) of Directive 2014/65/EU requires investment firms to establish adequate policies and procedures to ensure compliance of firms including their managers, employees and tied agents with their obligations under this Directive.

20. According to Article 13 of Directive 2013/36/EU, competent authorities shall refuse to grant authorisation as a credit institution if the members of the management body do not meet the requirements referred to in Article 91(1) of that Directive.

21. According to Article 9(4) of Directive 2014/65/EU, the competent authority shall refuse authorisation as an investment firm if it is not satisfied that the members of the management body of the investment firm are of good repute, possess sufficient knowledge, skills and experience, and commit sufficient time to performing their functions in the investment firm, or if there are objective and demonstrable grounds for believing that the management body of the firm may pose a threat to its effective, sound and prudent management and to the adequate consideration of the interest of its clients and the integrity of the market.

22. Article 74(1) of Directive 2013/36/EU requires that institutions subject to that Directive shall have robust internal governance arrangements, including a clear organisational structure with well-defined, transparent and consistent lines of responsibility, and mandates the EBA to develop Guidelines thereon.

23. Article 91(1) of Directive 2013/36/EU requires that institutions, financial holding companies and mixed financial holding companies have the primary responsibility for ensuring that members of the management body shall at all times be of good repute and possess sufficient knowledge, skills and experience to perform their duties, and that they meet the requirements in paragraphs (2) to (8) of this Article. In addition, Article 91(1) of this Directive requires that 'where members of the management body do not fulfil the requirements set out in this paragraph, competent authorities shall have the power to remove such members from the management body. The competent authorities shall in particular verify whether the requirements set out in this paragraph are still fulfilled where they have reasonable grounds to suspect that money laundering or terrorist financing is being or has been committed or attempted, or there is increased risk thereof in connection with that institution.' The same requirements apply to investment firms according to Article 9(1) of Directive 2014/65/EU.

24. Article 91(2) to (8) of Directive 2013/36/EU requires all members of the management body to commit sufficient time to performing their functions in the institution, limits the number of

mandates a member of the management body of a significant CRD institution can hold, requires adequate collective knowledge, skills and experience to be able to understand the institution's activities, including the main risks, and requires them to act with honesty, integrity and independence of mind. Being a member of affiliated companies or affiliated entities does not in itself constitute an obstacle to acting with independence of mind.[3]

25. In accordance with Article 91(1) and Article 121 of Directive 2013/36/EU, members of the management body of a financial holding company or mixed financial holding company should be of sufficiently good repute and possess sufficient knowledge, skills and experience as referred to in Article 91(1) of that Directive to perform those duties, taking into account the specific role of a financial holding company or mixed financial holding company.

26. Furthermore, institutions are required under Article 91(9) and (10) of Directive 2013/36/EU to devote adequate human and financial resources to the induction and training of members of the management body, to engage a broad set of qualities and competences when recruiting members to the management body and for that purpose to put in place a policy promoting diversity on the management body, including but not limited to the aspect of gender balance.

27. In line with Article 109(2) of Directive 2013/36/EU, these Guidelines apply on a sub-consolidated and consolidated basis, taking into account the prudential scope of consolidation. For this purpose, the EU parent undertakings or the parent undertaking in a Member State should ensure that internal governance arrangements, processes and mechanisms in their subsidiaries are consistent, well integrated and adequate within the group. In particular, they shall ensure that parent undertakings and subsidiaries subject to this Directive implement such governance arrangements, processes and mechanisms in their subsidiaries not subject to this Directive, including those established in third countries (which includes offshore financial centres). These arrangements, processes and mechanisms shall also be consistent and well integrated, and those subsidiaries shall also be able to produce any data and information relevant to the purpose of supervision.

28. The present Guidelines take into account the regulatory technical standards (RTS) under Article 8(2) of Directive 2013/36/EU on the information to be provided for the authorisation of credit institutions; the implementing technical standards (ITS) under Article 8(3) of Directive 2013/36/EU on standard forms, templates and procedures for the provision of the information required for the authorisation of credit institutions; the RTS under Article 7(4) of Directive 2014/65/EU on information and requirements for the authorisation of investment firms; the ITS under Article 7(5) of Directive 2014/65/EC; the RTS under Article 80(3) of Directive 2014/65/EU on the exchange of information between competent authorities when cooperating in supervisory activities, on-the-spot verifications and investigations; and the

[3] See also EBA Guidelines on Internal Governance and the conflict of interest policy under Section 13.

findings and recommendations made in the EBA's report[4] on its review of the EBA Guidelines on the assessment of the suitability of members of the management body and key function holders (EBA/GL/2012/06). They also take into account international governance standards and principles[5].

29. These Guidelines should be read in conjunction with other relevant EBA and ESMA Guidelines, in particular the EBA's Guidelines covering internal governance, including remuneration, risk management and outsourcing, the supervisory review and evaluation process (SREP), anti-money laundering and counter terrorist financing and disclosures.

Rationale and objective of the Guidelines

30. As required by Article 91 of Directive 2013/36/EU and Article 9 of Directive 2014/65/EU, the Guidelines specify the notion of sufficient time commitment, the notion of adequate individual and collective knowledge, skills and experience; the notions of honesty, integrity and independence of mind with which the members of the management body should comply; the notion of adequate human and financial resources for induction and training; and the notion of diversity which is to be taken into account when recruiting members of the management body and the power of the competent authority to remove members of the management body.

31. The Guidelines aim to establish harmonised criteria for the assessment of the suitability of members of the management body and key function holders, to ensure sound assessment processes as part of the institution's governance arrangements.

32. The Guidelines encompass the assessment of members of the management body in its management function and members of the management body in its supervisory function. The suitability of both functions is equally important for the well-functioning of an institution. As the members of the management body may have specific roles, the assessment process and criteria can differ. Members of the management body representing a Member State, a public authority of a Member State or a public entity must also be suitable at all times.

33. All staff of institutions should be suitable for performing their job. The heads of internal control functions, i.e. risk management, compliance and audit functions, have, under the overall responsibility of the management body, a key role in ensuring that the institution adheres to its risk strategy and complies with regulatory and other legislative requirements, in ensuring robust governance arrangements and in supporting the management body. Their suitability is therefore of utmost importance and more detailed suitability elements and processes are necessary. This also applies to the CFO where he or she is not part of the

[4] The review report can be accessed at: https://www.eba.europa.eu/documents/10180/950548/EBA+Peer+Review+Report+on+suitability.pdf

[5] E.g. the corporate governance principles for banks, published in July 2015 by the Basel Committee of Banking Supervisors.

management body. Where identified on a risk-based approach by relevant institutions, the suitability of other key function holders should also be ensured, as those individuals have significant influence over the direction of the institution under the overall responsibility of the management body.

34. The ongoing suitability of all members of the management body and key function holders is crucial for the proper functioning of an institution, and therefore institutions are required to assess the suitability of all these persons.

35. Events which may potentially affect the required knowledge, skills and experience of a member of the management body or a key function holder, or that person's reputation, honesty, integrity, independence of mind or time commitment, should lead to a re-assessment by the institution of the suitability of that person and potentially a re-assessment of the collective suitability of the management body.

36. Members of the management body should have sufficient time to carry out their respective responsibilities appropriately. Members of the management body should have sufficient time to cover all the necessary subjects in depth, and in particular the management of the main risks. For CRD institutions, this includes all material risks addressed in Directive 2013/36/EU and Regulation (EU) No 575/2013, including the valuation of assets and the use of external credit ratings and internal models relating to those risks.

37. Members of the management body should also have sufficient time to acquire, maintain and enhance their knowledge and skills – if necessary through additional training. This is to ensure that they understand the institution's structure and development, and relevant changes in the legal and economic environment, as well as to maintain up-to-date knowledge and to deliver a high level of performance at all times.

38. All members of the management body and key function holders must be of good repute, regardless of the nature, scale and complexity of the institution and their specific position.

39. The assessment of adequate knowledge, skills and experience and the other notions described in Article 91(12) of Directive 2013/36/EU should take into account the nature, scale and complexity of the institution's activities, in line with the application of the proportionality principle and the specific position concerned.

40. The members of the management body and key function holders should have sufficient knowledge, skills and experience to fulfil their individual position in an institution, and the management body must collectively possess adequate knowledge, skills and experience to understand the institution's activities including the main risks. These knowledge, skills and experience should be kept up to date, taking into account changes in the nature, scale and complexity of the institution's activities. Adequate knowledge, skills and experience cannot be determined by having experience expressed only in terms of a period of time in a certain position or a specific educational degree, but need to be assessed on a case-by-case basis.

41. As part of the overall suitability assessment, individuals proposed as members of the management body of an institution should also be able to demonstrate independence of mind to be able to effectively assess, challenge, oversee and monitor management decision-making.

42. Institutions need to provide sufficient resources for induction and training of members of the management body. Receiving induction should make new members familiar with the specificities of the institution's structure, how the institution is embedded in its group structure (where relevant), and business and risk strategy. Ongoing training should aim to improve and keep up to date the qualifications of members of the management body so that at all times the management body collectively meets or exceeds the level that is expected. Ongoing training is a necessity to ensure sufficient knowledge of changes in the relevant legal and regulatory requirements, markets and products, and the institution's structure, business model and risk profile.

43. While the diversity of the management body is not a criterion for the assessment of the members' individual suitability, diversity should also be taken into account when selecting and assessing members of management bodies. Diversity within the management body leads to a broader range of experience, knowledge, skills and values, and is one of the factors that enhance the functioning of the management body and address the phenomenon of group-think. Thus, a more diverse management body, in its supervisory and management functions, can reduce the phenomenon of groupthink and facilitate independent opinions and constructive challenging in the process of decision-making. Diversity, together with an adequate consideration of inclusion, will help to ensure that the diverse perspectives and opinions of the members of the management body are taken into account within the management body.

44. A diverse composition within the management body could be achieved by taking into account such aspects as educational and professional background, age, gender and geographical provenance.

45. In this respect a gender-balanced composition of the management body is of particular importance. This is mentioned in Directive 2013/36/EU as well as in Directive 2014/65/EU and is also expressed by other initiatives at EU level that aim to improve gender diversity[6]. Institutions should respect the principle of equal opportunities for any gender and take measures to ensure a more gender-balanced composition of staff in management positions in order to ensure that there is overall a more gender-balanced pool of candidates for positions within the management body.

46. Independent directors within the supervisory function of the management body help to ensure that the interests of all internal and external stakeholders are considered.

[6] More information on gender equality can be found under: http://ec.europa.eu/justice/gender-equality/

Independence of mind ensures that independent judgement is exercised. In this respect it is important to prevent, manage or mitigate actual or potential conflicts of interest.

47. Institutions are primarily responsible for ensuring that members of the management body fulfil the suitability criteria as defined in the Guidelines on an ongoing basis, and need to establish appropriate policies and procedures for this purpose. The nomination committee required for significant CRD institutions has a key role in assessing the suitability, diversity and composition of the management body. Where no nomination committee is established, the management body in its supervisory function as part of the institution's governance arrangements is responsible for fulfilling the tasks that are normally performed by the nomination committee, to ensure the effective and prudent management of the institution and the effectiveness of the institution's governance arrangements.

48. Institutions should assess the suitability of proposed members and members of the management body prior to their appointment or when duly justified as soon as practicable, but in any case within one month of the appointment, and should inform the competent authority of the proposed appointment or without delay after the appointment. Indeed, where shareholders nominate and appoint members of the management body at the general assembly, a prior assessment may not always be possible.

49. Competent authorities should have processes in place for the assessment of the suitability of members of the management body of all institutions and the heads of internal control functions and the CFOs of significant CRD institutions, where they are not part of the management body, as set out in the Guidelines. Competent authorities may choose to assess a broader scope of key function holders. In particular competent authorities' processes should ensure that all these persons are assessed in a timely manner.

50. The Guidelines do not harmonise the point in time when assessments of the suitability of members of the management body should be made. While an assessment before a member takes up the position would ensure that the member is suitable from the beginning of his or her mandate, the Guidelines took into account the practicalities under such a process. A higher level of harmonisation would be desirable within the banking union, but could not be achieved in the current circumstances due, among other things, to the existing fragmented national frameworks.

51. The suitability assessment conducted by competent authorities is prudential and preventive in nature and highly dependent on the available information. It is distinct from criminal or administrative infringement procedures. Institutions have to ensure that members of the management body and key function holders are suitable for their respective roles. When concerns have been raised, it is up to the institution to demonstrate that the individual meets reputation, honesty and integrity standards. In this respect, competent authorities are also required to verify whether the suitability requirements under CRD and MiFID as further specified in these Guidelines are still fulfilled where they have reasonable grounds to suspect

that money laundering or terrorist financing is being or has been committed or attempted, or there is increased risk thereof in connection with that institution.

52. Preventing money laundering and terrorist financing is essential for maintaining the stability and integrity of the financial system. Involvement of an institution in money laundering and terrorist financing might have an impact on its viability and the trust in the financial system. Directive (EU) 2015/849 (AMLD), in line with international standards for the prevention of money laundering and countering terrorist financing (AML/CFT) set by the Financial Action Task Force, stresses the importance of senior management taking responsibility for the identification, assessment and management of ML/TF risks and requires, without prejudice to the national transposition of Directive 2015/849/EU, institutions to identify the member of the management board[7] who is responsible for the implementation of the laws, regulations and administrative provisions necessary to comply with AMLD.

53. Without prejudice to the national transposition of Directive 2015/849/EU, a member of the management body should be identified as the individual responsible[8] for the implementation of the laws, regulations and administrative provisions necessary to comply with AMLD.[9].

54. Against this background, institutions and competent authorities should be aware of the negative impact on an institution's safety and soundness that could be produced in the event of a possible involvement of a member of the management body and/or a key function holder in ML/TF or of the institution being unwilling to take robust action to manage the risk of the institution's involvement in ML/TF.

55. Together with competent authorities responsible for ensuring compliance with anti-money laundering requirements under Directive (EU) 2015/849 (AML Supervisors) and other relevant bodies (such as Financial Intelligence Units), competent authorities have an important role to play in identifying and tackling weaknesses in institutions' AML/CFT systems and controls. In this context, the Guidelines clarify in line with Directive 2013/36/EU that the knowledge, experience and skill requirements of at least the member of the management body who is responsible for the implementation of the laws, regulations and administrative provisions necessary to comply with AMLD include identifying, managing and mitigating money laundering and financing of terrorism risk. The Guidelines also clarify that the ability to understand ML/TF risks is part of the assessments of the collective suitability of the members of the management body and the assessment of key function holders.

[7] For consistency, the Guidelines refer to the management body.

[8] The identification of a member of the management board as responsible for AML is for the purpose of allocation of duties and is without prejudice to the final responsibility of the management body for the day-to-day management of the institution and its responsibility for all activities of the institution.

[9] See also EBA Guidelines on Internal Governance.

56. It is crucial for competent authorities when assessing the suitability of members of the management body of all institutions and heads of internal control functions and the CFO of significant CRD institutions, where they are not part of the management body, to have access to and to assess specific information about the persons.

57. The Guidelines set out in Annex III the documentation and information to be provided for initial[10] and ongoing assessments. However, competent authorities are not limited to this information; e.g. within the supervisory process, a competent authority can also gather additional information on the suitability of persons. Relevant information that can be taken into account in the assessment of suitability can also come from other sources, such as internal whistleblowing or from external sources, when this information is deemed to be reliable.

58. It is important to ensure that institutions and competent authorities intervene if a member of the management body, a member proposed for such a position or the management body collectively is not suitable. This also applies to key function holders. Measures available to competent authorities may differ between Member States depending on the applicable national laws. Such measures can range from imposing conditions to ordering an institution to take action to improve the skills and knowledge of a member, or to transferring responsibilities between members, prohibiting a member or an institution from performing tasks, temporarily banning or replacing a member of the management body, or ultimately withdrawing the institution's authorisation. However, if a member of the management body is not suitable, competent authorities have the power to remove such a person from that position.

59. The Guidelines also take into account the recovery and resolution framework introduced by Directive 2014/59/EU (BRRD) and provide further guidance in this regard. During resolution and also as part of early intervention measures, the suitability of newly appointed members of the management body and of the management body collectively is relevant in accordance with Articles 27, 28 and 34(1)(c) of BRRD. The Guidelines aim to ensure that such assessments are conducted in an appropriate timeframe, considering the urgency of the situation, and that there is an appropriate interaction between competent authorities and resolution authorities. In contrast, the assessment of special managers under Article 35(1) of BRRD falls exclusively within the competence of resolution authorities, which appoint a special manager under the conditions of Article 35(1) of BRRD, namely an assessment of whether the special manager has the qualifications, ability and knowledge required to carry out his or her functions. This appointment does not depend on the assessment of the competent authority.

[10] Please refer to the draft RTS under Article 7(4) of Directive 2014/65/EU and draft ITS under Article 7(5) of Directive 2014/65/EU on the information to be provided at authorisation: http://ec.europa.eu/finance/securities/docs/isd/mifid/rts/160714-rts-authorisation_en.pdf and https://www.esma.europa.eu/sites/default/files/library/2015-1858_-_final_report_-_draft_implementing_technical_standards_under_mifid_ii.pdf . See also the Consultation Paper on the draft RTS on authorisation published by the EBA.

EBA/GL/2021/06

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Guidelines

on the assessment of the suitability of members of the management body and key function holders

1. Compliance and reporting obligations

Status of these Guidelines

1. These Guidelines are issued pursuant to Article 16 of the ESA Regulations[11]. In accordance with Article 16(3), competent authorities and financial institutions shall make every effort to comply with the Guidelines.

2. These Guidelines set out appropriate supervisory practices within the European System of Financial Supervision and regarding how Union law should be applied. Competent authorities to which these Guidelines apply should comply by incorporating them into their supervisory practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where Guidelines are directed primarily at institutions.

Reporting requirements

3. According to Article 16(3) of Regulation (EU) No 1093/2010 and Article 16(3) of Regulation (EU) No 1095/2010, competent authorities must notify the EBA and ESMA as to whether they comply or intend to comply with these Guidelines, or otherwise with reasons for non-compliance, by ([dd.mm.yyyy]). In the absence of any notification by this deadline, the competent authority will be considered to be non-compliant by the EBA and ESMA. Notifications should be sent by submitting the form available on the EBA website to compliance@eba.europa.eu with the reference 'EBA/GL/2021/06' and the form available on the ESMA website to managementbody.guidelines@esma.europa.eu with the reference 'ESMA35-36-2319'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authority. Any change in the status of compliance must also be reported to the EBA and ESMA.

4. Notifications will be published on the EBA website, in line with Article 16(3) of Regulation (EU) No 1093/2010, and on the ESMA website, in line with Article 16(3) of Regulation (EU) No 1095/2010.

[11] ESMA - Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC.

EBA - Regulation (EU) No 1093/2010 of The European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC.

2. Subject matter, scope and definitions

Subject matter

5. These Guidelines specify further, in accordance with Article 91(12) of Directive 2013/36/EU[12] and Article 9(1) second subparagraph of Directive 2014/65/EU[13], the requirements regarding the suitability of members of the management body in particular, the notions of sufficient time commitment; honesty, integrity and independence of mind of a member of the management body; adequate collective knowledge, skills and experience of the management body; and adequate human and financial resources devoted to the induction and training of such members. The notion of diversity to be taken into account for the selection of members of the management body is also specified in accordance with the above-mentioned articles.

