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Consultation paper

Draft 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

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Responding to this consultation

The EBA and ESMA invite comments on all proposals put forward in this paper and in particular on the specific questions summarised in 5.2.

Comments are most helpful if they:

1. respond to the question stated;
2. indicate the specific point to which a comment relates;
3. contain a clear rationale;
4. provide evidence to support the views expressed/ rationale proposed; and
5. describe any alternative regulatory choices the EBA and ESMA should consider.

Submission of responses

To submit your comments, click on the ‘send your comments’ button on the consultation page by 25.05.2026. Please note that comments submitted after this deadline, or submitted via other means may not be processed.

Publication of responses

Please clearly indicate in the consultation form if you wish your comments to be disclosed or to be treated as confidential. A confidential response may be requested from us in accordance with the EBA’s rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the EBA’s Board of Appeal and the European Ombudsman.

Data protection

The protection of individuals with regard to the processing of personal data by the EBA is based on Regulation (EU) 1725/2018 of the European Parliament and of the Council of 23 October 2018. Further information on data protection can be found under the Legal notice section of the EBA website.

Executive Summary

In accordance with the requirements introduced by Directive 2013/36/EU [1] 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(11) and 91a(8) of Directive 2013/36/EU and Article 9(1) of Directive 2014/65/EU [2], and on the assessment of suitability by institutions, investment firms 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 entities.

The Guidelines apply to all institutions and investment firms, 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 Guidelines specify further the requirement that all institutions and investment firms have to assess the members of the management body. Institutions that are subject to Directive 2013/36/EU also have to assess key function holders. The Guidelines foresee the assessment of heads of internal control functions and the CFO and also the assessment other key function holders by the institutions. The same applies to investment firms that are subject to Article 25 of Directive 2019/2034/EU as part of their sound governance arrangements. Competent authorities are required to assess all members of the management body. For large entities in line with Articles 91(1d) and 91a(5) of the Directive 2013/36/EU, competent authorities should assess the heads of internal control functions and the chief financial officer (CFO). Competent authorities may also assess other key function holders on request.

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 (EU) 2024/1619 with regard to applying an enhanced dialogue, in Member States conducting *ex post* assessments and having an *ex ante* suitability application process for new members of the management body in its management function or the chair of the management body in its supervisory function in large

[1] Directive 2013/36/Eu of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC

[2] 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).

entities in line with Articles 91(1d) and 91a(5) of the Directive 2013/36/EU, where there are concerns regarding their suitability.

The Guidelines also specify the requirement regarding the assessment of reasonable grounds to assume that there are increased money laundering or terrorist financing risks; in this context competent authorities may consult the supervision authority responsible for anti-money laundering in accordance with Directive (EU) 2015/849[3] and request information concerning the members of the management body during their verifications, based on a risk--based approach.

To ensure that members of the management body commit sufficient time to performing their functions, the Guidelines set a 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, entities are required to take measures to ensure that diversity and gender balance are 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; entities therefore need to establish training policies and to provide for appropriate financial and human resources to be devoted to induction and training.

Next steps

The EBA and ESMA will finalise its updated joint Guidelines on the assessment of the suitability of members of the management body and key function holders after the public consultation. It is expected that the amended Guidelines will enter into force 6 month after the publication of all translations of the Guidelines, but not later than XXX.

[3] Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing

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 entities 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 2014/65/EU and Directive 2013/36/EU include requirements to remedy weaknesses that were identified during the financial crisis regarding the functioning and composition of the management body, the qualification of its members and key function holders.

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.

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 (e.g. the CEO) or persons and where those effectively direct the business of the entity, they are members of the management function of the management body in accordance with the definition in Article 3(1)(8a) of Directive 2013/36/EU.

7. The management body is empowered to set the entity's strategy, objectives and overall direction, and oversees and monitors management decision-making. The management body in its management function directs the entity. 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 entities authorised in a third country (third country branches, TCB) are, depending on the implementation of the Directive 2013/36/EU by Member States, either subject to the same requirements as credit institutions in accordance with Article 48a (4) of Directive 2013/36/EU or subject to suitability requirements under Article 48g (1) of Directive 2013/36/EU and authorisation requirements under Article 48c of this Directive. These requirements are largely equivalent to those applicable to entities within Member States and mandate to have robust governance arrangements in place as set out under Article 74 of this Directive. As TCB are not legal persons and do not have a management body independent of their head office, such branches and competent authorities should assess the persons who effectively direct the branch. Directive 2013/36/EU requires TCB to have at least two persons in the relevant Member State effectively directing their business. Class 1 third country branches may be required to establish a local management committee to ensure an adequate governance of the branch, containing additional persons that are effectively directing the business of the branch. Third country branches are required to have robust governance arrangements, which include that persons directing the business (members of the management body in its management function) or key function holders in the relevant Member State are suitable. Article 48g in connection with Article 76 (5) and (6) of Directive 2013/36/EU requires explicitly the establishment of internal control functions based on the proportionality principle and mandates EBA to develop Guidelines. Article 48c of Directive 2013/36/EU specifies the requirements at authorisation, which include the requirements on suitability for the persons effectively directing their business. To ensure a level playing field with institutions, the same suitability assessment criteria should apply also to the respective functions in TCB.

11. These Guidelines set out the harmonised criteria for the assessment of the suitability of members of the management body, including the CEO. Even when the CEO is not part of the

entity's governing body or bodies in accordance with national company law, they are always a member of the management body. The Guidelines also foresee the assessment of the entity's key function holders. These assessments are considered to be proportionate to ensure robust governance arrangements that ensure the effective and prudent management of entities as required in particular by Articles 74, 76, 88, 91 and 91a 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 a third party service provider, the management body retains responsibility for the activities performed on behalf of the entities.

13. Because independence of members of the management body in its supervisory function is crucial and as appointing a former CEO or, where applicable, another executive director or former executive director as a Chair or as member of the management body in its supervisory function can lead to conflicts of interest, it is appropriate to apply a cooling-off period to manage such conflicts. The new Chair may face challenges overseeing decisions made during their previous CEO role. Where a cooling-off period is not always possible to implement, entities should take other steps to manage such situations effectively as further specified in the EBA Guidelines on internal governance.

14. Other than for the purposes of the legislation applicable to entities 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 entities together with other and independently of EU legislation. Member States may have divergent laws across the EU, which limit the level of harmonisation in this particular area.

15. The Guidelines take into account the European Commission's recommendation of 15 February 2005[4] 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 16 June 2015 peer review report of its Guidelines on the assessment of the suitability of members of the management body and key function holders of credit institutions[5].

16. The adoption of a broad technology-driven trend towards increased ICT, including Artificial Intelligence (AI) is evident in the EU financial sector. With the Digital Operational Resilience Act and the Regulation on Artificial Intelligence[6], competent authorities have intensified their

[4] 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

[5] EBA Peer review report of EBA/GL/2012/06 available under the following link: https://www.eba.europa.eu/documents/10180/950548/f0d98bd3-2a42-454e-a7fa-5ac3f97e5a1a/EBA%20Peer%20Review%20Report%20on%20suitability.pd

[6] Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence

efforts to provide guidance on ICT and AI use in financial services. The European Securities and Markets Authority (ESMA) has recently issued a public statement on the use of AI in the provision of retail investment services[7]. A thorough understanding of ICT systems and AI applications and their risks within the entities is essential for the management body to ensure a sound and adequate governance and control over these technologies.

Legal basis

17. To further harmonise the assessment of suitability within the EU banking and financial 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 joint Guidelines on the notions of suitability jointly with ESMA in line with Articles 91(11) and 91a(8)[8] of Directive 2013/36/EU and Article 9(1) of Directive 2014/65/EU. Branches in a Member State of entities authorised in a third country (third country branches, TCB) are subject to suitability requirements under Article 48g (1) of Directive 2013/36/EU. The joint adoption of these Guidelines is related to the relevant competences of the EBA and ESMA.