6. The Guidelines also specify elements regarding the suitability of the heads of internal control functions and the chief financial officer (CFO), where they are not part of the management body, and, where identified on a risk-based approach by those institutions, of other key function holders, as part of the governance arrangements referred to in Articles 74 and 88 of Directive 2013/36/EU and Articles 9(3), 9(6) and 16(2) of Directive 2014/65/EU, and on the related assessment processes, governance policies and practices, including the principle of independence applicable to certain members of the management body in its supervisory function.

Addressees

7. These Guidelines are addressed to competent authorities as defined in Article 4 (2) (i) of Regulation 1093/2010 and in Article 4(3) (i) of Regulation 1095/2010, to financial institutions as defined in Article 4(1) of that Regulation that are institutions for the purposes of the application of Directive 2013/36/EU as defined in point 3 of Article 3(1) of Directive 2013/36/EU also having regard to Article 3 (3) of that Directive, and to financial market participants as defined in Article 4(1) of Regulation 1095/2010 that are investment firms as defined in Article 4(1)(1) of Directive 2014/65/EU ('institutions').

[13] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast) (OJ L 173, 12.6.2014, p.349).

Scope of application

8. Unless otherwise specified as directly referring to either CRD institutions, or relevant institutions, these Guidelines apply to all institutions, as defined therein.

9. CRD institutions subject to Directive 2013/36/EU should comply with these Guidelines on an individual, sub-consolidated and consolidated basis, including their subsidiaries not subject to Directive 2013/36/EU, even if they are established in a third country, including offshore financial centres, in accordance with Article 109 of that Directive.

10. The Guidelines intend to embrace all existing board structures and do not advocate any particular structure. The Guidelines do not interfere with the general allocation of competences in accordance with national company law. Accordingly, they should be applied irrespective of the board structures used (unitary and/or a dual board structure and/or other structures) across Member States. The management body, as defined in points (7) and (8) of Article 3(1) of Directive 2013/36/EU, should be understood as having management (executive) and supervisory functions (non-executive)[14].

11. The terms 'management body in its management function' and 'management body in its supervisory function' are used throughout these Guidelines without referring to any specific governance structure and references to the management (executive) or supervisory (non-executive) function should be understood as applying to the bodies or members of the management body responsible for that function in accordance with national law.

12. In Member States where the management body delegates, partially or fully, the executive functions to a person or an internal executive body (e.g. chief executive officer (CEO), management team or executive committee), the persons who perform those executive functions on the basis of that delegation should be understood as constituting the management function of the management body. For the purposes of these Guidelines, any reference to the management body in its management function should be understood as including also the members of such an executive body or the CEO, as defined in these Guidelines, even if they have not been proposed or appointed as formal members of the institution's governing body or bodies under national law.

13. In Member States where some responsibilities assigned in these Guidelines to the management body are directly exercised by shareholders, members or owners of the institution rather than the management body, institutions should ensure that such responsibilities and related decisions are exercised, as far as possible, in line with the Guidelines applicable to the management body.

[14] See also recital 56 of Directive 2013/36/EU.

14. The definitions of CEO, CFO and key function holder used in these Guidelines are purely functional and are not intended to impose the appointment of those officers or the creation of such positions unless prescribed by relevant EU or national law.

15. Any references to 'risks' in these Guidelines should include also money laundering and terrorist financing risks and environmental, social and governance risk factors.

Definitions

16. Unless otherwise specified, terms used and defined in Directive 2013/36/EU, Regulation (EU) 575/2013 and Directive 2014/65/EU have the same meaning in the Guidelines. In addition, for the purposes of these Guidelines, the following definitions apply:

Institutions	means institutions as defined in point 3 of Article 3(1) of Directive 2013/36/EU having also regard to Article 3(3) of that Directive, and investment firms as defined in Article 4(1)(1) of Directive 2014/65/EU.
CRD institutions	means institutions as defined in point 3 of Article 3(1) of Directive 2013/36/EU and having regard to Article 3(3) of that Directive, and investment firms as defined in Article 4(1)(1) of Directive 2014/65 to which Article 2(2) of Directive 2019/2034 applies.
Relevant institutions	means institutions as defined in point 3 of Article 3(1) of Directive 2013/36/EU having also regard to Article 3(3) of that Directive, and investment firms as defined in Article 4(1)(1) of Directive 2014/65/EU that do not meet all of the conditions for qualifying as small and non-interconnected investment firms under Article 12(1) of Regulation (EU) 2019/2033.
Significant CRD institutions	Means CRD institutions referred to in Article 131 of Directive 2013/36/EU (global systemically important institutions (G-SIIs), and other systemically important institutions (O-SIIs), and, as appropriate, other CRD institutions determined by the competent authority or national law, based on an assessment of the institutions' size and internal organisation, and the nature, scope and complexity of their activities, and for the purposes of Article 91 of Directive 2013/36/EU financial holding companies and mixed financial holding companies that meet one of the aforementioned conditions.
Listed relevant institutions and listed institutions	means relevant institutions or respectively institutions whose financial instruments are admitted to trading on a regulated market as referred to in the list to be

	published by ESMA in accordance with Article 56 of Directive 2014/65/EU, in one or more Member States.[15]
Staff	means all employees of an institution and its subsidiaries within its scope of consolidation, including subsidiaries not subject to Directive 2013/36/EU, and all members of the management body in its management function and in its supervisory function.
Suitability	means the degree to which an individual is deemed to have good repute and to have, individually and collectively with other individuals, adequate knowledge, skills and experience to perform his/her/their duties. Suitability also covers the honesty, integrity and independence of mind of each individual and his or her ability to commit sufficient time to perform his or her duties.
Member	means a proposed or appointed member of the management body.
Chief executive officer (CEO)	means the person who is responsible for managing and steering the overall business activities of an institution.
Key function holders	means persons who have significant influence over the direction of the institution, but who are neither members of the management body nor the CEO. They include the heads of internal control functions and the CFO, where they are not members of the management body, and, where identified on a risk-based approach by relevant institutions, other key function holders. Other key function holders might include heads of significant business lines, European Economic Area/European Free Trade Association branches, third country subsidiaries and other internal functions.
Heads of internal control functions	means the persons at the highest hierarchical level in charge of effectively managing the day-to-day operation of the independent risk management, compliance and internal audit functions.
Chief financial officer (CFO)	means the person who is overall responsible for managing all of the following activities: financial resources management, financial planning and financial reporting.

[15] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

Prudential consolidation	means the application of the prudential rules set out in Directive 2013/36/EU and Regulation (EU) No 575/2013 on a consolidated or sub-consolidated basis, in accordance with Part 1, Title 2, Chapter 2 of Regulation (EU) No 575/2013.
Consolidating institution	means an institution that is required to abide by the prudential requirements on the basis of the consolidated situation in accordance with Part One, Title II, Chapter 2 of Regulation (EU) No 575/2013[16] or by the prudential requirements on the basis of the consolidated situation in accordance with Article 7 of Regulation (EU) 2019/2033.
Diversity	means the situation whereby the characteristics of the members of the management body, including their age, gender, geographical provenance and educational and professional background, are different to an extent that allows a variety of views within the management body.
Geographical provenance	means the region where a person has gained a cultural, educational or professional background.
Induction	means any initiative or programme to prepare a person for a specific new position as a member of the management body.
Training	means any initiative or programme to improve the skills, knowledge or competence of the members of the management body, on an ongoing or ad-hoc basis.
Shareholder	means a person who owns shares in an institution or, depending on the legal form of an institution, other owners or members of the institution.
Directorship	means a position as a member of the management body of an institution or another legal entity. Where the management body, depending on the legal form of the entity, is composed by a single person, this position is also counted as a directorship.
Non-executive directorship	means a directorship in which a person is responsible for overseeing and monitoring management decision-making without executive duties within an entity.

[16] See also RTS on prudential consolidation under: https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Draft%20Technical%20Standards/2021/973355/Final%20Report%20Draft%20RTS%20methods%20of%20consolidation.pdf

Executive directorship	means a directorship in which a person is responsible for effectively directing the business of an entity.
AML/CFT supervisor	means a competent authority responsible for the supervision of institutions' compliance with provisions of Directive (EU) 2015/849.

3. Implementation

Date of application

17. These Guidelines apply from 31 December 2021.

Repeal

The EBA Guidelines on the assessment of the suitability of members of the management body and key function holders (EBA/GL/2017/12) of 26 September 2017 are repealed with effect from 31 December 2021.

4. Guidelines

Title I - Application of the proportionality principle

18. The proportionality principle aims to match governance arrangements consistently with the individual risk profile and business model of the institution and takes into account the individual position for which an assessment is made so that the objectives of the regulatory requirements are effectively achieved.

19. Institutions should take into account their size, their internal organisation and the nature, scale and complexity of their activities when developing and implementing policies and processes set out in these Guidelines. Significant institutions should have more sophisticated policies and processes, while in particular small and less complex institutions may implement simpler policies and processes. Institutions should note that the size or systemic importance of an institution may not, by itself, be indicative of the extent to which an institution is exposed to risks. Those policies and processes should, however, ensure compliance with the criteria specified in these Guidelines to assess the suitability of members of the management body and key function holders and the elements to take diversity into account when recruiting members to the management body and to provide sufficient resources for their induction and training.

20. All members of the management body and key function holders should, in any event, be of sufficiently good repute and have honesty and integrity, and all members of the management body should have independence of mind regardless of the institution's size, internal organisation and the nature, scope and complexity of its activities, and the duties and responsibilities of the specific position, including memberships held in committees of the management body.

21. For the purpose of applying the principle of proportionality and in order to ensure the appropriate implementation of the governance requirements of Directive 2013/36/EU and Directive 2014/65/EU which the Guidelines further specify, the following criteria should be taken into account by institutions and competent authorities:

    a. the size of the institution in terms of the balance sheet total, the client assets held or managed, and/or the volume of transactions processed by the institution or its subsidiaries within the scope of prudential consolidation;

    b. the legal form of the institution, including whether or not the institution is part of a group and, if so, the proportionality assessment for the group;

    c. whether the institution is listed or not;

d. the type of authorised activities and services performed by the institution (see also Annex 1 of Directive 2013/36/EU and Annex 1 of Directive 2014/65/EU);

e. the geographical presence of the institution and the size of the operations in each jurisdiction;

f. the underlying business model and strategy, the nature and complexity of the business activities, and the institution's organisational structure;

g. the risk strategy, risk appetite and actual risk profile of the institution, also taking into account the result of the annual capital adequacy assessment;

h. the authorisation for institutions to use internal models for the measurement of capital requirements, where relevant;

i. the type of clients[17]; and

j. the nature and complexity of the products, contracts or instruments offered by the institution.

Title II – Scope of suitability assessments by institutions

1. The institutions' assessment of the individual suitability of members of the management body

22. Institutions should have the primary responsibility for ensuring, in accordance with Article 91(1) of Directive 2013/36/EU, that the members of the management body are individually suitable at all times and should assess or re-assess the suitability, in particular:

    a. when applying for authorisation to take up the business;

    b. when material changes to the composition of the management body occur, including:

[17] Directive 2014/65/EU defines a client in Article 4(1)(9), a professional client in Article 4(1)(10) and a retail client in Article 4(1)(11). Recital 103 of Directive 2014/65/EU also specifies that an eligible counterparty should be considered to be acting as a client, as described in Article 30 of that Directive.

i. when appointing new members of the management body, including as a result of a direct or indirect acquisition or increase of a qualifying holding in an institution[18]. This assessment should be limited to newly appointed members;

ii. when re-appointing members of the management body, if the requirements of the position have changed or if the member is appointed to a different position within the management body. This assessment should be limited to the members whose position has changed and to the analysis of the relevant aspects, taking into account any additional requirements for the position;

c. on an ongoing basis in accordance with paragraphs 26 and 27.

23. The initial and ongoing assessment of the individual suitability of the members of the management body is the responsibility of institutions, without prejudice to the assessment carried out by competent authorities for supervisory purposes.

24. Institutions should assess, in particular, whether or not the members:

a. are of sufficiently good repute;

b. possess sufficient knowledge, skills and experience to perform their duties;

c. are able to act with honesty, integrity and independence of mind to effectively assess and challenge the decisions of the management body in its management function and other relevant management decisions where necessary and to effectively oversee and monitor management decision-making;

d. are able to commit sufficient time to performing their functions in the institution and, where the institution is significant, whether or not the limitation of directorships under Article 91(3) of Directive 2013/36/EU is being complied with.

25. Where an assessment is made for a specific position, the assessment of sufficient knowledge, skills, experience and time commitment should take into account the role of the specific position concerned. The level and nature of the sufficient knowledge, skills and experience required from a member of the management body in its management function may differ from that required from a member of the management body in its supervisory function, in particular if these functions are assigned to different bodies.

[18] Please also refer to the (draft) RTS under Article 7(4) of Directive 2014/65/EU and draft ITS under Article 7(5) of Directive 2014/65/EU on the procedures for granting and refusing requests for authorisation of investment firms, available on ESMA's website. See also (draft) ITS on the procedures and forms in respect of acquisitions and increases of qualifying holdings in credit institutions and investment firms respectively, available on the EBA and ESMA websites: https://www.eba.europa.eu/regulation-and-policy/other-topics/its-on-the-procedures-and-forms-in-respect-of-acquisitions-and-increases-of-qualifying-holdings and https://www.esma.europa.eu/sites/default/files/library/2015/11/2015-613_final_report_and_assessment_rts_its.pdf

26. Institutions should monitor on an ongoing basis the suitability of the members of the management body to identify, in the light of any relevant new fact, situations where a re-assessment of their suitability should be performed. In particular, a re-assessment should be performed in the following cases:

    a. when there are concerns regarding the individual or collective suitability of the members of the management body;

    b. in the event of a material impact on the reputation of a member of the management body, or the institution, including cases where members do not comply with the institution's conflict of interest policy;

    c. where there are reasonable grounds to suspect that money laundering or terrorist financing has been or is being committed or attempted or there is an increased risk thereof in connection with that institution and in particular in situations where information available suggests that the institution:

        i. has not implemented appropriate internal controls or oversight mechanisms to monitor and mitigate ML/TF risks (e.g. identified by supervisory findings from on-site inspections or off-site inspections, supervisory dialogue or in the context of sanctions);

        ii. has been found to be in breach of its AML/CFT obligations in the home or host Member State or in a third country;

        iii. has materially changed its business activity or business model in a manner that suggests that its exposure to ML/TF risk has significantly increased; or

    d. in any event that can otherwise materially affect the suitability of the member of the management body.

27. Institutions should also re-assess the sufficient time commitment of a member of the management body if that member takes on an additional directorship or starts to perform new relevant activities, including political ones.

28. Institutions should base their suitability assessments on the notions defined in Title III, taking into account the diversity of the management body as specified in Title V, and should implement a suitability policy and processes as set out, respectively, in Titles VI and VII.

2. The institutions' assessment of the collective suitability of the management body

29. Institutions should ensure, in fulfilling the obligation set out in Article 91(7) of Directive 2013/36/EU, that at all times the management body collectively possesses adequate knowledge, skills and experience to be able to understand the institution's activities, including

the main risks. Notwithstanding the experience, knowledge and skills requirement for each member of the management body, institutions should ensure that the overall composition of the management body reflects an adequately broad range of knowledge, skills and experience to understand the institution's activities, including main risks.

30. Institutions should assess or re-assess the collective suitability of the management body, in particular:

    a. when applying for authorisation to take up the business, including situations where additional activities are authorised;

    b. when material changes to the composition of the management body occur, including:

        i. when appointing new members of the management body, including as a result of a direct or indirect acquisition or increase of a qualifying holding in an institution[19];

        ii. when re-appointing members of the management body, if the requirements of the position have changed or if the members are appointed to a different position within the management body;

        iii. when appointed or reappointed members cease to be members of the management body;

    c. on an ongoing basis, in accordance with paragraph 31.

31. Institutions should re-assess the collective suitability of the members of the management body, in particular, in the following cases:

    a. when there is a material change to the institution's business model, risk appetite or strategy or structure at individual or group level;

    b. as part of the review of the internal governance arrangements by the management body;

    c. where there are reasonable grounds to suspect that money laundering or terrorist financing has been or is being committed or attempted or there is an increased risk thereof in connection with that institution and in particular in situations where information available suggests that the institution

        i. has not implemented appropriate internal controls or oversight mechanisms to monitor and mitigate ML/TF risks (e.g. identified by supervisory findings from on-site inspections or off-site inspections, supervisory dialogue or in the context of sanctions);

[19] See footnote 17.

ii. has been found to be in breach of its AML/CFT obligations in the home or host Member State or in a third country; or

iii. has materially changed its business activity or business model in a manner that suggests that its exposure to ML/TF risk has significantly increased;

d. in any event that can otherwise materially affect the collective suitability of the management body.

32. Where re-assessments of the collective suitability are performed, institutions should focus their assessment on the relevant changes in the institution's business activities, strategies and risk profile and in the distribution of duties within the management body and their effect on the required collective knowledge, skills and experience of the management body.

33. Institutions should base their suitability assessments on the notions defined in Title III and should implement a suitability policy and processes as set out in Titles VI and VII.

34. The assessment of the initial and ongoing collective suitability of the management body is the responsibility of institutions. Where the assessment is also carried out by competent authorities for supervisory purposes, the responsibility to assess and ensure the collective suitability of the management body continues to remain with the institutions.

3. The relevant institutions' assessment of the suitability of key function holders

35. While all institutions should ensure that their staff are able to perform their functions adequately, relevant institutions should specifically ensure that key function holders are of sufficient good repute, have honesty and integrity, and possess sufficient knowledge, skills and experience for their positions at all times and assess the aforementioned elements, in particular:

a. when applying for an authorisation;

b. when appointing new key function holders, including as a result of a direct or indirect acquisition or increase of a qualifying holding in an institution;

c. where necessary, in accordance with paragraph 36.

36. Relevant institutions should monitor on an ongoing basis the reputation, honesty, integrity, knowledge, skills and experience of key function holders to identify, in the light of any relevant new fact, situations where a re-assessment should be performed. In particular a re-assessment should be made in the following cases:

a. where there are concerns regarding their suitability;

b. in the event of a material impact on the reputation of the individual;

c. where there are reasonable grounds to suspect that money laundering or terrorist financing has been or is being committed or attempted or there is an increased risk thereof in connection with that institution and in particular in situations where the institution:

   i. has not implemented appropriate internal controls or oversight mechanisms to monitor and mitigate ML/TF risks (e.g. identified by supervisory findings from on-site inspections or off-site inspections, supervisory dialogue or in the context of sanctions);

   ii. has been found to be in breach of its AML/CFT obligations at home or abroad; or

   iii. has materially changed its business activity or business model in a manner that suggests that its exposure to ML/TF risk has significantly increased;

d. as part of the review of the internal governance arrangements by the management body;

e. in any event that can otherwise materially affect the suitability of the individual.

37. The assessment of the individual reputation, honesty, integrity, knowledge, skills and experience of key function holders should be based on the same criteria as those applied to the assessment of such suitability requirements of the members of the management body. When assessing knowledge, skills and experience, the role and duties of the specific position should be considered.

38. Assessing the initial and ongoing suitability of key function holders is the responsibility of the institutions. Where the assessment for some key function holders is also carried out by competent authorities for supervisory purposes, the responsibility to assess and ensure the suitability of those key function holders continues to remain with the institutions.

Title III – Notions of suitability listed in Article 91(12) of Directive 2013/36/EU

4. Sufficient time commitment of a member of the management body

39. Institutions should assess whether or not a member of the management body is able to commit sufficient time to performing his or her functions and responsibilities including understanding the business of the institution, its main risks and the implications of the business and the risk strategy. Where the person holds a mandate in a significant CRD institution, this should include an assessment to ensure that the limitation of the maximum

number of directorships under Article 91(3) of Directive 2013/36/EU or Article 9(2) of Directive 2014/65/EU, as applicable, is being complied with.

40. Members should also be able to fulfil their duties in periods of particularly increased activity, such as a restructuring, a relocation of the institution, an acquisition, a merger, a takeover or a crisis situation, or as a result of some major difficulty with one or more of its operations, taking into account that in such periods a higher level of time commitment than in normal periods may be required.

41. In the assessment of sufficient time commitment of a member, institutions should take at least the following into account:

    a. the number of directorships in financial and non-financial companies held by that member at the same time, taking into account possible synergies when they are held within the same group, including when acting on behalf of a legal person or as an alternate of a member of the management body;

    b. the size, nature, scope and complexity of the activities of the entity where the member holds a directorship and, in particular, whether or not the entity is a non-EU entity;

    c. the member's geographical presence and the travel time required for the role;

    d. the number of meetings scheduled for the management body;

    e. the directorships in organisations which do not pursue predominantly commercial objectives held by that member at the same time;

    f. any necessary meetings to be held, in particular, with competent authorities or other internal or external stakeholders outside the management body's formal meeting schedule;

    g. the nature of the specific position and the responsibilities of the member, including specific roles such as CEO, chairperson, or chair or member of a committee, whether the member holds an executive or non-executive position, and the need of that member to attend meetings in the companies listed in point (a) and in the institution;

    h. other external professional or political activities, and any other functions and relevant activities, both within and outside the financial sector and both within and outside the EU;

    i. the necessary induction and training;

    j. any other relevant duties of the member that institutions consider to be necessary to take into account when carrying out the assessment of sufficient time commitment of a member; and

k. available relevant benchmarking on time commitment, including the benchmarking provided by the EBA[20].

42. Institutions should record in writing the roles, duties and required capabilities of the various positions within the management body and the expected time commitment required for each position, also taking into account the need to devote sufficient time for induction and training. For this purpose, smaller and less complex institutions may differentiate the expected time commitment only between executive and non-executive directorships.

43. A member of the management body should be made aware of the expected time commitment required to spend on his or her duties. Institutions may require the member to confirm that he or she can devote that amount of time to the role.

44. Institutions should monitor whether the members of the management body commit sufficient time to performing their functions. Preparation for meetings, attendance and the active involvement of members in management body meetings are all indicators of time commitment.

45. An institution should also consider the impact of any long-term absences of members of the management body in its assessment of the sufficient time commitment of other individual members of the management body.

46. Institutions should keep records of all external professional and political positions held by the members of the management body. Such records should be updated whenever a member notifies the institution of a change and when such changes come otherwise to the attention of the institution. Where changes to such positions occur that may reduce the ability of a member of the management body to commit sufficient time to performing his or her function, the institution should re-assess the member's ability to respect the required time commitment for his or her position.

5. Calculation of the number of directorships

47. In addition to the requirement to commit sufficient time to performing their functions, members of the management body that hold a directorship within a significant CRD institution must comply with the limitation of directorships set out in Article 91(3) of Directive 2013/36/EU.

48. For the purposes of Article 91(3) of Directive 2013/36/EU, where a directorship involves at the same time executive and non-executive responsibilities, the directorship should count as an executive directorship.

[20] Figures for the year 2015 are included as an Annex to the impact assessment of these Guidelines.

49. Where multiple directorships count as a single directorship, as described in Article 91(4) of Directive 2013/36/EU and as set out in paragraphs 50 to 55, that single directorship should count as a single executive directorship when it includes at least one executive directorship; otherwise it should count as a single non-executive directorship.

50. In accordance with Article 91(4)(a) of Directive 2013/36/EU, all directorships held within the same group count as a single directorship.

51. In accordance with Article 91(4)(b)(ii) of Directive 2013/36/EU, all directorships held within undertakings in which the institution holds a qualifying holding, but which are not subsidiaries included within the same group, count as a single directorship. That single directorship in qualifying holdings counts as a separate single directorship, i.e. the directorship held within the same institution and the single directorship in its qualifying holdings together count as two directorships.

52. When multiple institutions within the same group hold qualifying holdings, the directorships in all qualifying holdings should be counted, taking into account the consolidated situation (based on the accounting scope of consolidation) of the institution, as one separate single directorship. That single directorship in qualifying holdings counts as a separate single directorship, i.e. the single directorship counted for the directorships held within entities that belong to the group and the single directorship counted for the directorships held in all qualifying holdings of the same group count together as two directorships.

53. Where a member of the management body holds directorships in different groups or undertakings, all directorships held within the same institutional protection scheme, as referred to in Article 91(4)(b)(i) of Directive 2013/36/EU, count as a single directorship. Where the application of the rule set out in Article 91(4)(b)(i) of Directive 2013/36/EU, regarding the counting of directorships within the same institutional protection scheme, leads to a higher count of single directorships than the application of the rule set out in Article 91(4)(a) regarding the counting of single directorships within groups, the resulting lower number of single directorships should apply (e.g. where directorships are held within two groups, in both cases within undertakings that are members and at the same time within undertakings that are not members of the same institutional protection scheme, only two single directorships should be counted).

54. Directorships held in entities which do not pursue predominantly commercial objectives must not be counted when calculating the number of directorships under Article 91(3) of that Directive. However, such activities should be taken into account when assessing the time commitment of the concerned member.

55. Entities which do not pursue predominantly commercial objectives include among others:

    a. charities;

    b. other not-for-profit organisations; and

c. companies that are set up for the sole purpose of managing the private economic interests of members of the management body or their family members, provided that they do not require day-to-day management by the member of the management body.

6. Adequate knowledge, skills and experience

56. Members of the management body should have an up-to-date understanding of the business of the institution and its risks, at a level commensurate with their responsibilities. This includes an appropriate understanding of those areas for which an individual member is not directly responsible but is collectively accountable together with the other members of the management body.

57. Members of the management body should have a clear understanding of the institution's governance arrangements, their respective role and responsibilities and, where applicable, the group structure and any possible conflicts of interest that may arise therefrom. Members of the management body should be able to contribute to the implementation of an appropriate culture, corporate values and behaviour within the management body and the institution[21].

58. Without prejudice to the national transposition of Directive 2015/849/EU, the member of the management body identified as responsible for the implementation of the laws, regulations and administrative provisions necessary to comply with Directive (EU) 2015/849[22] should have good knowledge, skills and relevant experience regarding ML/TF risk identification and assessment, and AML/CFT policies, controls and procedures. This person should have a good understanding of the extent to which the institution's business model exposes it to ML/TF risks.

59. In this respect, the assessment of adequate knowledge, skills and experience should consider:

a. the role and duties of the position and the required capabilities;

b. the knowledge and skills attained through education, training and practice;

c. the practical and professional experience gained in previous positions; and

[21] See also the EBA's Guidelines on Internal Governance: https://www.eba.europa.eu/regulation-and-policy/internal-governance

[22] The identification of a member of the management body as responsible for AML is for the purpose of allocation of duties and is without prejudice to the final responsibility of the management body in its management function for the day-to-day management of the institution and its responsibility for all activities of the institution.

d. the knowledge and skills acquired and demonstrated by the professional conduct of the member of the management body.

60. To properly assess the skills of the members of the management body, institutions should consider using the non-exhaustive list of relevant skills set out in Annex II to these Guidelines, taking into account the role and duties of the position occupied by the member of the management body.

61. The level and profile of the education of the member and whether or not it relates to banking and financial services or other relevant areas should be considered. In particular, education in the areas of banking and finance, economics, law, accounting, auditing, administration, financial regulation, information technology and quantitative methods can in general be considered to be relevant for the financial services sector.

62. The assessment should not be limited to the educational degree of the member or proof of a certain period of service in an institution. A more thorough analysis of the member's practical experience should be conducted, as the knowledge and skills gained from previous occupations depend on the nature, scale and complexity of the business as well as the function that the member performed within it.

63. When assessing the knowledge, skills and experience of a member of the management body, consideration should be given to theoretical and practical experience relating to:

a. banking and financial markets;

b. legal requirements and regulatory framework;

c. strategic planning, the understanding of an institution's business strategy or business plan and accomplishment thereof;

d. risk management (identifying, assessing, monitoring, controlling and mitigating the main types of risk of an institution including environmental, governance and social risks and risk factors);

e. accounting and auditing;

f. the assessment of the effectiveness of an institution's arrangements, ensuring effective governance, oversight and controls;

g. the interpretation of an institution's financial information, the identification of key issues based on this information, and appropriate controls and measures.

64. Members of the management body in its management function should have gained sufficient practical and professional experience from a managerial position over a sufficiently long period. Short-term positions may be considered as part of the assessment, but such positions alone should not be sufficient to assume that a member has sufficient experience. When

assessing the practical and professional experience gained from previous positions, particular consideration should be given to:

a. the nature of the management position held and its hierarchical level;

b. the length of service;

c. the nature and complexity of the business where the position was held, including its organisational structure;

d. the scope of competencies, decision-making powers and responsibilities of the member;

e. the technical knowledge gained through the position;

f. the number of subordinates.

65. Members of the management body in its supervisory function should be able to provide constructive challenge to the decisions and effective oversight of the management body in its management function. Adequate knowledge, skills and experience for fulfilling the supervisory function effectively may have been gained from relevant academic or administrative positions or through the management, supervision or control of financial institutions or other firms.

7. Collective suitability criteria

66. The management body should collectively be able to understand the institution's activities, including the main risks. Unless otherwise indicated in this section, these criteria should be applied separately to the management body in its management function and the management body in its supervisory function.

67. The members of the management body should collectively be able to take appropriate decisions considering the business model, risk appetite, strategy and markets in which the institution operates.

68. Members of the management body in its supervisory function should collectively be able to effectively challenge and monitor decisions made by the management body in its management function.

69. All areas of knowledge required for the institution's business activities should be covered by the management body collectively with sufficient expertise among members of the management body. There should be a sufficient number of members with knowledge in each area to allow a discussion of decisions to be made. The members of the management body should collectively have the skills to present their views and to influence the decision-making process within the management body.

70. The composition of the management body should reflect the knowledge, skills and experience necessary to fulfil its responsibilities. This includes that the management body collectively has an appropriate understanding of those areas for which the members are collectively accountable, and the skills to effectively manage and oversee the institution, including the following aspects:

    a. the business of the institution and main risks related to it;

    b. each of the material activities of the institution;

    c. relevant areas of sectoral/financial competence, including financial and capital markets, solvency and models, environmental, governance and social risks and risk factors;

    d. financial accounting and reporting;

    e. risk management, compliance and internal audit;

    f. information technology and security;

    g. local, regional and global markets, where applicable;

    h. the legal and regulatory environment;

    i. managerial skills and experience;

    j. the ability to plan strategically;

    k. the management of (inter)national groups and risks related to group structures, where applicable.

71. While the management body in its management function should collectively have a high level of managerial skills, the management body in its supervisory function should collectively have sufficient management skills to organise its tasks effectively and to be able to understand and challenge the management practices applied and decisions taken by the management body in its management function.

8. Reputation, honesty and integrity

72. A member of the management body should be deemed to be of good repute and of honesty and integrity if there are no objective and demonstrable grounds to suggest otherwise, in particular taking into account the relevant available information on the factors or situations listed in paragraphs 73 to 77. The assessment of reputation, honesty and integrity should also consider the impact of the cumulative effects of minor incidents on a member's reputation.

73. Without prejudice to any fundamental rights, any relevant criminal or administrative records should be taken into account for the assessment of good repute, honesty and integrity, considering the type of conviction or indictment, the role of the individual involved, the penalty received, the phase of the judicial process reached and any rehabilitation measures that have taken effect. The surrounding circumstances, including mitigating factors, the seriousness of any relevant offence or administrative or supervisory action, the time elapsed since the offence, the member's conduct since the offence or action, and the relevance of the offence or action to the member's role should be considered. Any relevant criminal or administrative records should be taken into account considering periods of limitation in force in the national law.

74. Without prejudice to the presumption of innocence applicable to criminal proceedings, and other fundamental rights, the following factors should at least be considered in the assessment of reputation, honesty and integrity:

    a. convictions or ongoing prosecutions for a criminal offence, in particular:

        i. offences under the laws governing banking, financial, securities, insurance activities, or concerning securities markets or financial or payment instruments, including laws on money laundering and terrorism financing or any of the predicate offences to ML set out in Directive (EU) 2015/849, corruption, market manipulation, or insider dealing and usury;

        ii. offences of dishonesty, fraud or other financial crime;

        iii. tax offences, whether committed directly or indirectly, including through unlawful or banned dividend arbitrage schemes;

        iv. other offences under legislation relating to companies, bankruptcy, insolvency, or consumer protection;

    b. other relevant current or past findings and measures taken by any regulatory or professional body for non-compliance with any relevant provisions governing banking, financial, securities or insurance activities or any of the matters in paragraph (a) above.

75. Ongoing investigations should be taken into account when resulting from judicial or administrative procedures or other analogous regulatory investigations without prejudice to fundamental individual rights[23]. Other adverse reports with relevant, credible and reliable information (e.g. as part of whistleblowing procedures) should also be considered by institutions and competent authorities.

[23] In line with the European Convention on Human Rights and Charter of Fundamental Rights of the European Union: http://ec.europa.eu/justice/fundamental-rights/charter/index_en.htm

76. The following situations relating to the past and present business performance and financial soundness of a member of the management body should be considered, with regard to their potential impact on the member's reputation, integrity and honesty:

    a. being a defaulting debtor (e.g. having negative records at a reliable credit bureau if available);

    b. financial and business performance of entities owned or directed by the member or in which the member had or has significant share or influence with special consideration given to any bankruptcy and winding-up proceedings and whether or not and how the member has contributed to the situation that led to the proceedings;

    c. declaration of personal bankruptcy; and

    d. without prejudice to the presumption of innocence, civil lawsuits, administrative or criminal proceedings, large investments or exposures and loans taken out, insofar as they can have a significant impact on the financial soundness of the member or entities owned or directed by him or her, or in which the member has a significant share.

77. A member of the management body should uphold high standards of integrity and honesty. At least the following factors should also be considered in the assessment of reputation, honesty and integrity:

    a. any evidence that the person has not been transparent, open and cooperative in his or her dealings with competent authorities;

    b. refusal, revocation, withdrawal or expulsion of any registration, authorisation, membership, or licence to carry out a trade, business, or profession;

    c. the reasons for any dismissal from employment or from any position of trust, fiduciary relationship, or similar situation, or for having been asked to resign from employment in such a position;

    d. disqualification by any relevant competent authority from acting as a member of the management body, including persons who effectively direct the business of an entity; and

    e. any other evidence or serious allegation based on relevant, credible and reliable information that suggests that the person acts in a manner that is not in line with high standards of conduct.

9. Independence of mind and independent members

9.1 Interaction between independence of mind and the principle of being independent

78. When assessing the independence of members, institutions should differentiate between the notion of 'independence of mind', applicable to all members of an institution's management body, and the principle of 'being independent', required for certain members of a relevant institution's management body in its supervisory function. The criteria for the assessment of 'independence of mind' are provided in section 9.2 and for the assessment of 'being independent' in section 9.3.

79. Acting with 'independence of mind' is a pattern of behaviour, shown in particular during discussions and decision-making within the management body, and is required for each member of the management body regardless of whether or not the member is considered as 'being independent' in accordance with section 9.3. All members of the management body should engage actively in their duties and should be able to make their own sound, objective and independent decisions and judgments when performing their functions and responsibilities.

80. 'Being independent' means that a member of the management body in its supervisory function does not have any present or recent past relationships or links of any nature with the relevant institution or its management that could influence the member's objective and balanced judgement and reduce the member's ability to take decisions independently. The fact that a member is considered as 'being independent' does not mean that the member of the management body should automatically be deemed to be 'independent of mind' as the member might lack the required behavioural skills.

9.2 Independence of mind

81. When assessing the independence of mind as referred to in paragraph 79, institutions should assess whether or not all members of the management body have:

    a. the necessary behavioural skills, including:

        i. courage, conviction and strength to effectively assess and challenge the proposed decisions of other members of the management body;

        ii. being able to ask questions of the members of the management body in its management function; and

        iii. being able to resist groupthink;

b. conflicts of interest to an extent that would impede their ability to perform their duties independently and objectively.

82. When assessing the required behavioural skills of a member referred to in paragraph 82 (a), his or her past and ongoing behaviour, in particular within the institution, should be taken into account.

83. When assessing the existence of conflicts of interest referred to in paragraph 82 (b), institutions should identify actual or potential conflicts of interest in accordance with the institution's conflict of interest policy[24] and assess their materiality. At least the following situations that could create actual or potential conflicts of interests should be considered:

a. economic interests (e.g. shares, other ownership rights and memberships, holdings and other economic interests in commercial customers, intellectual property rights, loans granted by the institution to a company owned by members of the management body);

b. personal or professional relationships with the owners of qualifying holdings in the institution;

c. personal or professional relationships with staff of the institution or entities included within the scope of prudential consolidation (e.g. close family relationships);

d. other employments and previous employments within the recent past (e.g. five years);

e. personal or professional relationships with relevant external stakeholders (e.g. being associated with material suppliers, consultancies or other service providers);

f. membership in a body or ownership of a body or entity with conflicting interests;

g. political influence or political relationships.

84. All actual and potential conflicts of interest at management body level should be adequately communicated, discussed, documented, decided on and duly managed by the management body (i.e. the necessary mitigating measures should be taken). A member of the management body should abstain from voting on any matter where that member has a conflict of interest[25].

85. Institutions should inform competent authorities if an institution has identified a conflict of interest that may impact the independence of mind of a member of the management body, including the mitigating measures taken.

[24] Please refer to the EBA's Guidelines on Internal Governance regarding the conflict of interest policy for staff.

[25] Please refer to the EBA's Guidelines on Internal Governance regarding the conflict of interest policy for staff.

86. Being a shareholder, owner or member of an institution, a member of affiliated companies or affiliated entities, having private accounts, loans or using other services of the institution or any entity within the scope of consolidation should not be considered by itself to affect the independence of mind of a member of the management body.[26]

9.3 Independent members of a relevant institution's management body in its supervisory function

87. Having independent members, as referred to in paragraph 80, and non-independent members in the management body in its supervisory function is considered good practice for all relevant institutions.