18. The Guidelines apply to institutions, investment firms and to third country branches, all referred to as entities. The Guidelines consider different types of institutions and investment firms, ensuring a proportionate approach. The scope of the Guidelines specifies certain provisions that do not apply to all types of institutions and investment firms.

19. Article 9(1) of Directive 2014/65/EU specifies that competent authorities granting authorisation in accordance with Article 5 of this Directive should ensure that investment firms and their management bodies comply with Article 88 and Article 91 of Directive 2013/36/EU. Additionally, investment firms not qualifying as small and non-interconnected should be required to assess their key function holders in order to ensure that they have robust governance arrangements in place as required under Article 26 of Directive 2019/2034/EU. In addition, having robust governance arrangements implies that key function holders are suitable. Investment firms that are not directly subject to the requirements of Directive 2013/36/EU are also therefore subject to the same suitability requirements as entities subject to Directive 2013/36/EU. The same applies to third country branches in accordance with Article 48a, 48g and Article 74 of Directive 2013/36/EU.

20. 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.

[7] Public Statement On the use of Artificial Intelligence (AI) in the provision of retail investment services

[8] For entities that are subject to Directive 2013/36/EU

21. 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.

22. 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.

23. 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.

24. Article 74(1) of Directive 2013/36/EU requires that entities subject to that Directive shall have robust internal governance arrangements and mandates the EBA to develop Guidelines thereon.

25. Article 91(1) of Directive 2013/36/EU requires that entities, financial holding companies and mixed financial holding companies that have been granted approval in accordance with Article 21a(1) of this Directive have the primary responsibility for ensuring that members of the management body shall at all times be of sufficiently good repute, act with honesty, integrity and independence of mind and possess sufficient knowledge, skills and experience to perform their duties, and that they meet the requirements in paragraphs 2 to 6 of this Article. In addition, Article 91(1h) of this Directive states that where members of the management body do not at all times fulfil the above mentioned criteria and requirements, competent authorities have the necessary powers to either prevent new members from being part (for *ex ante* assessments) or remove them from the management body (for both *ex ante* and *ex post* assessments). Article 91(1g) of Directive 2013/36/EU requires the competent authorities to verify the fulfilment of the mentioned requirements 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 the entity.' The same requirements apply to investment firms according to Article 9(1) of Directive 2014/65/EU.

26. Article 91a(1) of Directive 2013/36/EU requires that entities have to ensure that key function holders are at all times of sufficiently good repute, act with honesty and integrity and possess sufficient knowledge, skills and experience necessary to perform their duties. In addition, Article 91a(6) of this Directive specifies that if the heads of internal control functions and the chief financial officer of large entities listed in Articles 91(1d) and 91a(5) do not fulfil at all times the mentioned criteria and requirements, competent authorities have the necessary powers either prevent such heads or officer from taking up the position or remove them from

the position for *ex ante* assessments and in case of *ex post* assessments remove such heads or officer, or require the entity to remove them from the position.

27. Climate change, environmental degradation, social issues (such as non-compliance with human and universal rights or labour laws) and other environmental, social and governance (ESG) factors are significant challenges for the economy and the financial sector. Entities are required to manage environmental risks, including climate-related risks and risks to biodiversity. As a result, these aspects form part of the knowledge requirements for members of the management body and key function holders.

28. Article 91(2) to (6) of Directive 2013/36/EU requires all members of the management body to commit sufficient time to performing their functions in the entity, limits the number of mandates a member of the management body of a significant entity can hold, requires adequate collective knowledge, skills and experience to be able to understand the entity's activities, including the main risks it is exposed to, and the impacts it creates in the short, medium and long term, taking into account ESG factors, and requires them to act with honesty, integrity and independence of mind.

29. Being a member of affiliated companies or affiliated entities does not in itself constitute an obstacle to acting with independence of mind.[9]

30. In accordance with Article 121 of Directive 2013/36/EU, members of the management body of a financial holding company or mixed financial holding company other than those that have been granted approval in accordance with Article 21a(1) of this Directive 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.

31. Furthermore, entities are required under Article 91(7) of Directive 2013/36/EU to devote adequate human and financial resources to the induction and training of members of the management body, including on ESG risks and impacts and on ICT risk, to engage a broad set of qualities and competences when recruiting members and to proportionally promote diversity and gender balance in the management body and for that purpose to put in place a policy promoting diversity and gender balance in the management body. In addition, listed entities will be subject to requirements under Directive (EU) 2022/2381 on improving the gender balance among directors of listed companies and related measures.

32. 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

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

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.

33. 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; the RTS under Article 91(10) of Directive 2013/36/EU to further specify the minimum content of the suitability questionnaire, curricula vitae and the internal suitability assessment; the RTS under Articles 15 and 16(3) of Regulation (EU) 2022/2554 to further harmonise ICT risk management tools, methods, processes and policies; the RTS under Article 28(10) of Regulation (EU) 2022/2554 to specify the detailed content of the policy in relation to the contractual arrangements on the use of ICT services supporting critical or important functions provided by ICT third-party service providers; joint RTS under Article 30(5) of Regulation (EU) 2022/2554 to specify the elements which a financial entity needs to determine and assess when subcontracting ICT services supporting critical or important functions. They also take into account international governance standards and principles[10].

34. These Guidelines should be read in conjunction with other relevant EBA and ESMA Guidelines, in particular the EBA's Guidelines covering internal governance, remuneration, risk management, ESG risks[11], third party risk management, the supervisory review and evaluation process (SREP), anti-money laundering and counter terrorist financing and disclosures and the establishment of the system for the exchange of information relevant to the assessment of the fitness and propriety[12] .

35. Article 91(14) of Directive 2013/36/EU requires that for the appointment of members of the management body in its supervisory function by regional or local elected bodies, or on appointments where the management body does not have any competence in the process of

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

[11] EBA/GL/2025/01 Guidelines on the management of environmental, social and governance (ESG) risks

[12] Joint guidelines on establishment of the system for the exchange of information relevant to the assessment of the fitness and propriety

selecting and appointing its members, appropriate safeguards are put in place to ensure the suitability of those members of the management body.

36. Entities should ensure that members of the management body in its supervisory function are suitable for their roles, regardless if the entity could or could not influence the selection process and appointment of such members. Entities should assess the suitability of the respective members and address any suitability concerns promptly. Entities should refer to all suitability requirements as set out in these Guidelines when performing such assessments and when they address any suitability concerns.

Rationale and objective of the Guidelines

37. 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 and gender balance 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. Additionally, the Guidelines specify the process for assessing whether there are reasonable grounds to suspect money laundering or terrorist financing while performing the suitability assessments. Those notions apply also for suitability assessments under Article 48g and Article 76(6) of Directive 2013/36/EU for assessments of third country branches.

38. In accordance with Article 91a of Directive 2013/36/EU, the Guidelines specify further the notions of good repute, honesty and integrity, the notion of sufficient knowledge, skills and experience, skills and experience with which key function holders should comply and specify the process for assessing whether there are reasonable grounds to suspect money laundering or terrorist financing while performing the suitability assessments.

39. 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 entity’s governance arrangements.

40. 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 entity. 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

41. While all the staff of entities should be suitable for performing their job, the heads of internal control functions have, under the overall responsibility of the management body, a key role

in ensuring that the entity 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 in line with Article 91a of Directive 2013/36/EU. Where identified on a risk-based approach by entities other than small and non-interconnected investment firms, the suitability of other key function holders should also be ensured, as those individuals have significant influence over the direction of the entity under the overall responsibility of the management body.

42. 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 entity of the suitability of that person and potentially a re-assessment of the collective suitability of the management body.

43. 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. This includes all material risks, as well as ESG risks and impacts, addressed in Directive 2013/36/EU, Regulation (EU) No 575/2013 and Directive 2014/65/EU), including the valuation of assets and the use of external credit ratings and internal models relating to those risks.