88. When determining the sufficient number of independent members, the principle of proportionality should be taken into account. Members representing employees in the management body should not be taken into account when determining the sufficient number of independent members in the management body in its supervisory function. Without prejudice to any additional requirements imposed by national law the following should apply:

    a. the following relevant institutions should have a management body in its supervisory function that includes a sufficient number of independent members:

        i. significant CRD institutions;

        ii. listed relevant institutions;

    b. relevant institutions that are neither significant nor listed should, as a general principle, have at least one independent member within the management body in its supervisory function. However, competent authorities may not require any independent directors within:

        i. relevant institutions that are wholly owned by a relevant institution, in particular when the subsidiary is located in the same Member State as the parent relevant institution;

        ii. investment firms that meet the criteria set out in point (a) of Article 32(4) of Directive 2019/2034/EU or the other criteria established by a relevant Member State in accordance with paragraphs (5) and (6) of Article 32 of Directive No 2019/2034/EU.

    c. Within the overall responsibility of the management body, the independent members should play a key role in enhancing the effectiveness of checks and balances within

[26] Please refer to the EBA's Guidelines on Internal Governance para 114.

the relevant institutions by improving oversight of management decision-making and ensuring that:

d. the interests of all stakeholders, including minority shareholders, are appropriately taken into account in the discussions and decision-making of the management body. Independent members could also help to mitigate or offset undue dominance by individual members of the management body representing a particular group or category of stakeholders;

e. no individual or small group of members dominates decision-making; and

f. conflicts of interest between the institution, its business units, other entities within the accounting scope of consolidation and external stakeholders, including clients, are appropriately managed.

89. Without prejudice to paragraph 91, in the following situations it is presumed that a member of a relevant institution's management body in its supervisory function is regarded as not 'being independent':

a. the member has or has had a mandate as a member of the management body in its management function within an institution within the scope of prudential consolidation, unless he or she has not occupied such a position for the previous five years;

b. the member is a controlling shareholder of the relevant institution, being determined by reference to the cases mentioned in Article 22(1) of Directive 2013/34/EU, or represents the interest of a controlling shareholder, including where the owner is a Member State or other public body;

c. the member has a material financial or business relationship with the relevant institution;

d. the member is an employee of or is otherwise associated with a controlling shareholder of the relevant institution;

e. the member is employed by any entity within the scope of consolidation, except when both of the following conditions are met:

i. the member does not belong to the institution's highest hierarchical level, which is directly accountable to the management body;

ii. the member has been elected to the supervisory function in the context of a system of employees' representation and national law provides for adequate protection against abusive dismissal and other forms of unfair treatment;

f. the member has previously been employed in a position at the highest hierarchical level in the relevant institution or another entity within its scope of prudential consolidation, being directly accountable only to the management body, and there has not been a period of at least three years between ceasing such employment and serving on the management body;

g. the member has been, within a period of three years, a principal of a material professional adviser, an external auditor or a material consultant to the relevant institution or another entity within the scope of prudential consolidation, or otherwise an employee materially associated with the service provided;

h. the member is or has been, within the last year, a material supplier or material customer of the relevant institution or another entity within the scope of prudential consolidation or had another material business relationship, or is a senior officer of or is otherwise associated directly or indirectly with a material supplier, customer or commercial entity that has a material business relationship;

i. the member receives, in addition to remuneration for his or her role and remuneration for employment in line with point (c), significant fees or other benefits from the relevant institution or another entity within its scope of prudential consolidation;

j. the member served as a member of the management body within the entity for 12 consecutive years or longer;

k. the member is a close family member of a member of the management body in the management function of the relevant institution or another entity in the scope of prudential consolidation or a person in a situation referred to under points (a) to (h).

90. The mere fact of meeting one or more situations under paragraph 89 does not automatically qualify a member as not being independent. Where a member falls under one or more of the situations set out in paragraph 89, the relevant institution may demonstrate to the competent authority that the member should nevertheless be considered as 'being independent'. To this end relevant institutions should be able to justify to the competent authority the reasoning why the member's ability to exercise objective and balanced judgement and to take decisions independently is not affected by the situation.

91. For the purpose of paragraph 90 relevant institutions should consider that being a shareholder of a relevant institution, having private accounts or loans or using other services, other than in the cases explicitly listed within this section, should not lead to a situation where the member is considered to be non-independent if they stay within an appropriate *de minimis* threshold. Such relationships should be taken into account within the management of conflicts of interest in accordance with the relevant EBA Guidelines on Internal Governance.

Title IV – Human and financial resources for training of members of the management body

10. Setting objectives of induction and training

92. Institutions should provide for the induction of members of the management body to facilitate their clear understanding of the relevant laws, regulations and administrative provisions, the institution's structure, business model, risk profile and governance arrangements, and the role of the member(s) within them, and to provide for relevant general and as appropriate individually tailored training programmes. Training should also promote their awareness regarding the benefits of diversity in the management body and institution. Institutions should allocate sufficient resources for induction and training for members of the management body individually and collectively.

93. All newly appointed members of the management body should receive key information one month after taking up their position at the latest, and the induction should be completed within six months.

94. Where appointed members of the management body are subject to fulfilling a particular aspect of the knowledge and skill elements, the training and induction for that member should aim to fill the identified gap within an appropriate timeframe, where possible before the position is effectively taken up or otherwise as soon as possible after the position is effectively taken up. In any case, a member should fulfil all knowledge and skill elements as set out in section 6 not later than one year after taking up the position. Where appropriate, the institution should set a timeframe within which the necessary measures should be completed and inform the competent authority accordingly. Members of the management body should maintain and deepen the knowledge and skills needed to fulfil their responsibilities.

11. Induction and training policy

95. Institutions should have in place policies and procedures for the induction and training of members of the management body. The policy should be adopted by the management body.

96. The human and financial resources provided for induction and training should be sufficient to achieve the objectives of induction and training and to ensure that the member is suitable and meets the requirements for his or her role. When establishing the human and financial resources required to deliver effective policies and procedures for the induction and training of the members of the management body, the institution should take into account available

relevant industry benchmarks, for example relating to available training budget and training days provided, including benchmarking results provided by the EBA.[27]

97. The policies and procedures for induction and training may be part of an overall suitability policy, and should at least set out:

    a. the induction and training objectives for the management body, separately for the management function and the supervisory function where applicable. This should also include where appropriate the induction and training objectives for specific positions according to their specific responsibilities and involvement in committees;

    b. the responsibilities for the development of a detailed training programme;

    c. the financial resources and human resources made available by the institution for induction and training, taking into account the number of induction and training sessions, their cost and any related administrative tasks, in order to ensure that induction and training can be provided in line with the policy;

    d. a clear process under which any member of the management body can request induction or training.

98. In the development of the policy, the management body or the nomination committee, when established, should consider input from the human resources function and the function responsible for the budgeting and organisation of training, as well as relevant internal control functions, where appropriate.

99. Institutions should have in place a process to identify the areas in which training is required, both for the management body collectively and for individual members of the management body. Relevant business areas and internal functions, including internal control functions, should be involved as appropriate in the development of the content of induction and training programmes.

100. The policies and procedures as well as training plans should be kept up to date, taking into account governance changes, strategic changes, new products and other relevant changes, as well as changes in applicable legislation and market developments.

101. Institutions should have an evaluation process in place to review the execution and the quality of induction and training provided and to ensure compliance with the induction and training policies and procedures.

[27] The Annex to the impact assessment of these Guidelines includes EBA benchmarking results (2015 data) for training resources and training days provided by institutions.

Title V – Diversity within the management body

12. Diversity policy objectives

102. In accordance with Article 91(10) of Directive 2013/36/EU, all institutions should have and implement a policy promoting diversity on the management body, in order to promote a diverse pool of members. It should aim to engage a broad set of qualities and competences when recruiting members of the management body, to achieve a variety of views and experiences and to facilitate independent opinions and sound decision-making within the management body. Institutions should aim at an appropriate representation of all genders within the management body and ensure that the principle of equal opportunities is respected when selecting members of the management body. Having employee representatives, where required under national law, of the under-represented gender alone is not sufficient to ensure that the management body has an appropriate gender balance.

103. The diversity policy should at least refer to the following diversity aspects: educational and professional background, gender, age and, in particular for institutions that are active internationally, geographical provenance, unless the inclusion of the aspect of geographical provenance is unlawful under the laws of the Member State. The diversity policy for significant CRD institutions should include a quantitative target for the representation of the under-represented gender in the management body. Significant CRD institutions should quantify the targeted participation of the under-represented gender and specify an appropriate timeframe within which the target should be met and how it will be met. The target should be defined for the management body collectively, but may be broken down into the management and supervisory functions where a sufficiently large management body exists. In all other institutions, in particular with a management body of fewer than five members, the target may be expressed in a qualitative way.

104. When setting diversity objectives, institutions should consider diversity benchmarking results published by competent authorities, the EBA or other relevant international bodies or organisations[28].

105. The diversity policy may include employee representation within the management body in order to add day-to-day practical knowledge and experience of the internal workings of the institution.

106. Significant CRD institutions should also document, as part of the annual review of the composition of the management body, their compliance with the objectives and targets set.

[28] See also the EBA's report on diversity benchmarking: https://www.eba.europa.eu/documents/10180/1360107/EBA-Op-2016-10+%28Report+on+the+benchmarking+of+diversity+practices%29.pdf and https://eba.europa.eu/eba-calls-measures-ensure-more-balanced-composition-management-bodies-institutions

In the event that any diversity objectives or targets have not been met, the significant CRD institution should document the reasons why, the measures to be taken and the timeframe for measures to be taken, in order to ensure that the diversity objectives and targets will be met.

107. In order to facilitate an appropriately diverse pool of candidates for management body positions, institutions should implement a diversity policy for staff, including career planning aspects and measures to ensure equal treatment and opportunities for staff of different genders. Such measures should include that the aspect of appropriate gender representation is also taken into account when selecting staff for management positions or when providing management training.

108. In order to support a diverse composition of the management body institutions should have policies that ensure that there is no discrimination based on gender, race, colour, ethnic or social origin, genetic features, religion or belief, membership of a national minority, property, birth, disability, age, or sexual orientation.[29]

Title VI – Suitability policy and governance arrangements

13. Suitability policy

109. According to Article 88(1) of Directive 2013/36/EU, an institution's management body defines, oversees and is accountable for the implementation of the governance arrangements that ensure effective and prudent management of the institution. In addition, according to Article 9(3) of Directive 2014/65/EU, the management body of an investment firm as defined in Directive 2014/65/EU (MiFID firm) defines, oversees and is accountable for the implementation of governance arrangements in a manner that promotes the integrity of the market and the interest of clients. This includes that the institution's suitability policy should be aligned with the institution's overall corporate governance framework, corporate culture and risk appetite and that the processes under the policy are fully operating as intended. This also includes that the institution's management body should adopt – without prejudice to any required shareholders' approval – and maintain a policy for the assessment of the suitability of members of the management body.

110. The suitability policy should include or refer to the diversity policy to ensure that diversity is taken into account when recruiting new members.

111. Any changes to the suitability policy should also be approved by the management body, without prejudice to any required shareholders' approval. Documentation regarding the

[29] See also the section on diversity in the EBA Guidelines on Internal Governance.

adoption of the policy and any amendments thereof should be maintained (e.g. in the minutes of relevant meetings).

112. The policy should be clear, well documented and transparent to all staff within the institution. When developing the policy, the management body may request and take into account input from other internal committees, in particular the nomination committee where established and other internal functions, such as the legal, human resources or control functions.

113. Internal control functions[30] should provide effective input to the development of the suitability policy in accordance with their roles. Notably, the compliance function should analyse how the suitability policy affects the institution's compliance with legislation, regulations, internal policies and procedures, and should report all identified compliance risks and issues of non-compliance to the management body.

114. The policy should include principles on the selection, monitoring and succession planning of its members and for re-appointing existing members, and should set out at least the following:

a. the process for the selection, appointment, re-appointment and succession planning of members of the management body and the applicable internal procedure for the assessment of the suitability of a member including the internal function responsible for providing support for the assessment (e.g. human resources);

b. the criteria to be used in the assessment, which should include the suitability criteria set out in these Guidelines;

c. how, as part of the selection process, the diversity policy for members of the management body of significant CRD institutions and the target for the under-represented gender in the management body are to be taken into account;

d. the communication channel with the competent authorities; and

e. how the assessment should be documented.

115. Relevant institutions should also include within their suitability policy the processes for the selection and appointment of key function holders. The suitability policy might set out in a risk-based approach those positions that could be considered by relevant institutions as key function holders in addition to the heads of internal control functions and the CFO, where they are not part of the management body.

[30] See also the EBA's Guidelines on Internal Governance: https://www.eba.europa.eu/regulation-and-policy/internal-governance

116. The management body in its supervisory function and the nomination committee where established should monitor the effectiveness of the institution's suitability policy and review its design and implementation. The management body should amend the policy, where appropriate, taking into account the recommendations made by the nomination committee where established and the internal audit function.

14. Suitability policy in a group context

117. In accordance with Article 109(2) and (3) of Directive 2013/36/EU, the consolidating CRD institution should ensure that a group-wide policy for the assessment of suitability of all members of the management body and key function holders is implemented consistently and well integrated in all subsidiaries within the scope of prudential consolidation, including those not subject to Directive 2013/36/EU, even when they are established in third countries, including in offshore financial centres.

118. The policy should be adjusted to the specific situation of the credit institutions that are part of the group and subsidiaries within the scope of prudential consolidation that are not themselves subject to Directive 2013/36/EU. Competent bodies or functions within the consolidating CRD institution and its subsidiaries should interact and exchange information for the assessment of suitability as appropriate.

119. The consolidating CRD institution should ensure that the suitability assessment complies with all specific requirements in any relevant jurisdiction. Regarding institutions and entities within a group located in more than one Member State, the consolidating CRD institution should ensure that the group-wide policy takes into account differences between national company laws and other regulatory requirements.

120. The consolidating CRD institution should ensure that subsidiaries established in third countries that are included in the scope of prudential consolidation have consistently implemented the group policy in a way that complies with the requirements of Articles 74, 88 and 91 of Directive 2013/36/EU, as long as this is not unlawful under the laws of the third country. For this purpose, the EU parent undertakings and subsidiaries subject to Directive 2013/36/EU must ensure that the suitability standards applied by the subsidiary located in a third country at least meet the ones applied in the European Union.

121. The suitability requirements of Directive 2013/36/EU and these Guidelines apply to CRD institutions independently of the fact that they may be subsidiaries of a parent institution in a third country. Where an EU subsidiary of a parent institution in a third country is a consolidating CRD institution, the scope of prudential consolidation does not include the level of the parent institution located in a third country and other direct subsidiaries of that parent institution. The consolidating CRD institution should ensure that the group-wide policy of the parent institution in a third country is taken into consideration within its own policy insofar

as this is not contrary to the requirements set out under relevant EU or national law, including these Guidelines.

122. The management body of subsidiaries that are subject to Directive 2013/36/EU should adopt and implement a suitability policy at individual level which is consistent with the policies established at the consolidated or sub-consolidated level, in a manner that complies with all specific requirements under national law.

15. Nomination committee and its tasks[31]

123. Significant CRD institutions must have a nomination committee that fulfils the responsibilities and has the resources set out under Article 88(2) of Directive 2013/36/EU.

124. Members of the nomination committee should have adequate collective knowledge, expertise and experience relating to the business of the institution to be able to assess the appropriate composition of the management body, including recommending candidates to fill management body vacancies.

125. Where a nomination committee is not established, the management body in its supervisory function should have the responsibilities set out in the first subparagraph of point (a) and points (b) to (d) of Article 88(2) of Directive 2013/36/EU, and the appropriate resources to this end. Where a nomination committee is not established, the assessment referred to under points (b) and (c) of Article 88(2) of that Directive should be performed at least every two years.

126. The nomination committee, where established, and the management body in its supervisory function, as appropriate, should have access to all necessary information to perform their duties and be able to involve the relevant internal control functions and other competent internal functions, where necessary.

127. In accordance with the last subparagraph of Article 88(2) of Directive 2013/36/EU, where, under national law, the management body does not have competence in the process of selection and appointment of any of its members, this section is not applicable.

16. Composition of the management body and the appointment and succession of its members

128. Without prejudice to national company law, the management body should have an adequate number of members and an appropriate composition and should be appointed for

[31] Regarding the composition and tasks of committees, see also the EBA's Guidelines on Internal Governance: https://www.eba.europa.eu/regulation-and-policy/internal-governance

an appropriate period. Nominations for re-appointment should take place only after considering the assessment result regarding the performance of the member that has been observed during the last term.

129. All members of the management body should be suitable. Without prejudice to members being elected by and representing employees, the management body should identify and select qualified and experienced members and ensure appropriate succession planning for the management body that is consistent with all legal requirements regarding composition, appointment or succession of the management body.

130. Without prejudice to the shareholders' rights to appoint members, when recruiting members of the management body the management body in its supervisory function or, where established, the nomination committee, should actively contribute to the selection of candidates for vacant management body positions in cooperation with human resources and should:

a. prepare a description of the roles of and capabilities for a particular appointment;

b. evaluate the adequate balance of knowledge, skills and experience of the management body;

c. assess the time commitment expected; and

d. consider the objectives of the diversity policy.

131. The recruitment decision should, where possible, take into account a shortlist containing a preselection of suitable candidates which takes into account the diversity objectives set out in the institution's diversity policy and the elements in Title V of these Guidelines. The decision should take into account the fact that a more diverse management body fosters constructive challenge and discussion based on different points of view. Institutions should not however recruit members of the management body with the sole purpose of increasing diversity to the detriment of the functioning and suitability of the management body collectively, or at the expense of the suitability of individual members of the management body.

132. The member of the management body should be aware of the culture, values, behaviours and strategy associated with that institution and its management body, where possible, before taking up the position.

133. Without prejudice to the shareholders' rights to appoint and replace all members of the management body simultaneously, when establishing a succession plan for its members the management body should ensure the continuity of decision-making and prevent, where possible, too many members having to be replaced simultaneously. Succession planning should set out the institution's plans, policies and processes for dealing with sudden or unexpected absences or departures of members of the management body, including any

relevant interim arrangements. Succession planning should also take into account the objectives and targets defined in the institution's diversity policy.

Title VII – Assessment of suitability by institutions

17. Common elements for the assessment of the individual and collective suitability of members of the management body

134. Unless otherwise specified in the Guidelines, the management body in its supervisory function or, where established, the nomination committee should ensure that the individual and collective suitability assessments of the members of the management body are carried out before they are appointed. They may liaise with other committees (e.g. risk and audit committee) and internal functions (e.g. human resources, legal or control functions). The management body in its supervisory function should be responsible for determining the final suitability assessments.