44. 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 entity'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.

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

46. The assessment of adequate knowledge, skills and experience and the other notions described in Article 91(11) of Directive 2013/36/EU should take into account the nature, scale and complexity of the entity's activities, in line with the application of the proportionality principle and the specific position concerned.

47. The members of the management body and key function holders should have sufficient knowledge, skills and experience to fulfil their individual position in an entity, and the management body must collectively possess adequate knowledge, skills and experience to understand the entity'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 entity'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.

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

49. Entities 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 entity's structure, how the entity 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 entity's structure, business model and risk profile, taking into account also ICT risks, ESG risks and impacts.

50. While the diversity of the management body is not a criterion for the assessment of the members' individual suitability, diversity should 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, helps to ensure that the diverse perspectives and opinions of the members of the management body are taken into account within the management body.

51. 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.

52. 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[13]. Entities 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.

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

[13] 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.

54. Entities 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 entities 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 entity'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 entity and the effectiveness of the entity's governance arrangements.

55. In line with Article 91 (1a) and Article 91a(2) of Directive 2013/36/EU, entities should assess the suitability of proposed members and members of the management body as well as key function holders prior to their appointment, unless the conditions set out under Article 91(1a) 2nd subparagraph are met, and they should periodically update the information on their suitability.

56. Where the competent authority carries out suitability assessments after the member takes up their position (*ex post*), in line with Article 91(1d) of this Directive, large entities in line with Articles 91(1d) and 91a(5) of the Directive 2013/36/EU should provide a suitability application to the competent authority without undue delay but at the latest 30 working days before the prospective member takes up their position.

57. Competent authorities should have processes in place for the assessment of the suitability of members of the management body of all entities and the heads of internal control functions and the chief financial officer of large entities in line with Articles 91(1d) and 91a(5) of the Directive 2013/36/EU, as set out in the Guidelines. In particular competent authorities' processes should ensure that all these persons are assessed in a timely manner.

58. 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 their 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.

59. 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. Entities 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 entity 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 entity.

60. Preventing money laundering and terrorist financing is essential for maintaining the stability and integrity of the financial system. Involvement of an entity 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, entities to identify the member of the management board[14] who is responsible for the implementation of the laws, regulations and administrative provisions necessary to comply with AMLD.

61. Without prejudice to the national transposition of Directive 2015/849/EU, a member of the management body should be identified as the individual responsible[15] for the implementation of the laws, regulations and administrative provisions necessary to comply with AMLD.[16].

62. Against this background, entities and competent authorities should be aware of the negative impact on an entity'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 entity being unwilling or failing to take robust action to manage the risk of the entity's involvement in ML/TF.

63. Together with supervisory authorities responsible for ensuring compliance with anti-money laundering requirements under Directive (EU) 2024/1640 and Regulation (EU) 2024/1620 (AML/CFT supervisors)and other relevant bodies (such as Financial Intelligence Units), competent authorities have an important role to play in identifying and tackling weaknesses in entities' 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

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

[15] 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 entity and its responsibility for all activities of the entity.

[16] See also EBA Guidelines on Internal Governance.

collective suitability of the members of the management body and the assessment of key function holders. In addition, the Guidelines specify the criteria to assess whether there are reasonable grounds to suspect that money laundering or terrorist financing within the meaning of Article 1 of Directive (EU) 2015/849 is being or has been committed or attempted, or that there is an increased risk thereof, in connection with the entity and how this fact is taken into account in the suitability assessments.

64. It is crucial for competent authorities when assessing the suitability of members of the management body of all entities and heads of internal control functions and the chief financial officer of large entities in line with Articles 91(1d) and 91a(5) of the Directive 2013/36/EU , and other key function holders, where required by the competent authority, to have access to and to assess specific information about the persons. The competent authorities performing such assessments should use the ESAs Information System[17].

65. For all entities, including those that do not fall under the scope of the RTS on information and documentation, these RTS should be applied to initial[18] and ongoing assessments submitted to competent authorities to carry out the suitability assessments[19]. Competent authorities are not limited to the information provided within these RTS; e.g. within the supervisory process, a competent authority can also gather and assess 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.

66. It is important to ensure that entities 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. In line with the Article 91(1b) Directive 2013/36/EU measures available to competent authorities can range from imposing conditions to ordering an entity to take action to improve the skills and knowledge of a member, or to transferring responsibilities between members, prohibiting a member or an entity from performing tasks, temporarily banning or replacing a member of the management body, or ultimately withdrawing the entity's authorisation. However, if a member of the management body or heads of internal control functions or the chief financial

[17] Joint Guidelines JC/GL 2024 88 on the system established by the European Supervisory Authorities for the exchange of information relevant to the assessment of the fitness and propriety of holders of qualifying holdings, directors and key function holders of financial institutions and financial market participants by competent authorities

[18] 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.

[19] RTS on information and documentation to be submitted to the competent authorities to carry out the suitability assessments

officer are not suitable, competent authorities have the power to remove such a person from that position in line with Article 91(1h)(a) and (b) and 91a(6)(a) and (b) Directive 2013/36/EU.

67. , The suitability of newly appointed members of the management body and of the management body collectively is relevant also during resolution and also as part of early intervention measures, in accordance with Articles 27, 28, 29 and 34(1)(c) of Directive 2014/59/EU (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 line with Article 29(1) of BRRD, competent authorities assess whether temporary administrators have the qualifications, ability and knowledge required to carry out their functions and are free of any conflict of interests. 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 their functions. These appointments do not depend on the assessment of the competent authority.

EBA/GL/2021/06

ESMA35-36-2319

09 April 2025

Draft Joint 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[20]. 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 entities.

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.

[20] 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 , in accordance with Articles 91(11) of Directive 2013/36/EU[21] as amended by Directive (EU) 2024/1619 [22] and Article 9(1) second subparagraph of Directive 2014/65/EU[23], the requirements in Article 91 of this Directive 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. The Guidelines also specify the principle of independence applicable to certain members of the management body in its supervisory function.

6. The Guidelines also specify, in accordance to Article 91a of Directive 2013/36/EU the notions of good repute, honesty and integrity as well as the notions of sufficient knowledge, skills and experience of key function holders, including the heads of internal control functions and the chief financial officer, where those heads or that officer are not members of the management body; and on the related assessment processes.

7. The Guidelines additionally specify, in accordance with Article 48g(9) of Directive 2013/36/EU, the assessment of the persons directing the business in third country branches in accordance with Article 48g (1) and their heads of control functions as part of measures that ensure robust governance arrangements under Articles 74, 75 and Article 76 (5) and (6).

8. Additionally, in accordance with Article 91(11)(f) and 91a(8)(c) of Directive 2013/36/EU, the Guidelines provide criteria to determine whether there are reasonable grounds to suspect that money laundering or terrorist financing is being or has been committed or attempted, or whether there is increased risk thereof, in connection with an entity, in the context of suitability assessments.

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[22] Directive (EU) 2024/1619 of the European Parliament and of the Council of 31 May 2024 amending Directive 2013/36/EU as regards supervisory powers, sanctions, third-country branches, and environmental, social and governance risks. OJ L, 2024/1619, 19.6.2024 (CRDVI)

[23] 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).

Addressees

9. 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, to third country branches established in accordance with Article 21c of Directive 2013/36/EU, 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('entities'). Certain requirements are explicitly addressed to significant institutions and do therefore not apply to other entities.