135. By way of derogation of paragraph 134 the individual and collective suitability assessments may be performed after the appointment of the member in any of the following cases for which the institution has provided duly justification:

a. shareholders, owners or members of the institution nominate and appoint members of the management body at the shareholders' or equivalent meeting that have not been proposed by the institution or by the management body, e.g. slate system;

b. a complete suitability assessment prior to the appointment of a member would disrupt the sound functioning of the management body, including as a result of the following situations:

i. where the need to replace members arises suddenly or unexpectedly, e.g. death of a member; and

ii. where a member is removed because he or she is no longer suitable.

136. The suitability assessments should take into account all matters relevant to and available for the assessments. Institutions should consider the risks, including the reputational risk, arising in the event that any weaknesses are identified affecting the individual or collective suitability of the members of the management body.

137. Where members are appointed by the general shareholders' meeting and where the assessment of the individual and collective suitability of members has been performed before the general shareholders' meeting, institutions should provide appropriate information on the assessment results to shareholders before the meeting. Where appropriate, the

assessment should comprise various alternative compositions of the management body that can be introduced to the shareholders.

138. Where, in the duly justified cases referred to in paragraph 135, members are appointed by shareholders before an assessment of suitability is made, the appointment should be subject to the positive assessment of their suitability. In these cases, institutions should assess the suitability of the members and the composition of the management body as soon as practicable and at the latest within one month of the appointment of the members. If the subsequent assessment by the institution resulted in a member being considered not suitable for his or her position, the member and the competent authority should be informed without delay. Institutions should also inform shareholders about the assessment made and the need to appoint different members.

139. Institutions should ensure that shareholders have full access to relevant and practical information about the obligation that the members of the management body and the management body collectively must at all times be suitable. The information provided to shareholders regarding the suitability of the management body and its members should enable shareholders to take informed decisions and to address any shortcomings in the composition of the management body or its individual members.

140. Where some members are appointed by the management body, such assessments should be performed before they effectively perform their function. In the duly justified cases referred to in paragraph 135, the assessment of suitability may be performed after the appointment of the member. This should be done as soon as practicable but at the latest within one month from the date of appointment.

141. Institutions should take into account the results of the assessment of the suitability of the individual member of the management body when assessing the collective suitability of the management body and vice versa. Weaknesses identified within the overall composition of the management body or its committees should not necessarily lead to the conclusion that a particular member is individually not suitable.

142. Institutions should document the results of their assessment of suitability, and in particular any weaknesses identified between the necessary and the actual individual and collective suitability of members of the management body, and measures to be taken to overcome these shortcomings.

143. Institutions should transmit to competent authorities the outcome of the suitability assessments for new members of the management body, including the institution's assessment of the collective composition of the management body in line with the specified

procedures referred to in section 23. This should include the documentation and information listed in Annex III[32].

144. Institutions should, at the request of the competent authorities, provide additional information necessary for the individual or collective suitability assessment of the members of the management body. In the case of a re-appointment this information may be limited to relevant changes.

18. Assessment of the suitability of individual members of the management body

145. Institutions should require members of the management body to demonstrate their suitability by providing at least the documentation that is required by competent authorities for the assessment of suitability, in accordance with Title VIII and Annex III of these Guidelines.

146. As part of the assessment of the suitability of an individual member of the management body, institutions should:

a. gather information on the member's suitability through various channels and instruments (e.g. diplomas and certificates, recommendation letters, curricula vitae, interviews, questionnaires);

b. gather information on the reputation, integrity and honesty of the assessed individual, including assessing whether there are reasonable grounds to suspect that ML/TF is being or has been committed or attempted or that the risk thereof could be increased;

c. evaluate the independence of mind of the assessed individual;

d. require the assessed individual to verify that the information provided is accurate and to provide proof of information, where necessary;

e. require the assessed individual to declare any actual and potential conflicts of interest;

f. validate, to the extent possible, the correctness of the information provided by the assessed individual;

g. evaluate within the management body in its supervisory function or, where established, the nomination committee, the assessment results; and

[32] Please also refer to the draft RTS under Article 7(4) of Directive 2014/65/EU and draft ITS under Article 7(5) of Directive 2014/65/EU on the information to be provided at authorisation: http://ec.europa.eu/finance/securities/docs/isd/mifid/rts/160714-rts-authorisation_en.pdf and https://www.esma.europa.eu/sites/default/files/library/2015-1858_-_final_report_-_draft_implementing_technical_standards_under_mifid_ii.pdf. See also the Consultation Paper on the draft RTS on authorisation published by the EBA.

h. where necessary, adopt corrective measures to ensure the individual suitability of the members of the management body in accordance with section 22.

147. Where there is a matter which causes concern about the suitability of a member of the management body, an assessment of how this concern affects that person's suitability should be undertaken. In this assessment institutions should take into account the existence of reasonable grounds to suspect that ML/TF is being or has been committed or attempted or that the risk thereof could be increased.

148. Institutions should document a description of the position for which an assessment was performed, including the role of that position within the institution, and should specify the results of the suitability assessment in relation to the following criteria:

a. sufficient time commitment;

b. compliance of members of the management body that hold a directorship in a significant CRD institution with the limitation of directorships under Article 91(3) of Directive 2013/36/EU;

c. sufficient knowledge, skills and experience;

d. reputation, honesty and integrity;

e. independence of mind.

19. Assessment of the collective suitability of the management body

149. When assessing the collective suitability of the management body, institutions should assess the composition of the management body in its management and supervisory functions separately. The assessment of collective suitability should provide a comparison between the actual composition of the management body and the management body's actual collective knowledge, skills and experience, and the required collective suitability pursuant to Article 91(7) of Directive 2013/36/EU.

150. Institutions should perform an assessment of the collective suitability of the management body using either:

a. the suitability matrix template included in Annex I. Institutions may adapt this template taking into account the criteria described in Title I; or

b. their own appropriate methodology in line with the criteria set out in these Guidelines.

151. When assessing the suitability of an individual member of the management body, institutions should, within the same time period, also assess the collective suitability of the management body in accordance with section 7 as well as whether or not the overall composition of the specialised committees of the management body in its supervisory function is adequate [33]. In particular, it should be assessed what knowledge, skills and experience the individual brings to the collective suitability of the management body and whether the overall composition of the management body reflects an adequately broad range of knowledge, skills and experience to understand the institution's activities and main risks.

152. When assessing the collective suitability in line with Title III (7), institutions should also assess whether the management body through its decisions has demonstrated a sufficient understanding of ML/TF risks and how these affect the institution's activities, and has demonstrated appropriate management of these risks, including corrective measures where necessary.

20. Ongoing monitoring and re-assessment of the individual and collective suitability of the members of the management body

153. The ongoing monitoring of the individual or collective suitability of the members of the management body should focus on whether the individual member or the members collectively remain suitable, taking into account the individual or collective performance and the relevant situation or event which caused a re-assessment and the impact it has on the actual or required suitability.

154. When re-assessing the individual or collective performance of the members of the management body, the members of the management body in its supervisory function or, where established, the nomination committee, should consider in particular:

a. the efficiency of the management body's working processes, including the efficiency of information flows and reporting lines to the management body taking into account the input from internal control functions and any follow-up or recommendations made by those functions;

b. the effective and prudent management of the institution, including whether or not the management body acted in the best interest of the institution including in relation to the fight against money laundering and terrorist financing;

c. the ability of the management body to focus on strategically important matters;

[33] Regarding the composition of committees please refer also to the relevant EBA Guidelines on Internal Governance.

d. the adequacy of the number of meetings held, the degree of attendance, the appropriateness of time committed and the intensity of directors' involvement during the meetings;

e. any changes to the composition of the management body and any weaknesses with regard to individual and collective suitability, taking into account the institution's business model and risk strategy and changes thereto;

f. any performance objectives set for the institution and the management body;

g. the independence of mind of members of the management body, including the requirement that decision-making is not dominated by any one individual or small group of individuals, and the compliance of members of the management body with the conflict of interest policy;

h. the degree to which the composition of the management body has met the objectives set in the institution's diversity policy in line with Title V; and

i. any events that may have a material impact on the individual or collective suitability of the members of the management body, including changes to the institution's business model, strategies and organisation;

j. reasonable grounds to suspect that money laundering or terrorist financing is being or has been committed or attempted or other financial crimes, or there is an increased risk thereof, including following such adverse findings made by the internal or external auditors or competent authorities regarding the adequacy of the institution's AML/CFT systems and controls.

155. When a re-assessment is triggered, due consideration should be given to:

a. the assigned duties and reporting lines within the institution, including where applicable within the group, in order to establish whether any material fact or finding should be allocated to one or more responsible members of the management body. In this context, assigned duties should be determined taking into account all relevant documentation, including but not limited to governance charters and codes, internal organigrams and other forms of designating areas of responsibility, internal policies, assessments of the suitability available and additional information provided in this context, letters of appointment or job descriptions, and minutes of meetings of the management body; and

b. the credibility and reliability of any fact that triggered the re-assessment, and the seriousness of any allegations of or actual wrongdoing of one or more members of the management body. Institutions should determine the credibility and reliability of information (e.g. the source, the plausibility, any conflicts of interest of the source giving the information) among other considerations. Institutions should note that the

absence of criminal convictions alone may not be sufficient to dismiss allegations of wrongdoing.

156. Significant CRD institutions should perform a periodic suitability re-assessment at least annually. Non-significant institutions should perform a suitability re-assessment at least every two years. Institutions should document the results of the periodic re-assessment. Where a re-assessment is triggered by a specific event, institutions may focus the re-assessment on the situation or event that has triggered the re-assessment, i.e. where certain aspects have not changed, these can be omitted from the assessment.

157. The result of the re-assessment, the reason for the re-assessment and any recommendation with regard to identified weaknesses should be documented and submitted to the management body.

158. The management body in its supervisory function or, where established, the nomination committee should report the result of the assessment of collective suitability to the management body even if no changes to its composition or other measures are recommended. Recommendations may include, but are not limited to, training, change of processes, measures to mitigate conflicts of interest, the appointment of additional members with a specific competence and the replacement of members of the management body.

159. The management body in its management function should take note of the report and decide on the recommendations made by the management body in its supervisory function or, where established, the nomination committee, and where recommendations are not adopted, document the underlying reasons.

160. Institutions should inform the competent authority where re-assessments due to material changes occurred. Significant CRD institutions should inform the competent authority at least annually of any re-assessments of collective suitability made.

161. Institutions should document the re-assessments, including their outcome and any measures taken as a result of the re-assessment. Institutions should submit the documentation supporting the re-assessment at the request of the competent authority.

162. In the event that the management body concludes that a member of the management body is not suitable individually, or where the management body is not suitable collectively, the institution should immediately inform the competent authority without delay, including about the measures proposed or taken by the institution to remedy the situation.

21. Suitability assessment of key function holders by relevant institutions

163. The responsible function within a relevant institution should carry out the suitability assessment of key function holders before their appointment and should report the

assessment results to the appointing function and the management body. Significant CRD institutions, referred to in paragraph 172, should inform competent authorities of the assessment results regarding heads of internal control functions and the CFO, where they are not part of the management body.

164. If a relevant institution's assessment concludes that a key function holder is not suitable, the relevant institution should either not appoint the individual or take appropriate measures to ensure the appropriate functioning of this position. Significant CRD institutions should inform the competent authority accordingly with regard to the heads of internal control functions and the CFO, where they are not part of the management body. Competent authorities may require such information from all relevant institutions and for all key function holders.

165. Where an assessment by a competent authority is also required, relevant institutions should take the necessary measures (e.g. by applying a probation period or a suspensive condition in the employment contract or by appointing acting heads) when appointing a key function holder to enable the institution to remove the key function holder from the position if he or she is assessed as not being suitable by the competent authority for that position.

22. Institutions' corrective measures

166. If an institution's assessment or re-assessment concludes that a person is not suitable to be appointed as a member of the management body, that person should not be appointed or, if the member has already been appointed, the institution should replace that member. With the exception of criteria relevant to the assessment of reputation, honesty and integrity, if an institution's assessment or re-assessment identifies easily remediable shortcomings in the member's knowledge, skills or experience the institution should take appropriate corrective measures to overcome those shortcomings in a timely manner.

167. If an institution's assessment or re-assessment concludes that the management body is not collectively suitable, the institution should take appropriate corrective measures in a timely manner.

168. When an institution takes corrective measures it should consider the particular situation and shortcomings of an individual member or the collective composition of the management body. In the case of the authorisation of an institution to take up its business, such measures should be implemented before the authorisation is granted.[34]

169. Appropriate corrective measures may include, but are not limited to: adjusting responsibilities between members of the management body; replacing certain members; recruiting additional members; possible measures to mitigate conflicts of interest; training

[34] See footnote 28.

single members; or training for the management body collectively to ensure the individual and collective suitability of the management body.

170. In any case, competent authorities should be informed without delay of any material shortcomings identified concerning any of the members of the management body and the management body's collective composition. Significant CRD institutions should also inform competent authorities about any shortcomings identified regarding heads of internal control functions and the CFO, where they are not part of the management body. The information should include the measures taken or envisaged to remedy those shortcomings and the timeline for their implementation.

Title VIII – Suitability assessment by competent authorities

23. Competent authorities' assessment procedures

171. Competent authorities should specify the supervisory procedures applicable to the suitability assessment of members of the management body of institutions, as well as the heads of internal control functions and the CFO, where they are not part of the management body, in the case of significant CRD institutions. When specifying the supervisory procedures, competent authorities should consider that a suitability assessment performed after the member has taken up his or her position could lead to the need to remove a non-suitable member from the management body or to a situation where the management body collectively has ceased to be suitable. Competent authorities should ensure that a description of those assessment procedures is publicly available.

172. The suitability assessments of heads of internal control functions and the CFO, where they are not part of the management body, for significant CRD institutions, should be performed by competent authorities for:

a. significant consolidating CRD institutions;

b. significant CRD institutions that are part of a group, where the consolidating CRD institution is not a significant institution;

c. significant CRD institutions that are not part of a group.

173. The supervisory procedures should ensure that newly appointed members of the management body, the management body as a collective body and, for significant CRD institutions referred to in paragraph 172, newly appointed heads of internal control functions and the CFO, where they are not part of the management body, are assessed by the competent authorities. The supervisory procedures should also ensure that re-appointed members of the management body are re-assessed by the competent authority in accordance with paragraphs 22 b) ii) and 30 b) ii) where a re-assessment is necessary.

174. Competent authorities should ensure that their supervisory procedures allow them to address cases of non-compliance in a timely manner.

175. As part of the above supervisory procedures, institutions should be required to inform competent authorities without delay of any vacant positions within the management body. Institutions should also be required to notify competent authorities of the intended appointment, in cases where the competent authority assesses the suitability before the appointment, or the appointment, in cases where the competent authorities assess the suitability after the appointment, of a member of the management body. Such notifications should, in cases where the competent authority assesses the suitability before the appointment, be made not later than two weeks after the institution decided to propose the member for appointment or, in cases where the competent authorities assess the suitability after the appointment, two weeks after the appointment and include the complete documentation and information in Annex III.

176. In the duly justified cases referred to in paragraph 136, institutions should be required to provide the complete documentation and information in Annex III, together with the notification to the competent authority within one month of the member being appointed.

177. Significant CRD institutions, for which an assessment of heads of internal control functions and the CFO, where they are not part of the management body, is required in line with paragraphs 172 and 173, should notify competent authorities of the appointment of these functions without delay and at the latest within two weeks of their appointment. Significant CRD institutions should be required to provide the complete documentation and information listed in Annex III, as applicable, together with the notification.

178. Competent authorities may set out the supervisory procedures applicable to the assessment of suitability of heads of internal control functions and the CFO, where they are not part of the management body, in other institutions not referred to in paragraph 172 and, where identified on a risk-based approach, other key function holders in institutions. As part of those procedures, competent authorities may also request those institutions to inform them about the results of the assessment carried out and to submit the relevant documentation to them.

179. Competent authorities should set out a maximum period for their assessment of suitability which should not exceed four months from the date when the notifications referred to in paragraphs 175 to 177 are provided by the institution. Where a competent authority establishes that additional documentation and information are needed to complete the assessment, that period may be suspended from the time when the competent authority requests additional documentation and information necessary to complete the assessment, until the receipt of that documentation and information. Necessary documentation and information should include documents or hearings that have to be requested or conducted in the course of the administrative procedures in cases where a negative decision is intended.

180. In accordance with Article 15 of Directive 2013/36/EU, where the assessment of suitability is performed in the context of an authorisation to take up the business, the maximum period must not exceed six months after receipt of the application or, where the application is incomplete, six months after receipt of the complete information required for the decision[35].

181. Competent authorities should perform their assessment on the basis of the documentation and information provided by the institution and assessed members, and assess them against the notions defined in Title III, as applicable.

182. The assessment of the individual and collective suitability of the members of the management body and, in case of significant CRD institutions, the assessment of the individual suitability of the heads of internal control functions and the CFO, where they are not part of the management body, should be performed on an ongoing basis by competent authorities, as part of their ongoing supervisory activity. Competent authorities should ensure that necessary re-assessments under sections 1, 2 and 3 of Title II are conducted by institutions. If a re-assessment of suitability by a competent authority is prompted by a re-assessment by an institution, that competent authority should in particular take into account the circumstances that prompted the re-assessment by the institution. In particular, competent authorities should re-assess the individual or collective suitability of the members of the management body and the individual suitability of heads of internal control functions and the CFO, where they are not part of the management body, within significant CRD institutions referred in paragraph 172 whenever significant new facts or evidence are unveiled during the course of ongoing supervision. This should include situations that cast factual material doubt on the past or ongoing compliance with AML/TF requirements by the institution, individual members of the management body and, within significant institutions referred to in paragraph 173, heads of internal control functions and the CFO, where they are not part of the management body.

183. For significant CRD institutions, competent authorities should use interviews where appropriate for the purpose of suitability assessments. Interviews may also be performed for other institutions on a risk-based approach, taking into account the criteria set out in Title I as well as the individual circumstances of the institution, the assessed individual, and the position for which an assessment is made.

184. Where appropriate, the interview process may also serve to re-assess the suitability of a member of the management body or key function holder when there are any new facts or circumstances that may raise concerns about the suitability of the individual.

185. Competent authorities may attend or conduct meetings with the institution, including with some or all members of its management body or key function holders, or participate as an observer in meetings of the management body in order to assess the effective functioning

[35] See footnote 28.

of the management body. The frequency of such meetings should be set using a risk-based approach.

186. A breach of a prudential or other regulatory requirement by an institution can, in some circumstances, support a finding by the competent authority that an individual is no longer suitable – for instance, in the event that the competent authority establishes, following due process, that an individual failed to take such steps as a person in his or her position could reasonably be expected to take in order to prevent, remedy or stop the breach.

24. Decision of the competent authority

187. Competent authorities should take a decision based on the assessment of individual and collective suitability of members of the management body and the assessment of heads of internal control functions and the CFO, where they are not members of the management body, within the maximum period referred to in paragraph 179 or, if the period has been suspended, within a maximum period of six months after the start of that period.

188. In the cases referred to in paragraph 181, in accordance with the second subparagraph of Article 15 of Directive 2013/36/EU, a decision to grant or refuse authorisation must, in any event, be taken within 12 months of the receipt of the application.