Scope of application[24]

10. These Guidelines apply to competent authorities; Titles I to VII and Section 26 apply to the following entities:

    a. institutions that are large entities and which are listed in points (a) to (f) of Article 91 (1d) and Article 91a (5) of Directive 2013/36/EU;

    b. institutions as defined in Article 3(1)of Directive 2013/36/EU that are not large entities ;

    c. investment firms (class 1-) as defined in Article 4(1)(1) of Directive 2014/65/EU to which Article 2(2) of Directive 2019/2034 /EU applies;

    d. investment firms (class 2) as defined in Article 4(1)(1) of Directive 2014/65/EU to which Article 2(2) of Directive 2019/2034 /EU does not apply and which do not meet all of the criteria under Article 12(1) of Regulation (EU) 2019/2033[25], with the exception of the following parts of the guidelines:

        i. Title III, Section 5 (calculation of the number of directorships) where members of the management body do not hold another directorship in a significant entity;

        ii. Title III, Section 9, sub-section 9.3 (Independent members of the management body in its supervisory function, with regard to the sufficient number of independent members for significant entities);

        iii. Title VI, Section 14 (Suitability policy in a group context);

        iv. Title VI, Section 15 (Nomination Committee);

[24] See also illustration of the scope of application annexed to the guidelines

[25] Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms

e. investment firms (class3) as defined in Article 4(1)(1) of Directive 2014/65/EU who meet all of the conditions for qualifying as small and non-interconnected investment firms under Article 12(1) of Regulation (EU) 2019/2033[26], with the exception of:

   i. Title II Section 3 (The entities' assessment of the suitability of key function holder);

   ii. Title III, Section 5 (calculation of directorships);

   iii. Title III, Section 9, subsection 9.1 Interaction between independence of mind and the principle of being independent) and 9.3 (Independent members of the management body in its supervisory function);

   iv. Title VI, Section 14 (Suitability policy in a group context);

   v. Title VI, Section 15 (Nomination Committee);

   vi. Title VII Section 21 (Suitability assessment of key function holders by entities).

   vii. Section 23 (Competent authorities' assessment procedures with regard to key function holders)

f. Third country branches, for which the competent authority decides to apply under Article 48a(4) of the Directive 2013/36/EU the same requirements as those for credit institutions, they should apply the guidelines as applicable under point(a) or (b) of this paragraph.

g. Third country branches, for which the competent authority decides not to apply the same requirements as those for credit institutions, with the exception of:

   i. Title III, Section 5 (calculation of directorships);

   ii. Title III, Section 9;

   iii. Title VI, Section 14 (Suitability policy in a group context);

   iv. Title VI, Section 15 (Nomination Committee).

h. Where Member States have implemented Article 91 (1d) and 91a(5) in a way that requires the assessment of members of the management body in its management function or the chair of the management body in its supervisory function and the assessment of key function holders in entities other than large entities, competent authorities should apply Sections 23 and 25 of these Guidelines..

[26] Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms (IFR)

11. Where competent authorities or Member States decide to apply suitability requirements beyond the minimum requirements set out in Article 48g (1) of Directive 2013/36/EU to third country branches, they should apply the same guidelines that apply to credit institutions. The assessment criteria for the third-country branches should not be applied less stringent as for entities of comparable size and risk profile.

12. Entities 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 on an individual basis, even if they are established in a third country, including offshore financial centres, in accordance with Article 109 of that Directive.

13. 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.

14. The terms 'management body in its management function' and 'management body in its supervisory function' as defined in Directive 2013/36/EU and implemented in the national law 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.

15. In Member States, where the management body appoints persons that effectively direct the business of the institutions, those persons belong in accordance with Article 3(1)(8a) of Directive 2013/36/EU to the management function of the management body and are therefore be assessed for their suitability in line with Article 91 of this Directive.

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

17. For the purposes of applying these Guidelines, in a third country branch the at least two persons directing the business or, where established, the management committee are considered as the management body in its management function and persons who have significant influence over the direction of the branch are considered as key function holders.

18. Any references to 'risks' in these Guidelines should include also money laundering and terrorist financing risks and ESG risks .

Definitions

19. 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:

Entities	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 and third country branches established in accordance with Article 21c of Directive 2013/36/EU.
Large entities	means institutions defined in Article 4(1), point (3), of Regulation (EU) No 575/2013 that are mentioned in Article 91(1d) or 91a(5) of Directive 2013/36/EU
Significant entities	Means 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 in accordance with Article 3(3) of this Directive financial holding companies and mixed financial holding companies that have been granted approval in accordance with Article 21a of this Directive and meet one of the aforementioned conditions.
Listed entities	means entities as defined in Article 3(1) of the Directive (EU) 2022/2381[27]
Staff	means all employees of an entity 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.

[27] Directive (EU) 2022/2381 of the European Parliament and of the Council of 23 November 2022 on improving the gender balance among directors of listed companies and related measures

	Suitability also covers the honesty, integrity and independence of mind of each individual and their ability to commit sufficient time to perform their 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 entity and is part of the management body in its management function
Key function holders	means persons as defined in point 9a of Article 3(1) of Directive 2013/36/EU.
Significant influence over the direction of an entity	means to have a position with the ability and powers to participate in the operating and financial policy decisions at the level below the management body or the level below senior management.
Heads of internal control functions	means the persons as defined in point 9c of Article 3(1) of Directive 2013/36/EU
Chief financial officer (CFO)	means persons as defined in point 9d of Article 3(1) of Directive 2013/36/ EU
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 entity	means an entity 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[28] or by the prudential requirements on the basis of the consolidated situation in accordance with Article 7 of Regulation (EU) 2019/2033.

[28] 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

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 entity or, depending on the legal form of an entity, other owners or members of the entity.
Directorship	means a position as a member of the management body of an entity or another legal person. Where the management body, depending on the legal form of the entity or legal person, 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.
Executive directorship	means a directorship in which a person is responsible for effectively directing the business of an entity.
AML/CFT supervisor	means a supervisory authority, as defined under point 45 of Article 2(a) of Regulation (EU) 2024/1624 responsible for the supervision of entities' compliance with provisions of point 45 of Article 2 (1) Regulation (EU) 2024/1624.

3. Implementation

Date of application

20. These Guidelines apply 6 month after the publication of all translations of the GL, but not later than 31.12.2026.

Repeal

The EBA and ESMA Guidelines on the assessment of the suitability of members of the management body and key function holders (EBA/GL/2021/06- ESMA35-36-2319) of 2 July 2021 are repealed with effect XXXX.

Question 1: Are subject matter, scope of application, definitions and date of application appropriate and sufficiently clear?

4. Guidelines

Title I - Application of the proportionality principle

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

22. Entities 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 entities should have more sophisticated policies and processes, while in particular small and less complex entities may implement simpler policies and processes. Entities should note that the size or systemic importance of an entity may not, by itself, be indicative of the extent to which an entity 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.

23. 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 entity'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.

24. 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 entities and competent authorities:

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

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

    c. whether the entity is listed or not;

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

e. the geographical presence of the entity 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 entity's organisational structure;

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

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

i. the type of clients[29]; and

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

Title II – Scope of suitability assessments by entities

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

25. Entities 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:

        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 entity[30]. This assessment should be limited to newly appointed members;

[29] 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.

[30] Please also refer to the Commission Delegated Regulation (EU) 2017/1943 of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on information and requirements for the authorisation of investment firms and Commission Implementing Regulation (EU) 2017/1945 of 19 June 2017 laying down implementing technical standards with regard to notifications by and to applicant and authorised investment firms according to Directive 2014/65/EU of the European Parliament and of the Council. See also Commission Implementing Regulation (EU) 2017/461 of 16 March 2017 laying down implementing technical standards

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 30 and 31.

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

27. Entities 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 entity and, where the entity is significant, whether or not the limitation of directorships under Article 91(3) of Directive 2013/36/EU is being complied with.

28. 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 and the duties allocated in accordance with Article 88(3) of Directive 2013/36/EU and in the updated EBA guidelines on internal governance[31]. The level and nature of the sufficient knowledge, skills and experience required from a member of the management body in its management function differs from that required from a member of the management body in its supervisory function, in particular if these functions are assigned to different bodies.

29. Entities should use the individual statements, established under Article 88(3) of Directive 2013/36/EU and the EBA Guidelines on internal governance, setting out the roles and duties of the members of the management body in its management function for assessment and re-assessment of the individual suitability of the respective members.

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with regard to common procedures, forms and templates for the consultation process between the relevant competent authorities for proposed acquisitions of qualifying holdings in credit institutions as referred to in Article 24 of Directive 2013/36/EU of the European Parliament and of the Council

[31] EBA/GL/2021/05 EBA guidelines on internal governance under Directive 2013/36/EU

30. Entities 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 entity, including cases where members do not comply with the entity'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 that there is an increased risk thereof, in connection with the entity as further specified in Section 26;

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

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

32. Entities 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 entities' assessment of the collective suitability of the management body

33. Entities should ensure, in fulfilling the obligation set out in Article 91(2b) 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 entity's activities, including the main risks. Notwithstanding the experience, knowledge and skills requirement for each member of the management body, entities should ensure that the overall composition of the management body reflects an adequately broad range of knowledge, skills and experience to understand the entity's activities, including their main risks.

34. Entities should use the individual statements, established under Article 88(3) of Directive 2013/36/EU and the EBA Guidelines on internal governance, setting out the roles and duties of the members of the management body in its management function for assessment and re-assessment of the collective suitability of the management body in its management function. To assess the collective suitability, entities should assess the mapping of duties of the

members of the management body and ensure that all the relevant duties within the entity are covered.

35. Entities 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 entity[32];

        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 36.

36. Entities 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 entity'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 the entity as further specified in Section 26;

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

37. Where re-assessments of the collective suitability are performed, entities should focus their assessment on the relevant changes in the entity's business activities, strategies and risk

[32] See footnote 29.

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.

38. Entities 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.

39. The assessment of the initial and ongoing collective suitability of the management body is the responsibility of entities. 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 entities.

3. The entities' assessment of the suitability of key function holders

40. Entities should use the individual statements, established under Article 88(3) of Directive 2013/36/EU and the EBA Guidelines on internal governance, setting out the roles and duties of key function holders for assessment and re-assessment their suitability.

41. All entities should ensure that their staff are able to perform their functions adequately and should specifically ensure in fulfilling the obligation to have robust governance arrangements, including suitable resources set out, as applicable, in Article 48(g), Article 74, Article 91a(1) and Article 76(6) 3rd subparagraph points (a) and (b) of Directive 2013/36/EU and Article 26 of Directive 2019/2034/EU, that key function holders at all times meet the requirements on suitability and 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 42.

42. Entities 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 the entity as further specified in paragraphs 86 and 87 as well as Section 26;

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.

43. 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.

44. Assessing the initial and ongoing suitability of key function holders is the responsibility of the entities. 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 entities.

Question 2: Are the changes made in Title II appropriate and sufficiently clear?

Title III Notions of suitability listed in Article 91(11) of Directive 2013/36/EU

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

45. Entities should assess whether or not a member of the management body is able to commit sufficient time to performing their functions and responsibilities including understanding the business of the entity, its main risks and the implications of the business and the risk strategy. Where the person holds a mandate in a significant entity, 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.

46. Members should also be able to fulfil their duties in periods of particularly increased activity, such as a restructuring, a relocation of the entity, 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.

47. In the assessment of sufficient time commitment of a member, entities should take 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 entity;

    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 entities 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, e.g. of competent authorities or by the EBA.

48. Entities 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 entities may differentiate the expected time commitment only between executive and non-executive directorships.

49. A member of the management body should be made aware of the expected time commitment required to spend on their duties. Entities may require the member to confirm that they can devote that amount of time to the role.

50. Entities should monitor and record 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.

51. An entity 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.

52. Entities 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 their function, the institution should re-assess the member's ability to respect the required time commitment for their position.

5. Calculation of the number of directorships

53. 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 entity must comply with the limitation of directorships set out in Article 91(3) of Directive 2013/36/EU.

54. 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.

55. 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 56 to 61, 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.

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

57. In accordance with Article 91(4)(b)(ii) of Directive 2013/36/EU, all directorships held within undertakings in which the entity 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 entity and the single directorship in its qualifying holdings together count as two directorships.

58. When multiple entities 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 entity, 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.

59. Where a member of the management body holds directorships in different groups or undertakings, all directorships held within the same institutional protection scheme or where the same institutional protection scheme holds a qualifying holding, 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 or where the same institutional protection scheme holds a qualifying holding, 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).

60. 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 Directive 2013/36/EU. However, such activities should be taken into account when assessing the time commitment of the concerned member.

61. 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

62. Members of the management body should have an up-to-date understanding of the business of the entity 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, including all of the areas specified in paragraph 77.

63. Members of the management body should have a clear understanding of the entity'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 entity[33].

64. 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[34] 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 entity's business model exposes it to ML/TF risks.

65. 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

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

66. To properly assess the skills of the members of the management body, entities 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.

67. 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.

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

[34] 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 entity and its responsibility for all activities of the entity.

68. The assessment should not be limited to the educational degree of the member or proof of a certain period of service in an entity. 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.

69. When assessing the knowledge, skills (see Annex II) 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 entity'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 entity including ESG risks and risk factors as well as information and communication technology risks);

    e. accounting and auditing;

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

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

    h. anti money laundering and counter terrorist obligations;

    i. data protection requirements and their implementation in light of other prudential requirements,

    j. the ability to present their views, discuss strategies and business objectives;

70. When assessing the knowledge and experience of a member of the management body of entities which also issue asset-referenced tokens (ARTs) or provide crypto-asset services (CASPs) according to Regulation (EU) 2023/1114[35], paragraph 24 of the Guidelines on suitability assessments under Regulation (EU) 2023/1114[36] should be additionally adhered to

[35] Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937

[36] Joint EBA and ESMA Guidelines on the suitability assessment of members of management body of issuers of asset-referenced tokens and of crypto-asset service providers

with regard to the issuance of tokens or CASP services. 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 within a position;

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;

g. additional knowledge gained from academical activities.

71. 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 entities or other firms.

7. Collective suitability criteria

72. The management body should collectively be able to understand the entity's activities, as well as the associated risks it is exposed to, and the impacts it creates in the short, medium and long term, taking into account ESG factors. 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.

73. 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 entity operates.

74. 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.

75. All areas of knowledge required for the entity'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.

76. 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.

77. The composition of the management body should be sufficiently diverse to reflect the knowledge, skills and an adequately broad range of experience necessary to fulfil its responsibilities. This includes the management body collectively having an appropriate understanding of the areas for which the members are collectively accountable, and the skills to effectively manage and oversee the entity, including the following aspects:

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

    b. each of the material activities of the entity;

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

    d. financial accounting and reporting;

    e. risk management, compliance and internal audit;

    f. information and communication technology and security, including the requirements within Regulation (EU) 2024/1689[37] on artificial intelligence systems;

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

    h. the legal and regulatory environment;

    i. managerial skills and experience;

    j. experience in implementing a culture of probing and challenging MB decision

    k. the ability to plan strategically;

[37] See also: Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (OJ L, 2024/1689, 12.7.2024)

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

m. ESG factors and ESG risks and their impacts on the above mentioned areas, where relevant

n. Requirements under Regulation (EU) 2022/2554 [38] regarding digital operational resilience, including the respective delegated technical standards

78. In addition to the points mentioned in the previous paragraph, entities that issue ARTs or are CASPs should also adhere to paragraph 28 Section C.2.3. of the Guidelines on suitability assessments under Regulation (EU) 2023/1114 with regard to the collective appropriate knowledge, skills and experience necessary to conduct all the business activities of the issuer of ARTs and of CASP services provided.

79. 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

80. 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 81 to 87. The assessment of reputation, honesty and integrity should also consider the impact of the cumulative effects of minor incidents on a member's reputation.