189. Where an institution fails to provide sufficient information regarding the suitability of an assessed individual to the competent authority, the latter should either inform the institution that the member cannot be a member of the management body or a key function holder because it has not been sufficiently proven that the person is suitable, or decide negatively.

190. Where the outcome of the assessment of suitability by the competent authority concludes that it is not sufficiently proven that the assessed person is suitable, the competent authority should object to or not approve the appointment of that person, unless the identified shortcomings are remediable and can be overcome by other measures taken by the institution.

191. Competent authorities should inform institutions of at least a negative decision taken as soon as possible. Where provided by national law or defined by the competent authority as part of their supervisory processes, a positive decision may be deemed to be taken by silence, when the maximum period for the assessment, as referred to in paragraph 179, is completed and the competent authority has not taken a negative decision.

192. The competent authority, considering the measures already taken by the institution, should take appropriate measures to address the identified shortcomings and set a timeline for the implementation of these measures. Such measures should include as appropriate one or more of the following measures:

a. requiring the institution to organise specific training for the members of the management body individually or collectively;

b. requiring the institution to change the division of tasks amongst the members of the management body;

c. requiring the institution to refuse the proposed member or to replace certain members;

d. requiring the institution to change the composition of the management body to ensure the individual and collective suitability of the management body;

e. removing the member from the management body;

f. where appropriate, imposing administrative penalties or other administrative measures (e.g. setting out specific obligations, recommendations or conditions), including ultimately withdrawing the institution's authorisation.

193. The measures referred to in (a) and (c) should also be applicable in the context of the suitability assessments of the heads of internal control functions and the CFO, where they are not part of the management body, of significant CRD institutions.

194. Where members of the management body do not fulfil the requirements set out in Article 91(1) of Directive 2013/36/EU, competent authorities have the power to remove such members from the management body. The competent authorities should in particular verify whether the requirements set out in Article 91(1) of Directive 2013/36/EU and as further specified in these Guidelines are still fulfilled where they have reasonable grounds to suspect that money laundering or terrorist financing is being or has been committed or attempted, or there is increased risk thereof in connection with that institution.

25. Cooperation between competent authorities

195. Competent authorities should provide each other, while respecting the applicable data protection legislation, with any information they hold about a member of the management body or key function holder for the performance of a suitability assessment. The information should also include a justification for the decision taken regarding that person's suitability. For this purpose, unless national law permits it without requiring consent, the requesting competent authority should seek from members of the management body or key function holders consent:

a. to request from any competent authority information relating to them which is needed for the suitability assessment;

b. to process and use the provided information for the suitability assessment, if such consent is required by applicable data protection legislation.

196. Competent authorities may take into consideration the results of the assessment of suitability conducted by other competent authorities or other relevant information for the purpose of the assessment of suitability about members of the management body or key function holders and request the necessary information from other competent authorities in order to do so. Where appropriate, competent authorities should contact the AML/CFT supervisor in the relevant Member State to obtain additional information necessary to assess the integrity, honesty, good repute and suitability of an institution's management body or key function holders. In addition, in situations where the risk of ML/TF associated with the institution or member is increased, competent authorities should also, where appropriate, seek information from other relevant stakeholders, including the Financial Intelligence Units and law enforcement agencies, to inform their suitability assessment.[36]

197. Competent authorities receiving such requests should, where possible, provide relevant available information on the suitability of individuals as soon as possible to enable the requesting competent authority to comply with the time for assessment laid down in paragraph 179. The information provided should comprise the result of the assessment of suitability, any identified shortcomings, measures taken to ensure the suitability, the responsibilities of the position for which the person was assessed and basic information on the size, nature, scale and complexity of the relevant institution, or other relevant information for the assessment of suitability.

198. Competent authorities should take into account the information provided in the EBA and ESMA databases on administrative penalties in line with Article 69 of Directive 2013/36/EU and Article 71 of Directive 2014/65/EU as a part of their assessment of suitability, by identifying any penalties in the last ten years against institutions where the assessed person was a member of their management body or a key function holder and considering the severity of the underlying cause and the responsibility of the assessed person.

199. Where relevant, competent authorities may also request information from other competent authorities about the assessed individual in cases where the person has not been assessed by another competent authority, but where the other competent authority may be in a position to provide additional information, e.g. on refused registrations or criminal records. Competent authorities receiving such requests should provide relevant available information on the suitability of persons. Where the information originates in another Member State, it shall be disclosed only with the express agreement of the authorities which have provided the information and solely for the purposes for which those authorities gave their agreement.

200. Where a competent authority reaches a decision about the suitability of a person that differs from any previous assessment conducted by another competent authority, the

[36] See also: Joint guidelines on cooperation and information exchange for the purpose of Directive (EU) 2015/849 between competent authorities supervising credit and financial institutions available under https://eba.europa.eu/regulation-and-policy/anti-money-laundering-and-countering-financing-terrorism

competent authority performing the more recent assessment should inform the other competent authorities of the result of its assessment.

201. Where a competent authority decides that a member of the management body or a head of the internal control function and the CFO, where they are not part of the management body, as referred to in paragraph 172, is not suitable based on relevant facts in the context of ML/TF risks or events, the competent authority should, without prejudice to national law, share their findings and decisions with the competent AML/CFT supervisor.

202. When requesting information, the competent authority making the request should provide the name of the individual being assessed together with his or her date of birth or the name of the institution and position for which the individual has already been assessed, to ensure that data for the correct person is provided.

Title IX - Competent authorities' and resolution authorities' suitability assessment in the context of resolution

203. Competent authorities and resolution authorities should specify the procedures applicable to the exchange of information regarding suitability assessments of members of the management body and their replacement in line with Articles 27, 28 and 34(1)(c), having also regard to Article 81(2) of BRRD according to which competent authorities should inform the resolution authorities of the removal of one or more members of the management body and the appointment of one or more members of the management body under Articles 27 and 28 of BRRD.

204. As part of the above procedures, it should be ensured that the suitability of newly appointed members of the management body and the management body as a collective body where relevant as referred to in Articles 27, 28 and Article 34(1)(c) of BRRD are assessed by competent authorities in line with the criteria of Title III.

205. The procedures should ensure that the resolution authorities notify competent authorities without delay of any new appointment of one or more members of the management body. When appointing members of the management body in accordance with Article 34(1)(c) under the resolution powers provided under Article 63(1)(l) of BRRD, resolution authorities should provide competent authorities as soon as possible with the required documents to enable them to perform a suitability assessment.

206. When new members of the management body are appointed under Article 27, Article 28 or Article 34(1)(c) of BRRD, competent authorities should perform the suitability assessment after the member of the management body or the management body as a collective body has taken up their position given the emergency of the situation and make their decision on the suitability without undue delay, aiming at a time period of one month from the date they receive a notification of appointment as set out in national law (e.g. from the institution) in accordance either with Article 28 of BRRD or from the resolution authority in accordance with Article 34(1)(c) under the resolution powers provided under Article 63(1)(l) of BRRD. The

competent authority should inform the resolution authority without undue delay about the assessment results.

207. The special manager appointed by the resolution authority under resolution and assigned with tasks exclusively related to the implementation of the resolution actions according to Article 35 of BRRD with a temporary mandate not exceeding the resolution period, is not subject to the suitability assessment to be conducted by the competent authority.

Annex I – Template for a matrix to assess the collective competence of members of the management body

Annex I to the Guidelines is provided as a separate Excel file. The Annex has been amended to include compliance with AML/TF requirements, but stays otherwise unchanged.

Annex II – Skills

This is the non-exhaustive list of relevant skills, referred to in paragraph 59, that institutions should consider using when performing their suitability assessments:

a. **Authenticity:** is consistent in word and deed and behaves in accordance with own stated values and beliefs. Openly communicates his or her intentions, ideas and feelings, encourages an environment of openness and honesty, and correctly informs the supervisor about the actual situation, at the same time acknowledging risks and problems.

b. **Language:** is able to communicate orally in a structured and conventional way and write in the national language or the working language of the institution's location.

c. **Decisiveness:** takes timely and well-informed decisions by acting promptly or by committing to a particular course of action, for example by expressing his or her views and not procrastinating.

d. **Communication:** is capable of conveying a message in an understandable and acceptable manner, and in an appropriate form. Focuses on providing and obtaining clarity and transparency and encourages active feedback.

e. **Judgement:** is capable of weighing up data and different courses of action and coming to a logical conclusion. Examines, recognises and understands the essential elements and issues. Has the breadth of vision to look beyond his or her own area of responsibility, especially when dealing with problems that may jeopardise the continuity of the undertaking.

f. **Customer and quality-oriented:** focuses on providing quality and, wherever possible, finding ways of improving this. Specifically, this means withholding consent from the development and marketing of products and services and to capital expenditure, e.g. on products, office buildings or holdings, in circumstances where he or she is unable to gauge the risks properly owing to a lack of understanding of the architecture, principles or basic assumptions. Identifies and studies the wishes and needs of customers, ensures that customers run no unnecessary risks and arranges for the provision of correct, complete and balanced information to customers.

g. **Leadership:** provides direction and guidance to a group, develops and maintains teamwork, motivates and encourages the available human resources and ensures that members of staff have the professional competence to achieve a particular goal. Is receptive to criticism and provides scope for critical debate.

h. **Loyalty:** identifies with the undertaking and has a sense of involvement. Shows that he or she can devote sufficient time to the job and can discharge his or her duties properly, defends the interests of the undertaking and operates objectively and critically. Recognises and anticipates potential conflicts of personal and business interest.

i. **External awareness:** monitors developments, power bases and attitudes within the undertaking. Is well informed on relevant financial, economic, social and other developments at national and international level that may affect the undertaking and also on the interests of stakeholders and is able to put this information to effective use.

j. **Negotiating:** identifies and reveals common interests in a manner designed to build consensus, while pursuing the negotiation objectives.

k. **Persuasive:** is capable of influencing the views of others by exercising persuasive powers and using natural authority and tact. Is a strong personality and capable of standing firm.

l. **Teamwork:** is aware of the group interest and makes a contribution to the common result; able to function as part of a team.

m. **Strategic acumen:** is capable of developing a realistic vision of future developments and translating this into long-term objectives, for example by applying scenario analysis. In doing so, takes proper account of risks that the undertaking is exposed to and takes appropriate measures to control them.

n. **Stress resistance:** is resilient and able to perform consistently even when under great pressure and in times of uncertainty.

o. **Sense of responsibility:** understands internal and external interests, evaluates them carefully and renders account for them. Has the capacity to learn and realises that his or her actions affect the interests of stakeholders.

p. **Chairing meetings:** is capable of chairing meetings efficiently and effectively and creating an open atmosphere that encourages everyone to participate on an equal footing; is aware of other people's duties and responsibilities.

Annex III – Documentation elements for initial appointments

The following information and/or accompanying documents are required to be submitted to the competent authorities for each requested suitability assessment.

1. Personal details and details on the institution and the function concerned

1.1 Personal individual details including full name, name at birth if different, gender, place and date of birth, address and contact details, nationality, and personal identification number or copy of ID card or equivalent.

1.2 Details of the position for which the assessment is sought, whether or not the management body position is executive or non-executive, or if the position is for a key function holder. This should also include the following details:

a. the letter of appointment, contract, offer of employment or drafts thereof, as applicable;
b. any associated board minutes or suitability assessment report/document;
c. the planned start date and duration of mandate;
d. the expected time commitment for the position as accepted by the individual;
e. description of the individual's key duties and responsibilities;
f. if the person is replacing someone, the name of this person.

1.3 A list of reference persons including contact information, preferably for employers in the banking or financial sector, including full name, institution, position, telephone number, email address, nature of the professional relationship and whether or not any non-professional relationship exists or existed with this individual.

2. Suitability assessment by institution

2.1 The following details should be provided:

a. details of the result of any assessment of the suitability of the individual performed by the institution, such as relevant board minutes or suitability assessment report/documents that include the reasoning for the result of the assessment made;
b. whether or not the institution is significant as defined in the Guidelines; and
c. the contact person within the institution.

3. Knowledge, skills and experience

3.1 Curriculum vitae containing details of education and professional experience (including professional experience, academic qualifications and other relevant training), including the name and nature of all organisations for which the individual has worked and the nature and duration of the functions performed, in particular highlighting any activities within the scope of the position sought (banking and/or management experience).

3.2 The information to be provided should include a statement from the institution of whether or not the individual has been assessed as having the requisite experience as enumerated in these Guidelines and, if not, details of the training plan imposed, including the content, the provider and the date by which the training plan will be completed.

4. Reputation, honesty, integrity

4.1 Criminal records and relevant information on criminal investigations and proceedings, relevant civil and administrative cases, and disciplinary actions (including disqualification as a company director, bankruptcy, insolvency and similar procedures) especially through an official certificate or any reliable source of information concerning the absence of criminal conviction, investigations and proceedings (e.g. third-party investigation, testimony made by a lawyer or a notary established in the EU).

4.2 Statement of whether or not criminal proceedings are pending or whether or not the person or any organisation managed by him or her has been involved as a debtor in insolvency proceedings or a comparable proceeding.

4.3 Information concerning the following:

a. investigations, enforcement proceedings, or sanctions by a supervisory authority in which the individual has been directly or indirectly involved;
b. refusal of registration, authorisation, membership or a licence to carry out a trade, business or profession; or the withdrawal, revocation or termination of registration, authorisation, membership or a licence; or expulsion by a regulatory or government body or by a professional body or association;
c. dismissal from employment or a position of trust, fiduciary relationship, or similar situation, or having been asked to resign from employment in such a position (excluding redundancies);
d. whether or not an assessment of reputation of the individual as an acquirer or a person who directs the business of an institution has already been conducted by another competent authority (including the identity of that authority, the date of the assessment and evidence of the outcome of this assessment) and the consent of the individual where required to seek such information to be able to process and use the provided information for the suitability assessment; and

e. whether or not any previous assessment of the individual by an authority from another, non-financial, sector has already been conducted (including the identity of that authority and evidence of the outcome of this assessment).

5. Financial and non-financial interests

5.1 All financial and non-financial interests that could create potential conflicts of interest should be disclosed, including but not limited to:

a. description of any financial (e.g. loans, shareholdings) and non-financial interests or relationships (e.g. close relations such as a spouse, registered partner, cohabitant, child, parent or other relation with whom the person shares living accommodation) between the individual and his or her close relatives (or any company that the individual is closely connected with) and the institution, its parent or subsidiaries, or any person holding a qualifying holding in such an institution, including any members of those institutions or key function holders;
b. whether or not the individual conducts any business or has any commercial relationship (or has had over the past two years) with any of the above listed institutions or persons or is involved in any legal proceedings with those institutions or persons;
c. whether or not the individual and his or her close relatives have any competing interests with the institution, its parent or subsidiaries;
d. whether or not the individual is being proposed on behalf of any one significant shareholder;
e. any financial obligations to the institution, its parent or its subsidiaries (excluding performing mortgages negotiated at arm's length); and
f. any positions of political influence (nationally or locally) held over the past two years.

5.2 If a material conflict of interest is identified, the institution should provide a statement on how this conflict has been satisfactorily mitigated or remedied including a reference to the relevant parts of the institution's conflict of interest policy or any bespoke conflict management or mitigation arrangements.

6. Time commitment

6.1 All relevant and necessary details should be provided to show that the individual has sufficient time to commit to the mandate including:

a. information about the minimum time that will be devoted to the performance of the person's functions within the institution (annual and monthly indications);

b. a list of the predominantly commercial mandates that the individual holds including whether or not the privileged counting rules[37] in Article 91(4) of CRD IV apply;
c. where the privileged counting rules apply, an explanation of any synergies that exist between the companies;
d. a list of those mandates which are pursuing predominantly non-commercial activities or are set up for the sole purposes of managing the economic interests of the individual;
e. the size of the companies or organisations where those mandates are held including for example, total assets, whether or not the company is listed, and number of employees;
f. a list of any additional responsibilities associated with those mandates (such as the chair of a committee);
g. estimated time in days per year dedicated to each mandate; and
h. number of meetings per year dedicated to each mandate.

7. Collective knowledge, skills and experience

7.1 The institution should provide a list of the names of the members of the management body and their respective roles and functions in brief.

7.2 The institution should provide a statement regarding its overall assessment of the collective suitability of the management body as a whole, including a statement on how the individual is to be situated in the overall suitability of the management body (i.e. following an assessment using the suitability matrix in Annex I or another method chosen by the institution or required by the relevant competent authority). This should include a description of how the overall composition of the management body reflects an adequately broad range of experience and the identification of any gaps or weaknesses and the measures imposed to address these.

8. Any and all other relevant information should be submitted as part of the application.

[37] This is where the individual avails himself or herself of the possibility of holding several mandates that are part of the same group, or within undertakings where the institution holds a qualifying holding or in institutions that are part of the same institutional protection schemes.

5. Accompanying documents

5.1. Draft cost-benefit analysis / impact assessment

Article 16(2) of the EBA and ESMA Regulations provides that the EBA and ESMA should carry out an analysis of 'the potential related costs and benefits' of any Guidelines they develop. This analysis should provide an overview of the findings regarding the problem to be dealt with, the solutions proposed and the potential impact of these options.

A. Problem identification

Directive (EU) 2019/878 of 20 May 2019 amends Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures. The new Directive is to be implemented by Member States by 28 December 2020. The EBA and ESMA issued Joint Guidelines on the Assessment of the suitability of members of the management body and key function holders in 2017. The Joint Guidelines have been amended to reflect the introduced changes.

B. Policy objectives

These Guidelines are expected to contribute to the development of a single rule book and a level playing field for the EU banking and investment firm sectors and convergence of supervisory practices and outcomes[38]. As a joint mandate of the EBA and ESMA, these Guidelines are also expected to enhance cross-sectoral consistency and reduce potential risk originating from regulatory arbitrage within the EU financial system.

More specifically, these Guidelines aim to harmonise and improve the scope and the criteria used for the assessment of the suitability of members of the management body, heads of internal control functions and CFO, where they are not part of the management body, and other key function holders of credit institutions and investment firms in the EU, with a view to improving their internal governance and the performance and involvement of their management and internal control functions in credit institutions and investment firms.

[38] EBA Annual Report 2014, available under http://www.eba.europa.eu/documents/10180/1112872/EBA+2014+Annual+Report.pdf; EBA Work Programme 2016 (revised), available under http://www.eba.europa.eu/documents/10180/1232192/EBA+2016+Work+Programme+%28revised%29.pdf

These Guidelines were developed to provide guidance for the harmonised implementation of the notions of sufficient time commitment, adequate collective knowledge, skills and experience, honesty, integrity and independence of mind, adequate human and financial resources devoted to induction and training of the members of management body, and management body diversity.

These Guidelines also include guidance on the relevant policies of institutions and related decision-making processes, as well as the supervisory procedures to be followed by competent authorities.

C. Baseline scenario

For credit institutions, the current EU legislative framework for the assessment of the suitability of members of the management body and key function holders of financial institutions is based mainly on Directive 2013/36/EU. Directive 2014/65/EU entered into application on 3 January 2018 and aligned the requirements for the assessment of the suitability of the members of the management body with those applicable for credit institutions and investment firms subject to Directive 2013/36/EU (Article 9(1) of Directive 2014/65/EU that recalls Article 88 and 91 of Directive 2013/36/EU).

With regard to equal opportunities and non-discrimination the Treaty on the Functioning of the European Union and the European Charter of Fundamental Rights set the underlying framework.

The above requirements, further specified within the Joint Guidelines on the Assessment of the suitability of members of the management body and key function holders issued by the EBA and ESMA in 2017 and other EBA and ESMA Guidelines already in place (e.g. Guidelines on Internal Governance) form the baseline scenario.

D. Options considered

Changes to the Guidelines are limited to changes introduced by Directive and to remedy weaknesses identified regarding the representation of the under-represented gender. Most changes are of a technical nature and concern the change of scope of application of Directive 2013/36/EU that applies also to financial and mixed financial holding companies and the amendments to Article 91 of that Directive, concerning the risks of money laundering and terrorist financing that have to be taken into account in the assessment. Regarding those changes no alternative options have been identified that require assessment.

Additional changes have been introduced in the section on diversity policy objectives. In its diversity benchmarking exercise the EBA found widespread weaknesses in institutions' diversity policies and in the representation of the under-represented gender.

Option A:

Amending the Guidelines to clarify how institutions should set diversity targets and in particular on how to take into account employee representatives when assessing compliance with gender targets.

Option B:

In addition to Option A, providing further guidance on the requirement that institutions have to ensure that there are equal opportunities for all genders that include that there are appropriate policies that ensure equal opportunities in career progression and that there is no discrimination towards staff.

The diversity benchmarking report of the EBA, published in early 2020, provides evidence that Option A alone would not be effective. Many institutions have not yet adopted diversity policies and gender diversity is not always included in diversity policies that have been adopted. There is also an insufficient representation of the under-represented gender in many institutions.

Therefore it is appropriate to set out additional expectations regarding measures that should be taken by institutions to ensure that the principle of equal opportunities, encoded in the Treaty on the Functioning of the European Union, is respected. Those measures include, but are not limited to, career development plans, training, active reintegration of staff after maternity or parental leave and anti-discrimination measures. All those should facilitate a more diverse pool of candidates for management body positions and should help to improve diversity at the level of other staff with managerial responsibilities. All this should improve the decision-making processes in institutions.

While there are some costs to implement such measures, they are expected to be very limited and not caused by the Guidelines as such, but by the general legal framework established in the European Union.

Option B has been retained.

Additional changes have been introduced to add a new title on exchange of information on suitability assessment between competent authorities and resolution authorities to further harmonise practices and ensure supervisory convergence.

Option A:

Amending the Guidelines to clarify how competent authorities and resolution authorities should exchange information on the suitability assessment after replacement of members of the management body and provide further guidance in this respect. In particular, how competent authorities and resolution authorities should specify the procedures applicable to the exchange of information regarding suitability assessments of members of the management body and their the replacement in line with Articles 27, 28 and 34(1)(c) and 81(2) of BRRD.

Option B:

In addition to Option A, providing further guidance on how the suitability assessment should be made and under what timeline.

Option A has been retained.

Summary of key issues and the EBA's response

The EBA published its consultation paper on 31 July 2020 and received overall 17 responses; 15 of them were published, while the other two have been submitted on a confidential basis. The consultation was limited to the changes made to the guidelines previously in place. Therefore, comments received on guidelines that have not been amended are in general not included in the feedback table. The Banking Stakeholder Group did not submit an opinion.

The main comments received challenged the way in which the topic of money laundering has been integrated into the Guidelines.

Several respondents challenged the legal basis regarding the notion of key function holders. The EBA and ESMA must issue specific Guidelines whenever explicitly required under European Union law. This is the case for Articles 74(3) and Article 91 of Directive 2013/36/EU (CRD) and Article 9 of Directive 2014/65/EU, which mandates the EBA and ESMA to issue Guidelines on governance arrangements, processes and internal control mechanisms. In addition, Article 16 of EBA Regulation (EU) No 1093/2010 lays down the general competence to issue Guidelines ensuring common, uniform and consistent application of Union law within its scope of action and effective supervisory practices within the ESFS. The same holds true for ESMA. The assessment of KFH is one necessary measure to ensure robust governance arrangements required by Article 74 of Directive 2013/36/EU and by Articles 9 and 16 of Directive 2014/65/EU. In light of the above, it is necessary to further specify the re-assessment triggers in light of the reinforced link between ML-TF risks and the prudential framework.

Many institutions had objections against the requirement that a member of the management board should be identified as being responsible for implementation of the requirements in Directive 2018/843 (AMLD V) on anti-money laundering and terrorist financing. Moreover, some respondents would prefer to remove the guidance provided in light of other upcoming EBA work on this topic.

The guidelines have been aligned with the requirements under AMLD V. Institutions' governance arrangements must take into account the risks that can emerge from being involved or being exploited in the context of money laundering and terrorist financing. The management body bears the overall responsibility for implementing the related policies and processes. However, many national laws, in line with AMLD V, indeed foresee that companies that are subject to AMLD V must identify one member of the management board, where such a body exists, as being responsible. The EBA is working on additional guidelines on AML compliance, while these Guidelines set out principles on the assessment of risks triggered by ML/TF risk factors during the assessment of the suitability of members of the management and key function holders.

A detailed analysis of the comments received is included in the feedback table below.

Summary of responses to the consultation and the EBA's analysis

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Responses to questions in Consultation Paper EBA/CP/2020/19			
Comments to the Background section			
Para. 24: Legal basis	One respondent suggests making reference to the conflicts of interest section of the EBA Guidelines on Internal Governance.	The comment has been accommodated.	GL amended
Para. 23 and 30: Background and rationale	Some respondents ask for confirmation that Article 16(2)(m) of the SSM Regulation is the legal basis. One respondent proposes deleting the amendment. Alternatively, it suggests redrafting considering that supervisory authorities can remove individual members solely due to e.g. matters of the collective gender equality in the management body, whereas Article 91(12)(e) of Directive 2013/36/EU specifically refers to the notion of diversity to be taken into account for the selection of members of the management body. Nor does Article 9 of Directive 2014/65/EU provide for competent authorities to remove members of management bodies on such grounds.	The legal basis is provided under Article 91 of the CRD as explicitly mentioned in those paragraphs. For MiFID firms, Article 9 refers explicitly to Article 91 of the CRD for the assessment of fit and proper members of the management body. Article 91 explicitly refers also to the removal power of CAs. This section reflects fully the text of CRD.	No change
Para. 27: Background and rationale	Some respondents find the references to 'offshore financial centres' confusing, since later there are references to 'third country' (numerous paragraphs). They suggest to align the references throughout the GL.	The wording 'offshore financial centres' repeats the wording used in Article 109 of the CRD. The use of this term in the Guidelines does not lead to a differentiation of elements between such centres and other third countries and therefore no definition is necessary. The guidelines have been further clarified.	GL clarified

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Para. 51: Background	One respondent suggests removing 'attempted' ML/TF as attempted ML/TF is too common to constitute a meaningful or appropriate trigger for re-assessment of suitability (same comment also for para. 27 c, 32 c and 37).	The wording used is in line with the wording used under Article 91 CRD.	No change
Para. 53: Rationale and objective of the Guidelines	One respondent notes that this paragraph mentions 'authorities and bodies' without clarifying what is meant by 'authorities' and 'bodies'. It suggests clarifying or otherwise removing.	Authorities and bodies are the ones in charge responsible for ensuring compliance with anti-money laundering requirements under Directive (EU) 2015/849 so basically AML-CFT supervisors and FIUs. The wording has been clarified.	GL amended
Para. 57: Rationale and objective of the Guidelines	Some respondents suggest that the word 'untrusted' should be replaced with 'trusted'.	The comment has been accommodated.	GL amended
Question 1: Are subject matter, scope of application, definitions and date of application appropriate and sufficiently clear?			
Scope of application	Many respondents suggest proportionality in the application of the GL on the (sub-)consolidated basis, particularly for those entities not directly supervised by the ECB. Some respondents suggest limiting the application of the Guidelines only to subsidiaries that are themselves financial holding companies or mixed financial holding companies. Some suggest that the suitability assessment for non-regulated subsidiaries within the EU should be risk-based, since there may be cases where it is not proportional to request application of all the details.	Directive 2013/36/EU (CRD) applies on an individual, sub-consolidated or consolidated basis. The scope of prudential consolidation is specified within the CRR and includes all financial institutions within the scope of prudential consolidation. The principle of proportionality determines how regulatory requirements are applied in a proportionate way. Creating waivers within guidelines for entities in the scope of prudential consolidation is not possible under the existing legal framework. The consolidating institution is responsible for ensuring that the requirements in Title VII, Chapter 3, Section II of the CRD are met in the scope of consolidation, therefore all members of management	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		bodies of all financial institutions within the prudential scope of consolidation have to be assessed.	
Para. 16: Definitions	Some respondents recommend ensuring alignment to the definitions provided in the EBA GL on Internal Governance. More specifically, reference is made to the definitions of 'prudential consolidation' and 'relevant institution'.	The EBA has reviewed all the mentioned Guidelines and ensured that definitions are consistent. The definition 'relevant institution' is not needed in the Guidelines on Internal Governance.	GL amended
Para. 17: Date of application	Several respondents suggest postponing the date of application to take into account the time needed for CRD and IFD national transposition processes, translations of the GL into the EU languages, the 'comply or explain' procedures and the impact of Covid-19, suggesting dates between 29.12.2021 and 30.06.2022 for its entry into force.	The effective coming into force of the amendments within the guidelines has been set to 31.12.2021, taking into account the time needed for their implementation.	GL amended
Transitional provisions	Most respondents observe that transitional provisions may have been useful in the 'original' GL, but in this amended version they can be deleted with the effect that the revised Guidelines should apply only to members appointed as from the date of application.	The EBA appreciates that the implementation of the revised guidelines will require some time. The effective coming into force of the amendments within the guidelines has been set to 31.12.2021, take into account the time needed for their implementation.	GL amended
Para. 15: Inclusion of AML/TF risks	One respondent suggests specifying, as done for ML/TF risks, that any references to 'risks' in the GL should include ESG risks.	The comment has been accommodated.	GL amended
Para. 16: Definitions	Some respondents deemed it difficult to further differentiate between the categories of institutions that are now in scope (there are overall six categories: 'institutions', 'CRD institutions', 'relevant institutions', 'significant CRD institutions', 'listed relevant institutions and listed institutions', 'consolidating credit institutions'); on the other side, the Internal Governance GL	The term 'relevant institution' comprises institutions subject to the CRD and means credit institutions as defined in Article 4(1)(1) of Regulation (EU) No 575/2013 and investment firms as defined in Article 4(1)(1) of Directive 2014/65/EU that do not meet all of the	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	operates with the terms 'significant credit institutions' and 'listed CRD credit institution'.	conditions for qualifying as small and non-interconnected investment firms under Article 12(1) of Regulation (EU) 2019/2033. As the scope of application of the guidelines differs from the Guidelines on Internal Governance, it is necessary to include additional definitions to further specify to whom certain guidelines apply.	
Para. 20: proportionality principle	One respondent requests clarification as to the intent of the insertion.	The application of proportionality is further specified and indeed the size or systemic importance of an institution may not, by itself, be indicative of the extent to which an institution is exposed to risks (for example regarding ML-FT risks).	No change
Question 2: Are the changes made in Title II appropriate and sufficiently clear?			
Para. 27(c): Legal basis	Several respondents suggest deleting, especially in the light of the fact that the CRD lacks a legal basis for the re-assessment of the suitability of the members of the management body.	The suitability of members of the management body is one requirement in accordance with MIFID and the CRD that must be met at authorisation and all requirements that apply at authorisation have to be met at all times.	No change
Para. 27(c): Cases for suitability re-assessment by institutions – ML/CF suspect	Most respondents find the requirement disproportionate, because it widens the circumstances triggering suitability re-assessments beyond what would appear reasonable. E.g. as soon as a bank files a Suspicious Activity Report (SAR), regardless of whether the suspicion includes the involvement of one or more members of the management body; or in response to ML/TF originating externally, including all attempts by external actors, which would potentially require an endless series of re-assessments to be performed with a disproportionate and unreasonable level of frequency.	The Guidelines are in line with the amendment introduced by CRD 5 that creates a link between ML/TF risk and the prudential framework. Institutions should monitor on an ongoing basis the suitability of the members of the management body to identify, in the light of any relevant new fact, situations where a re-assessment of their suitability should be performed. Where there are reasonable grounds, e.g. weaknesses in the institution's AML/CTF control framework, to suspect that money laundering or terrorist financing has been or is being committed or attempted or there is an increased risk thereof in connection with the	GL clarified

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	In view of the above, if the part is confirmed, in order to limit the triggering circumstances it is suggested to clarify that: (i) a review is needed only if there is evidence of significant or material and/or systematic ML/TF being carried out or attempted; (ii) a re-assessment is not necessary (and would be inappropriate or disproportionate) where there is no link between the suspected ML/TF and individual members of the management body, i.e. the risk is external to the institution. One respondent suggests limiting the re-assessment only to the member of the management body responsible for AML.	institution, a re-assessment should be triggered to assess whether the member of the management (or several members) are still fit and proper. The guidelines have been further clarified, in particular the conditions that trigger a re-assessment. As specified in the Guidelines, in any case, any event that can otherwise materially affect the suitability of the member of the management body should trigger a re-assessment and it belongs to institutions to assess those events and be able to demonstrate it to the CAs if required. The wording 'institution may or is exposed to' is in line with the CRD and AMLD. It is important that all institutions implement appropriate AML/CTF controls under the overall responsibility of the management body. Such events are not limited to the fact that a member of the management body is itself suspected to be involved in ML/TF activities. The management body bears the overall responsibility for compliance with AML/CTF requirements.	No change
Para. 27(c): Presumption of innocence	Some respondents suggest clarifying that only information that is relevant, important, serious or exceptional to that institution in particular could be considered. They highlight that this is a very subjective criterion questioning the presumption of innocence. This gives a very important and almost discretionary power to the authorities to interfere in the governance (same comment also on para. 194).	See also comments above. This assessment is done for prudential purposes and as several times indicated in the Guidelines is without prejudice to the presumption of innocence and other fundamental rights.	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Para. 30 and 151: Institutions' assessment of the collective suitability of the management body	One respondent suggests clarifying what is meant by 'adequately broad range of experience' within the overall composition of the management body. Some respondents evidence that some institutions have no influence on the composition of the supervisory body and therefore cannot ensure a wide range of experience (e.g. in the case of German public-law savings banks, the selection of the members of the management body in its supervisory function is the sole responsibility of the municipalities, which are the trustees of the savings banks).	The term used includes that the experiences collectively covered by all members of the management body should be adequate, while each member must have sufficient individual suitability, including experience. The EBA is aware about some specific legal structures and the resulting challenges. However, the CRD requirements apply to all institutions. Moreover, guidelines cannot be addressed to institutions that have a specific business model or legal form. The elements need to be seen also in combination with the elements on induction and training policies for members of the management body.	No change No change
Para. 36–39: Institutions' assessment of the suitability of key function holders	Some respondents complaint about the lack of legal basis in the CRD to set suitability requirements for key function holders. Therefore they do not support the inclusion of AML/CTF evaluations. It is also recalled that in the consultation launched by the European Commission (EC) on the final Basel III reforms, the EC has specifically addressed the fact that the current CRD framework does not provide for the assessment of KFH and has acknowledged that the Joint ESMA and EBA GL on suitability go further in this respect. It is suggested to refrain from introducing in the GL (additional) suitability requirements to KFH.	The EBA and ESMA must issue specific Guidelines whenever explicitly required under European Union law. This is the case for Articles 74(3) and Article 91 of Directive 2013/36/EU (CRD) and Article 9 of Directive 2014/65/EU, which mandates the EBA and ESMA to issue Guidelines on governance arrangements, processes and internal control mechanisms. In addition, Article 16 of EBA Regulation (EU) No 1093/2010 lays down the general competence to issue Guidelines ensuring common, uniform and consistent application of Union law within its scope of action and effective supervisory practices within the ESFS. The same holds true for ESMA. The assessment of KFH is one necessary measure to ensure robust governance arrangements required by Article 74 of Directive 2013/36/EU and by Articles 9 and 16 of Directive 2014/65/EU. In light of the above, it is necessary to further specify the re-assessment triggers in light of the reinforced link between ML-TF risks and the prudential framework.	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Para. 37(c): institutions' re-assessment of the suitability of key function holders – ML/TF suspect	One respondent suggests that the requirement should be limited to the key function holders who have a role or a responsibility which has enabled him or her to have an impact on the identified ML/TF issues.	All the KFH identified under the Guidelines may have an impact on ML-TF risks and therefore those aspects have to be considered in the suitability assessment and re-assessment.	No change
Question 3: Are the changes made in Title III appropriate and sufficiently clear?			
Para. 58: Adequate knowledge, skills and experience – assignment to a member of the management body of AML/CTF responsibilities	One respondent suggests clarifying as follows: '*Members of the management body that are responsible for the implementation of the laws, regulations and administrative provisions necessary to comply with Directive (EU) 2015/849 within the institution should have adequate knowledge (…)'*.	The allocation of such responsibilities to a member of the management body does not reduce the overall responsibility of the management body. The member responsible needs to have more intensive knowledge, skills and experience in this area than other members. The Guidelines have been clarified.	GL amended
Para. 58: Adequate knowledge, skills and experience – assignment to a member of the management body of AML/CTF responsibilities	One respondent suggests introducing a specific paragraph on the duty of management body members to have a good understanding of the institution and its business model, and the extent to which this may expose the institution to ML/TF risks. One respondent suggests clarifying that the assessment of knowledge of principles, regulations and ability to manage ML/TF risk should be applied only to members of the management body in its management function, while the members of management body in its supervisory function and key function holders should be assessed only in case of possible infringement of the commonly binding regulations in this area.	The guidelines are sufficiently clear, the area of ML/TF risks is relevant for all members of the management body, while some members need to have a deeper knowledge than others. The supervisory function oversees the management function and therefore also those members are subject to the respective elements.	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Para. 74(a)(iii): Reputation, honesty, and integrity – tax offences	Some respondents suggest deleting the specific reference to dividend arbitrage schemes and only mentioning higher-level categories such as 'tax offences'. Alternatively, if the reference to such schemes is retained, they note that the language 'illicit dividend arbitrage schemes' suggests that it is specifically within the remit of these GL to declare particular practices illicit.	The comment has been accommodated and 'illicit' been replaced with unlawful or banned as in any case the reference include 'tax offence'.	The Guidelines have been clarified.
	One respondent asks clarifying if 'tax offences […] committed indirectly' refers to offences committed personally or through companies/trusteeship, etc.	This is correct.	No change
Para. 74(b): Reputation, honesty, and integrity – findings	Respondents suggest deleting 'findings', being rather large and imprecise; alternatively, some clarifications should be provided, e.g. what if an investigation concludes with a settlement rather than a sanction.	Findings relate for example to findings during an on-site inspection of the Competent Authority. Therefore, findings can for example refer to weaknesses identified that do not lead necessarily to a sanction.	No change
Para. 75: Reputation, honesty, and integrity – adverse reports	Several respondents deem 'adverse reports' excessively broad and not in line with the European Convention on Human Rights or the Charter of Fundamental Rights of the European Union as long as it clearly refers to cases where there is neither a decision/measure that has been taken by a competent institution, nor an ongoing investigation resulting from judicial or administrative procedures as referred to in the first sentence of the same paragraph.	The paragraph clearly specifies that the factors listed are to be considered. It also explicitly mentions that it should be without prejudice to the presumption of innocence applicable to criminal proceedings, and other fundamental rights. Therefore, those factors are to be considered for the purpose of the assessment of reputation, honesty and integrity.	No change
	Moreover, some respondents recommend deleting references to whistleblowing procedures based on the fact that the credibility of the information of the whistleblower cannot be adequately verified in practice and is not valid as a credible accusation, which could have consequences in the form of a	The same as above, information obtained via whistleblowing processes should be taken into account among all other factors. The reference is in line with the provisions of the CRD that set out a specific framework for whistleblowing. The existence of adverse reports or whistleblowing information does not automatically lead to a conclusion that a person is not suitable. Such information is among several factors that are taken into account.	