81. 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.

[38] Regulation (EU) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014, (EU) No 909/2014 and (EU) 2016/1011 (Text with EEA relevance) OJ L 333, 27/12/2022, p. 1–79

82. 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. designated persons in an EU sanctions list or lists issued by a country where the entity is active in;

    c. 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.

83. 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[39]. Other adverse reports with relevant, credible and reliable information (e.g. as part of whistleblowing procedures) should also be considered by entities and competent authorities.

84. 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

[39] 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

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. relevant civil lawsuits administrative proceedings or without prejudice to the presumption of innocence- criminal proceedings,

e. 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 them, or in which the member has a significant share.

85. 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 their 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.

86. When assessing the good repute of the members of the management body and key function holders and especially when there is information on increased ML/TF risks in connection with the entity, competent authorities should consider the following situations and risk factors:

a. the sector of current and previous activity of the person. Sectors that may be considered as vulnerable to ML, TF and other profit-generating financial crimes include at least mining/extractive industries, energy, international trade, precious metals, defence, arms, gaming, etc. and other cash generating businesses or activities.

b. existing or past business interest and ownership / participations of the person. Certain legal forms may represent higher ML/TF risks, including, for example, trust, non-transparent corporate structures, legal arrangements which are personal asset-holding vehicles.

c. existing or past close associates, business partnerships or known proxies schemes. Higher ML/TF risk factors may include, for example, proxies who are designated persons or entities in sanctions lists (e.g. issued by the UN or EU).

d. existing or past direct or indirect business relations and close family members, who are linked to geographies representing high/higher ML/TF risks such as countries identified in FATF listing[40], EU list of high risk third countries, third countries subject to international financial sanctions, offshore financial centres or tax heavens. Additionally, if a member of the management body or key function holder is publicly known to maintain direct business relations or has close family members that have been convicted of such ML or TF activities.

e. existing or past other factors which may constitute a suspicion that the person is exposed to increased risk of ML, TF or other profit-generating financial crimes. For example if the individual is or was a PEP,.

87. When becoming aware that there are increased ML/TF risks in connection with the entity and as confirmed by the relevant AML/CFT supervisor, where the person held or holds a position as an employee, key function holder or member of the management body, competent authorities should assess if the members of the management body and key function holders still meet the requirements specified in paragraphs 2 to 6 of Article 91, Article 91a(1) and 48g(1) in light of those risks, and should follow the process described in Section 26.

9. Independence of mind and independent members

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

88. When assessing the independence of members, entities should differentiate between the notion of 'independence of mind', applicable to all members of an entity's management body, and the principle of 'being independent', required for certain members of a relevant entity'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.

89. 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

[40] https://www.fatf-gafi.org/en/countries/black-and-grey-lists.html

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.

90. '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

91. When assessing the independence of mind as referred to in paragraph 89, entities should assess whether or not all members of the management body have:

  a. the necessary behavioural skills, including:

     i. the ability to present their views, discuss strategies and business objectives, effectively, critically and independently assess and challenge the proposed decisions of other members of the management body and act in an independent manner;

     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.

92. When assessing the required behavioural skills of a member referred to in paragraph 91(a), their past and ongoing behaviour, in particular within the institution, should be taken into account.

93. When assessing the existence of conflicts of interest referred to in paragraph 91(b), entities should identify actual or potential conflicts of interest in accordance with the institution's

conflict of interest policy[41] 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. three 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;

h. without prejudice to national law, the former CEO or, where applicable another executive director or former executive director takes on the role of chairperson or as member of the management body in its supervisory function within the same entity within a time period of three years after their position of a member of the management body in its management function ended.[42]

94. 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[43].

95. A conflict of interest arising from the role change mentioned in paragraph 93 (h) with regard to being a member of the management body in its supervisory function should be mitigated in line with Section 11 of the EBA guidelines on internal governance.

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

[42] Please refer to EBA guidelines on internal governance under CRD and EBA guidelines on internal governance under IFD

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

96. Entities 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.

97. 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.[44]

9.3 Independent members of the management body in its supervisory function

98. Having independent members, as referred to in paragraph 90, and non-independent members in the management body in its supervisory function is considered good practice for all entities.

99. 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. Significant and listed entities should have a management body in its supervisory function that includes a sufficient number of independent members:

    b. entities 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 decide not to require any independent directors within:

        i. entities that are wholly owned by an entity, in particular when the subsidiary is located in the same Member State as the parent entity;

        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

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

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

i. 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 should also help to mitigate or offset undue dominance by individual members of the management body representing a particular group or category of stakeholders;

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

iii. 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.

100. Without prejudice to paragraph 102, in the following situations it is presumed that a member of the entity'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 entity within the scope of prudential consolidation, unless that member 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 entity;

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

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 highest hierarchical level of the employing entity, that 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 entity 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 entity 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 entity 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 their role and remuneration for employment in line with point (c), significant fees or other benefits from the entity 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 entity or another entity in the scope of prudential consolidation or a person in a situation referred to under points (a) to (h).

101. The mere fact of meeting one or more situations under paragraph 100 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 100, the entity may demonstrate to the competent authority that the member should nevertheless be considered as 'being independent'. To this end entities 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.

102. For the purpose of paragraph 101 entities should consider that being a shareholder of an entity, 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.

9.4 Additional safeguards for appointments under Art 91(14) of Directive 2013/36/EU

103. In case of the appointment of members of the management body in its supervisory function by regional or local elected bodies or appointments where the management body does not have any competence in the process of selecting and appointing its members as per Article 91(14) of Directive 2013/36/EU, entities are required to establish safeguards to ascertain the suitability of such appointees. The entity should perform the suitability assessment as soon as the member is appointed, identify any suitability concerns, and propose to the member how the identified concerns may be addressed. The entity should take appropriate measures in line with paragraph 105 to ensure their suitability within an appropriate time period of six to twelve months or sooner from the date of appointment.

104. Entities should provide training for these appointees to cover any knowledge gaps, ensure they commit sufficient time to perform their function and, identify, manage and mitigate any material potential conflicts of interest, if any.

105. Additional safeguards could include:

a. Initiating training and induction as soon as possible in particular to mitigate shortcomings with regard to:

    i. Risk management framework in relation to the entity's business model

    ii. Applicable regulatory framework

    iii. Corporate governance arrangements within the entity Business strategy

    iv. Financial oversight, budgeting and accounting framework

b. Tailor-made individual on-boarding programme, including induction and trainings, to ensure that any weaknesses regarding their knowledge, skills and experience are mitigated in an appropriate time of no longer than six month;

c. Expectation of higher time commitment (at least for on-boarding time);

d. Specific documentation and monitoring requirements on actions and decisions taken;

e. Where not covered by a periodic suitability re-assessment according to paragraph 174, the knowledge and experience of the member may be reassessed not later than 12 months after the date of appointment by the entity in order to identify any further gaps or, where relevant, other concerns related to independence of mind and time commitment in order to foresee further measures (for example, additional training).

Question 3: Independent non-executive directors:

The Joint GL set out provisions on independent non-executive members of the MB. The Joint GL apply in a proportionate manner and distinguish between different types of entities (GSII, OSII and other institutions) and specify that for institutions other than significant ones only

one independent director as a minimum is required. Furthermore, the Joint GL provide criteria for the assessment of "being independent". In light of the above, the EBA and ESMA would appreciate further input on the impact of the independence criteria.

Do you have any views on the provisions regarding these independence criteria? Please share any experiences related to the effectiveness, clarity, or implementation of these independence criteria across different business models/types of institutions.

Question 4: Are the changes made in Title III appropriate and sufficiently clear?

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

10. Setting objectives of induction and training

106. Entities 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 entity'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. In addition, induction and training should support the management body's understanding of ICT-related risks, and ESG factors, ESG risks and impacts, including their transmission channels and prudential and strategic impacts on entities. The institution's should provide an appropriate training of how AI technologies are applied and used within the institution. Training should also promote their awareness regarding the benefits of diversity and gender balance in the management body and entity. Entities should allocate sufficient resources for induction and training for members of the management body individually and collectively.

107. 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.

108. 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 entity 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

109. Entities 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.

110. 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 their 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 entity 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.[45]

111. 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 staff responsible for the development of a detailed training programme;

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

112. 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.

113. Entities 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.

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

114. 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.

115. Entities 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.

Question 5: Are the changes made in Title IV appropriate and sufficiently clear?

Title V – Diversity within the management body

12. Diversity policy objectives

116. In accordance with Article 91(8) of Directive 2013/36/EU, all entities should have and implement a policy proportionally promoting diversity and gender balance on the management body, in order to promote a diverse composition 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. Entities should aim at an appropriate representation of the male and female gender 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.

117. The diversity policy of significant entities should ensure that the management body in its management function and in its supervisory function are having an appropriate gender balance. The diversity policy should at least refer to the following diversity aspects: educational and professional background, gender, age and, in particular for entities 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 entities should include a quantitative target for the representation of the under-represented gender in the management body. Significant entities 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. Without prejudice to national law, the target may be defined for the management body as a whole.

118. Where significant entities fall short of complying with the target on gender balance within the management body, they should document the reasons why, the measures to be taken and

the timeframe for measures to be taken, in order to ensure that an appropriate gender balance within the management body is met.

119. To ensure that a proportionate approach is applied, entities that are not significant may express the target in a qualitative way, if their management body has fewer than five members.

120. When setting diversity and gender balance targets, entities should consider diversity benchmarking results published by competent authorities, the EBA or other relevant international bodies or organisations[46].

121. 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 entity and to ensure that the interests of staff are taken into account.

122. Significant entities should also document, as part of the annual review of the composition of the management body, their compliance with the objectives and targets set. In the event that any diversity objectives or targets have not been met, the significant entity 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.

123. In order to facilitate an appropriately diverse pool of candidates for management body positions, entities 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. Where the entity established a nomination committee their composition should, where possible, be gender balanced.

124. In order to support a diverse composition of the management body entities 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.[47]

Question 6: Are the changes made in Title V appropriate and sufficiently clear?

[46] 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

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

Title VI – Suitability policy and governance arrangements

13. Suitability policy

125. 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 entity's suitability policy should be aligned with the entity'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 entity'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.

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

127. Any changes to the suitability policy should also be approved by the management body, without prejudice to any required shareholders' approval. Documentation regarding the adoption of the policy and any amendments thereof should be maintained (e.g. in the minutes of relevant meetings).

128. The policy should be clear, well documented and transparent to all staff within the entity. 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.

129. Internal control functions[48] 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 entity'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.

130. 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:

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

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 entities 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.

131. Entities 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 entities as key function holders in addition to the heads of internal control functions and the CFO.

132. The management body in its supervisory function and the nomination committee where established should monitor the effectiveness of the entity'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

133. In accordance with Article 109(2) and (3) of Directive 2013/36/EU, the consolidating 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.

134. The policy should be adjusted to the specific situation of institutions that are part of the group and subsidiaries within the scope of prudential consolidation that are not themselves subject to the requirements under Article 91 and 91a of Directive 2013/36/EU. Competent bodies or functions within the consolidating institution and its subsidiaries should interact and exchange information for the assessment of suitability as appropriate.

135. The consolidating institution should ensure that the suitability assessment complies with all specific requirements in any relevant jurisdiction. Regarding entities within a group located in

more than one Member State, the consolidating institution should ensure that the group-wide policy takes into account differences between national company laws and other regulatory requirements.

136. The consolidating 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.

137. The suitability requirements of Directive 2013/36/EU and these Guidelines apply to 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 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 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.

138. The management body of subsidiaries that are subject to Article 91 and Article 91a of 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[49]

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

140. 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.

141. 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

[49] 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

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.

142. 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.

143. 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

144. 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 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.

145. 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.

146. 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.

147. 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. Entities 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.

148. 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.

149. 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 entity'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 entity's diversity policy.

Question 7: Are the changes made in Title VI appropriate and sufficiently clear?

Title VII – Assessment of suitability by entities

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

150. 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.

151. Without prejudice to Article 91 (1a) of the Directive 2013/36/EU, in exceptional cases where the requirement of Article 13 of Directive 2013/36/EU, which includes that at least two persons effectively direct the business of the entity, can otherwise not be met, the assessment of newly appointed members of the management body may, after consultation with the competent authority, be completed after they take up their position. Such exceptions should

be limited to situations where the need to replace members arises suddenly or unexpectedly, e.g. death of a member or members or where a member or members are removed because they are no longer suitable and the entity would due to this not any longer meet the requirements for authorisation.

152. The suitability assessments should take into account all matters relevant to and available for the assessments. Entities 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.

153. 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, entities 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.

154. Entities should inform competent authorities about the exceptional cases referred to in paragraph 151 and discuss the possibility of appointing a temporary administrator by competent authorities or the appointment of the member by shareholders before an assessment of suitability is made where the national law permits. Where 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, entities 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 entity resulted in a member being considered not suitable for their position, the member and the competent authority should be informed without delay. Entities should also inform shareholders about the assessment made and act in line with Article 91(1b) of the Directive 2013/36/EU.

155. Entities 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.

156. 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 Article 91(1a) of the Directive 2013/36/EU, 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.

157. Entities 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.

158. Entities 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.

159. Entities 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 in line with the RTS on the minimum content of information [50][51].

160. Entities should keep up to date the information on the suitability of members of the management body and review it at least annually. Entities should inform competent authorities about material changes and where requested by the competent authorities, provide information necessary for the individual or collective suitability assessment of the members of the management body in line with Article 91(1c) of the Directive 2013/36/EU. In the case of a re-appointment this information may be limited to relevant changes.

161. For all entities, the same types of information and documentation as required under the RTS on the minimum content of information mandated under Article 91 (10) should be required by the competent authority for the initial and ongoing assessments and be submitted to competent authorities to carry out the suitability assessments, unless such information is already available to the competent authorities. For entities that do not fall under the scope of the RTS on the minimum content of information, competent authorities may determine the extent and granularity of the information and documentation required taking into account the principle of proportionality with regard to the size, internal organisation, nature, scale and complexity of the entity's activities.

[50] RTS on information and documentation for suitability assessments of members of the management body and key function holders to be submitted to the competent authorities

[51] 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.

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

162. Entities should require members of the management body to demonstrate their suitability by providing the documentation that is required by competent authorities for the assessment of suitability, in accordance with Title VIII of these Guidelines and point (e) of Article 91(1e) of Directive 2013/36/EU, including the information that are required by the entity to complete the information specified under the RTS on the minimum content of information for suitability assessments[52].

163. Third country branches should carry out the suitability assessment of the persons who will effectively direct the branch before their appointment. Third country branches should inform competent authorities of the assessment results and submit all the necessary documentation in line with RTS on the minimum content of information to competent authorities.

164. As part of the assessment of the suitability of an individual member of the management body, entities 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
    h. where necessary, adopt corrective measures to ensure the individual suitability of the members of the management body in accordance with Section 22.

[52] RTS on information and documentation for suitability assessments of members of the management body and key function holders to be submitted to the competent authorities mandated under Articles 91(10) of Directive 2013/36/EU.

165. 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.

166. Entities should document a description of the position for which an assessment was performed, including the role of that position within the institution, the allocated duties, and how diversity has been taken into account in the recruitment process, 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 entity 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, including 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;

    e. independence of mind.

19. Assessment of the collective suitability of the management body

167. When assessing the collective suitability of the management body, entities 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 adequate collective knowledge, skills and experience, and the required collective suitability pursuant to Article 91(2b) of Directive 2013/36/EU . Entities should also ensure that all material individual roles and duties of the management body are allocated to a member of the management body.