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	criminal or administrative procedure which is then taken into account.		
Para. 77(e): Reputation, honesty, and integrity – factors to be considered in the assessment – serious allegations	Several respondents suggest deleting 'allegation' that would make institutions vulnerable to false allegations by third parties and thus effectively increase reputational risk. They also evidence that allegations cannot be considered as sufficient in order to assess a member of the management body being in contravention on the basic principle of 'innocent until proven guilty'.	The wording used in the Guidelines is quite limiting and refers only to serious allegations based on relevant, credible and reliable information. In addition the paragraph explicitly refers to the requirement that it should be without prejudice to the presumption of innocence applicable to criminal proceedings, and other fundamental rights. See also comments above under para. 75 regarding the approach to take into account such allegations. The approach is in line with the wording used under the AML-CFT framework.	No change
Para. 83(g): Independence of mind – political influence or political relationships	Some respondents suggest that situations where a member of the management body is a 'politically exposed person' should not be considered as significant in terms of independence of mind, taking into account the extension of the definition. Furthermore, this would lead to the inclusion, for example, of situations where board members are members of the administrative, management or supervisory bodies of state-owned enterprises, which cannot be considered as detrimental to the independence of mind of a board member. In any case it is not clear if the positions held as 'PEP' in the past 12 months are considered in the draft as relevant. In this regard, it is suggested to make reference to the criteria adopted by the ECB in its guidance on fit and proper assessment where it is specified that 'the materiality of the conflict of interest depends on whether there are specific powers or obligations inherent in the political role which would hinder the appointee from acting in the interest of the supervised entity'. Also, a timeframe for consideration is suggested to be added, e.g. appointments from	This comment has been taken into account and deleted from the Guidelines.	GL amended

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	the preceding 12 months. This also is suggested with regard to Annex III, para. 5.1(f).		
Para. 86: Independence of mind – affiliated companies	Several requests for clarifications are submitted, mainly aimed at specifying (i) the meaning of 'member' of affiliated companies and the definition of 'affiliated'; (ii) if 'membership' is to be understood as 'member of the management body'; (iii) that it does not apply to those members of the management body in its supervisory function which are representatives of municipal trustees, as the situation is comparable to that of shareholder representatives / shareholders and therefore equal treatment should be applied.	There is no definition within the CRD of the term 'affiliated companies'. However, the CRD makes reference to affiliated companies that are permanently affiliated to a central body or affiliated companies that are affiliated to the same institutional protection scheme. Member refers to members of the management body of a company and members of cooperative banks that are affiliated to the institution, where the member of the management body holds a directorship in the management or supervisory function. The EBA is aware of those specific situations and in this case a representative of municipal trustees who is appointed as a member of the management body by law cannot be considered as independent. Nonetheless, the member can be a non-independent member and be independent of mind and meet the suitability criteria.	No change
Para. 88(b): Independent members of a relevant institution's management body in its supervisory function	One respondent suggests to grant the exemption from the requirement to appoint independent members also to significant banks that are owned by only one undertaking and are not systemically relevant. This should apply not only to institutions whose parent undertaking is itself a CRD institution but also to other parent undertakings if they are sole owners of the institution.	Relevant institutions that are neither significant nor listed should, as a general principle, have at least one independent member within the management body in its supervisory function unless the conditions specified in the Guidelines are met. This is to ensure that a proportionate approach is applied.	No change
Question 4: Are the requirements in section 12 sufficiently clear; are there additional measures that should be required to ensure that diversity is appropriately taken into account by institutions and that the principle of equal opportunities for all genders is appropriately reflected?			

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Para. 102: Appropriate representation of all genders within the management body – principle of equal opportunities	Some respondents expressed concerns about the application in smaller institutions, where management bodies often comprise only two members. A gender-balanced composition would mean that one board member would always have to be a woman. For purely factual reasons, this goal is not always achievable. For the sake of proportionality, one respondent suggests that this regulation should not be relevant for non-CRD investment firms that have one or two managing directors. Requests for clarification are submitted on if (i) this is to be measured within the group as a whole, on aggregate level, or per board; (ii) there is a defined percentage of gender representation to fulfil the requirement to ensure 'that the principle of equal opportunities is respected when selecting members of the management body'.	While institutions need to take into account the gender balance when recruiting new members of the management body, there are no hard elements in the Guidelines that specifies a certain minimum representation. The respective CRD provision within Article 91 applies also on an individual level and via the reference in Article 9 of MiFID to investment firms.	No change
Para. 102: Appropriate representation of all genders within the management body – principle of equal opportunities	With regard to employee representatives, one respondent suggests deleting the last sentence ('Having employee representatives (…) gender balance') that could lead to a situation where the under-represented gender would be over-represented in the end. It is evidenced that, since employee representatives in the management body facilitate a diverse composition of the board, it is not clear what the rationale is behind not accepting them for ensuring gender balance. Alternatively, if the sentence is not deleted, it is suggested to not refer to the supervisory function of the management body but rather the management body in general, meaning both executive and supervisory function (i.e. 'Having employee representatives, where required under national law, of the	While it is true that the staff representatives add to the diversity of the management body, institutions must under Art. 91 of the CRD take into account diversity when recruiting members of the management body. Staff representatives are elected by staff, they are elected independently of a diversity policy adopted by the management body. Furthermore, Article 88 (2) requires that the nomination committee in significant institutions shall decide on a target for the representation of the under-represented gender in the management body and prepare a policy on how to increase the number of the under-represented gender in the management body in order to meet that target. Also in this context the institution cannot depend on the staff to elect members of the under-represented gender.	No change

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	under-represented gender alone is not sufficient to ensure that the management body has an appropriate gender balance').	Therefore to ensure a gender balanced composition is achieved in line with the diversity policy of the institution, the institution must implement measures that do not depend on a certain outcome of the election of staff representatives. The reference to management body includes both functions and allows for more flexibility than requiring at each board a gender balance. However, this would be the most agreeable situation, but is often difficult to achieve in small boards.	
Para. 107: Policies that facilitate the reintegration of staff after maternity or parental leave	One respondent objects to the inclusion of policies that facilitate the reintegration of staff after maternity or parental leave as it goes beyond the scope of the EBA/ESMA mandate. By contrast, some respondents express support for this inclusion; one of them suggests further reinforcing the drafting as follows: 'Institutions should consider having policies that facilitate the reintegration of staff after maternity or parental leave'.	In order to support a diverse composition of staff and in the long run the management body, by supporting the developing of a diverse pool of candidates, but also to ensure that the principle of equal opportunities encoded in the TFEU is respected, institutions should consider having policies that facilitate the reintegration of staff after maternity or parental leave. For the sake of clarity those provisions have been moved to the EBA Guidelines on Internal Governance and brought into context with other provisions aiming at gender neutrality.	GL amended
Para. 108: Non-discrimination policies for staff	Should the paragraph remain, it is suggested: (i) providing that gender-equality policies already instituted and based on other regulations will be regarded as policies within the meaning of these GL; (ii) taking into account that in some countries labour law prohibits discrimination in many aspects; (iii) avoiding general references to 'staff', which is not defined within the text and could potentially cover the entire organization, which remains outside their scope of application and beyond the EBA/ESMA mandate. On this, one respondent evidences that in some jurisdictions, e.g. Sweden, the only person of the management body who is employed by the bank and falls under the wording 'staff' is the CEO. Replacement is suggested with	Anti-discrimination rules are a part of robust governance arrangements. This principle is without prejudice to national laws regarding anti-discrimination. A definition of staff for the purpose of these Guidelines is included in the Guidelines. However, for clarity the provision has been amended to refer to the members of the management body.	GL amended

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	'persons'; (iv) clarifying what discrimination based on birth or property means; (v) adding 'including non-binary gender' after gender.		
Question 5: Are the changes made in Title VI appropriate and sufficiently clear?			
Question 5 – general comment	One respondent considers that the GL should reflect the fact that rules concerning the suitability of owner elected board members are directed at the owner and offer guidance on how suitability is to be reviewed and enforced with respect to board members in a way consistent with national company law and corporate governance regimes (similar issues arise when electing employee representatives).	The criteria set out in the Guidelines are to be considered by institutions and competent authorities. The same holds true for the skills set out in Annex II. It should be stressed that the management body has an overall responsibility for the whole institution and all members must fulfil the suitability requirements in accordance with MiFID and the CRD. The management body should also possess collectively adequate knowledge, skills and experience.	No change
Para. 120: Suitability policy in a group context	Some respondents suggest deleting the newly introduced phrase in para. 120 or, alternatively, inserting a cross reference to the principle of proportionality in Title I which is embedded in the level 1 text and of utmost importance in the context of group-wide application of European regulations. There exist concerns that situations may raise in which there is a conflict between this requirement and local rules (e.g. gender balance). Therefore it is pointed out that the Guidelines should not impose or expect the same standards or suitability policies in subsidiaries located in third countries, not only because group policies will have to account for a wide array of legal frameworks, but likewise because subsidiaries will likely have very different risk profiles, business models, size, internal organisation, complexity, etc. Third country subsidiaries will have their own processes or procedures and specificities to be respected, it might raise a	In line with the CRD, the consolidating CRD institution should ensure that subsidiaries established in third countries that are included in the scope of prudential consolidation have consistently implemented the group policy in a way that complies with the requirements of Articles 74, 88 and 91 of Directive 2013/36/EU, as long as this is not unlawful under the laws of the third country. In accordance with the above, suitability standards should be consistent and well integrated within the group. The formulation 'are not lower' considers the fact that third country standards might be stricter than CRD standards.	GL clarified

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	problem for EU parent undertakings to prove that the suitability standards applied in third country subsidiaries are indeed not lower than in the institution.		
Question 6: Are the changes made in Title VII appropriate and sufficiently clear?			
Para. 146(b)	Some respondents suggest deleting the added part in point (b) of para. 146. Banks would be already required to gather information on reputation, integrity and honesty of Board members under the existing text, which would already cover this requirement.	Point b) of para. 146 is in line with the CRD, in particular with Article 91.	No change
Para. 146 (c)	Most of the respondents suggest removing point (c) of para. 146 or providing clarification on the gathering of information regarding independence of mind as that would be a rather intangible concept which is harder to measure and verify (than e.g. curricula vitae are), therefore it would be hard to imagine how such information would be gathered in practice. Other respondents point out that the same approach must be applied as for the assessment of trustworthiness/reliability, i.e. so long as there is no information that can justify serious doubts on the 'independence of mind', one can assume 'independence of mind'.	Independence is a requirement under Article 91 of the CRD and therefore information regarding the assessment of this requirement should be gathered by institutions in line with the guidelines provided for this particular criterion. The wording has been clarified, the aspect has to be part of the assessment. The assessment includes also information provided by the member.	GL amended
Para. 147: Assessment of the suitability of individual members of the management body – ML/TF risks	Several respondents ask if institutions should analyse those facts in connection with previous institutions in which the director was involved. If so, respondents wonder how said information should be gathered. Other respondents suggest deleting para. 147. The requirements are considered to exceed the EBA's mandate included in Article 91(12) and would present serious difficulties	Paragraph 147 is fully in line with Article 91 of the CRD and in line with the mandate given to the EBA under Article 91 of the CRD and Article 74 of the CRD. The analysis should be done towards the institution where the member of the management performs his or her function.	No change

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	of implementation, especially in Member States where it is hard to reconcile with national transposition of AML directives and in Member States where the management body acts as one single collegial body which is assigned all rights and responsibilities.	Regarding involvement in past ML-TF cases of members of the management body, this assessment should also be done when assessing the reputation, honesty and integrity criteria as specified in the Guidelines. To this end institutions should undertake reasonable steps to gather such information from e.g. public sources or via contact with the member.	
Para. 152, 154–155: Ongoing monitoring and (re-)assessment of the collective suitability of the management body – ML/FT risks	One respondent suggests deleting this since it lacks a legal basis in the CRD. The effect of proposed para. 152 exceeds the scope of the changes introduced by the level 1 text, and would impose obligations on institutions which are unparalleled in comparison with any other risk under analysis by the management body. 'Reasonable grounds to suspect that money laundering or terrorist financing is being committed or attempted' is an issue with potentially no link to the suitability of directors. In the case of ML/TF risk, the assessment would have to be done regarding the individual and collective knowledge, skills and experience to adequately comprehend said risk. Isolated facts or increased risk, as such, cannot be linked directly to a suitability deficit or loss, whether pertaining to ML/FT risk or any other risk. The respondent refers to para. 15 that clarifies that any references to 'risks' in these Guidelines should also include money laundering and terrorist financing risk and therefore its content is understood to be covered in para. 66. The modified Article 91 of the CRD focuses on ensuring that suitability persists upon the occurrence of certain events, i.e. when there are reasonable grounds that ML/TF are taking place or have taken place in the institution, but the underlying obligation of suitability has not been altered. It is questionable whether institutions should demonstrate more understanding	Institutions and competent authorities should be aware of the negative impact on an institution in the event of a possible involvement of a member of the management body and/or a key function holder in ML/TF, or where the institution fails to take robust action to manage the risk of being involved in ML/TF. Together with the authorities and bodies responsible for ensuring compliance with anti-money laundering requirements under Directive (EU) 2015/849, prudential supervisors have an important role to play in identifying and tackling weaknesses in institutions' AML/CFT systems and controls. In this context, the Guidelines clarify in line with Directive 2013/36/EU that the knowledge, experience and skill requirements of at least the member of the management body who is responsible for the implementation of the laws, regulations and administrative provisions necessary to comply with AMLD include identifying, managing and mitigating money laundering and financing of terrorism risk. Also other members need to have some knowledge in this area, which can e.g. be achieved via training. The Guidelines also clarify that the ability to understand ML/TF risks is part of the assessments of the collective suitability of the members of the management body and the assessment of key function holders. This is in line with the CRD and the EBA mandate in this regard.	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	of ML/TF risks than any of the remaining risks they analyse, and this paragraph raises the question of whether institutions, in order to demonstrate the management body's understanding of ML/TF risks, gather ad hoc evidence that is not aligned with its processes regarding the collective suitability analysis. Another respondent suggests that the reference to 'decisions' should be corrected, as matters linked to ML/TF will not always entail a decision, in many instances they will be subject to analysis, supervision and control, not necessarily involving a specific decision.	In addition institutions should demonstrate an understanding of all risks they are or might be exposed to. Fit and proper requirements under the CRD and MIFID for members of the management body play an important role in this regard as the management body bears the overall responsibility for the institution. The purpose of those paragraphs are that the management body, when performing its tasks, should be able to consider ML-FT risks in the same way as any other risks.	
Para. 154(j): Re-assessment of the individual and collective suitability of the members of the management body – ML/FT	One respondent deems it unclear how it should connect or be applied in the context of collective suitability. When assessing collective suitability, institutions analyse the overall composition of the management body, to ensure that it possesses adequate collective knowledge, skills and experience to be able to understand the institution's activities, including the main risks.	Collective suitability means that the management body should cover collectively by their knowledge, experience and skills all the main activities and risks of the institution. Ml-FT is one of these risks.	No change
Para. 155: Elements to consider in the re-assessment	Some respondents observe that institutions need not necessarily allocate the responsibilities envisaged in the AML Directive to a member of the management body, as the Guidelines seem to have assumed. This assumption is thus not correct and contradicts at least some national legislation. A compromise could be to refer to 'the relevant body or person in accordance with local regulation'.	The allocation of such responsibilities to a member of the management body in its management function is in line with AMLD. The member responsible needs to have more intensive knowledge, skills and experience in this area than other members. The Guidelines have been clarified.	GL amended
Question 7: Are the changes made in Title VIII appropriate and sufficiently clear?			
Para. 182	In addition, several respondents claim that the wording in paragraph 182 ('re-assess the individual or collective suitability	The guidelines have been clarified.	GL amended

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	of the members of the management body and heads of internal control functions and the CFO') is considered to be misleading since it could indicate that there could be a collective suitability of key function holders. Therefore one of the respondents asks to delete this paragraph.		
Para. 182, 196, 202: Competent authorities' assessment procedures	Several respondents complain of a lack of legal basis to provide further regulation on external assessment of key function holders by the supervisor, as CRD V does not provide for such an assessment. In addition, CRD V and AMLD do not provide for all the KFH to be assessed in relation to the AML/FT provisions. Another respondent claims that the EBA's reference to Article 74 as a legal basis for suitability assessment of the key function holders is a very extensive interpretation, provided that there is a more restrictive specific clause (lex specialis) in Article 91. Especially in cooperative banking groups the draft revised Guidelines regarding the suitability assessment of key function holders are too categorical. The guidance regarding key function holders should at least clearly provide that the requirement on suitability assessment of key function holders only applies to the central institution/parent entity level in banking groups where the main responsibility of the said functions is centralized and not to require the assessment of key function holders at the level of local and regional cooperative banks. An equally restrictive approach should be applied to less significant institutions in general. The same approach should be	See comments under para. 36-39. The notion of KFH and their suitability was not a subject of consultation and was already extensively discussed in 2017 (please refer to the 2017 feedback table). It should be reminded that KFH should identified by all relevant institutions and not only by significant institutions.	No change

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	adopted for the 'other key function holders' having a significant influence over the direction of the institution. Another respondent also requests an appropriate addendum that key functions have to be identified only by significant institutions and thus para. 182 does not apply to non-significant institutions. The requirement derives from para. 37.		
Para. 196	One respondent suggests adding 'competent' to the term authorities.	The comment has been accommodated.	GL amended
Para. 202	One respondent claims that the requirement to share findings and decisions with the competent AML/CTF supervisor would not be in line with the purpose of AMLD and therefore not acceptable taking into consideration proportionality and subsidiarity.	The EBA considers that this element is fully in line with the CRD and AMLD.	No change
Question 8: Are the changes made in Title IX appropriate and sufficiently clear?			
Annex I	One respondent claims that it is mentioned that Annex I would be amended to include compliance with AML/TF requirements.	Annex amended	GL amended