168. Entities should perform an assessment of the collective suitability of the management body using either:

    a. the suitability matrix template included in Annex I. Entities 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.

169. When assessing the suitability of an individual member of the management body, entities 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[53]. 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.

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

171. Entities should inform competent authorities about material changes and where requested by the competent authorities, provide information necessary for the individual or collective suitability assessment of the members of the management body in line with Article 91(1c) of the Directive 2013/36/EU. In the case of a re-appointment this information may be limited to relevant changes.

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

172. 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.

173. 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;

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

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 performance of the roles and duties set out in the individual statements by the members of the management body;

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

e. 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;

f. 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;

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

h. 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;

i. 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

j. 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;

k. 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 in accordance with the criteria specified in paragraph 235.

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

a. the assigned duties and reporting lines within the institution, taking into account the individual statements and mapping of roles and duties under Article 88 of Directive 2013/36/EU, 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. Entities 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. Entities should note that the absence of criminal convictions alone may not be sufficient to dismiss allegations of wrongdoing.

175. Significant entities should perform a periodic suitability re-assessment at least annually or in any case as soon as any new facts or other circumstances that could affect the suitability of the members of the management body become known. Non-significant entities should perform a suitability re-assessment at least every two years or in any case as soon as any new facts or other circumstances that could affect the suitability of the members of the management body become known. Where there are no new facts or circumstances that are to be considered, the reassessment may be limited to establishing this fact. Entities should document the results of the periodic re-assessment. Where a re-assessment is triggered by a specific event, entities 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.

176. 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.

177. 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.

178. 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.

179. Entities should inform the competent authority where re-assessments due to any new facts or other circumstances that could affect the suitability of the members of the management body become known. Significant entities should inform the competent authority at least annually of any re-assessments of collective suitability made.

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

181. 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 entities

182. The responsible function within an entity should carry out the suitability assessment of key function holders before their appointment and periodically, in line with the Article 91a paragraph (2) of Directive 2013/36/EU, and should report the assessment results to the appointing function and the management body.

183. Large entities referred to in Article 91(a) (5) of Directive 2013/36/EU, should inform competent authorities of the assessment results regarding heads of internal control functions and the CFO. To this end large entities should complete the documentation that is required by competent authorities for the assessment of suitability, including the suitability questionnaire, curricula vitae and the internal suitability assessment as specified in the RTS on the minimum content of information for suitability assessments.

184. Entities should keep up to date the information on the suitability of members of key function holders and review it at least annually.

185. Where an assessment by a competent authority is also required, entities 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 they are assessed as not being suitable by the competent authority for that position.

22. Entities’ corrective measures

186. In line with Article 91 (1b) of Directive 2013/36/EU if an entity’ 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 entity should replace that member, unless an entity’s assessment or re-assessment identifies easily remediable shortcomings in the member’s knowledge, skills or experience and the institution takes appropriate corrective measures.

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

188. When an entity 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.[54]

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

190. 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. Large entities should also inform competent authorities about any shortcomings identified regarding heads of internal control functions and the CFO. The information should include the measures taken or envisaged to remedy those shortcomings and the timeline for their implementation.

191. In line with Article 91a(3) of Directive 2013/36/EU, if an entity's assessment concludes that a key function holder is not suitable, the entity should either not appoint the individual, remove the key function holder from the position or take appropriate measures to ensure the effective functioning of this position. Large entities should inform the competent authority accordingly with regard to the heads of internal control functions and the CFO.

Question 8: Are the changes made in Title VII appropriate and sufficiently clear?

Title VIII – Suitability assessment by competent authorities

23. Competent authorities' assessment procedures

Scope of assessment procedures

192. Competent authorities should specify the supervisory procedures applicable to the suitability assessment of members of the management body of large entities. Competent authorities

[54] See footnote 28.

should consider similar supervisory procedures for assessing the suitability of members of the management body of entities other than large entities.

193. Competent authorities should specify the supervisory procedures applicable to the assessment of suitability of heads of internal control functions and the CFO of large entities. Where deemed necessary by competent authorities similar procedures should be specified for other key function holders in large entities. Additionally, competent authorities should consider setting out similar supervisory procedures for assessing the suitability of key function holder in entities other than large entities.

194. Competent authorities may request entities to inform them about the results of the entities' assessment carried out and to submit the relevant documentation for suitability assessments of members of the management body and key function holders in line with Article 91(1) and 91a(1) of Directive 2013/36/EU.

195. Competent authorities should specify the supervisory procedures applicable to the suitability assessment of individuals who effectively direct the branch in a Member State of entities authorised in a third country.

196. The supervisory procedures should ensure that newly appointed members of the management body, the management body as a collective body of entities and, newly appointed heads of internal control functions and the CFO of large entities 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 paragraph 25 b) ii) and 35 b(ii) where a re-assessment is necessary.

197. Competent authorities should perform their assessment on the basis of the documentation and information provided by the entity and assessed members and, where applicable, information received from other competent authorities, and assess them against the applicable notions defined in Title III.

Procedural requirements

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

199. Competent authorities should ensure that a description of those assessment procedures is publicly available, in particular :

    a. information regarding the persons in scope of the suitability assessment. This should specify the categories of individuals who should be assessed;

    b. assessment criteria for the different categories of individuals who should be assessed, in line with Article 91 and 91a of Directive 2013/36/EU and these Guidelines

c. description of situations that trigger a suitability assessment, including any re-assessments, other than new initial appointments;

d. time and steps of assessment by the competent authority;

e. frequency of assessments;

f. information sharing.

200. As part of the above supervisory procedures, entities should be required to inform competent authorities of any vacant positions within the management body without undue delay.

Notifications of new appointments

201. Competent authorities should require entities to notify to competent authorities newly appointed members and provide the required accompanying documents. Notifications of the suitability application and the accompanying documents to the competent authority should include the information and the documentation referred to in Article 91 (1e) Directive 2013/36/EU as well as, to the extend deemed proportionate by the competent authorities in line with paragraph 161 of these Guidelines, in the RTS on the minimum content of information mandate under Article 91 (10). Such notifications include:

a. notifications to the competent authority assessing the suitability before the intended appointment or taking up the position (*ex-ante* jurisdictions) or based on the appointment decision of a member of the management body and, where applicable, key function holder. Such notifications should be made in due time after the entity decided to propose the member for appointment or at the latest after their appointment and before taking up their position;

b. notifications to the competent authority assessing the suitability after the appointment or taking up of the position (*ex-post* jurisdictions) of a member of the management body and, where applicable, a key function holder. Such notifications should be made not later than two weeks after the appointment.

c. notifications to the competent authority (*ex-post* jurisdictions) assessing the suitability of members of the management body in its management function or the chair of the management body in its supervisory function in large entities, as further specified in paragraph 203.

Notifications to *ex-post* jurisdictions of large entities about intended appointments of members of the management body in the executive function or chairperson (ex-ante suitability applications) and appointments of heads of control functions and CFO

202. Competent authorities should require large entities to submit an *ex-ante* suitability application in accordance with Article 91(1d) of Directive 2013/36/EU. This application should be made without undue delay and as soon as there is a clear intention to appoint a member,

or based on the appointment decision and in any case before the person takes up their position. For members of the management body in its management function or the chair of the management body in its supervisory function it should be submitted at the latest 30 working days before the prospective members take up their position.

203. For the assessment of a head of a control function or the CFO large entities should notify competent authorities of the appointment not later than two weeks after the appointment.

204. Notifications should at least include the documentation and information in accordance with Article 91 (1e) of Directive 2013/36/EU for member of the management body in its management function or the chair of the management body in its supervisory function and the RTS on the minimum content of information for such members, the chairperson, the heads of control functions and the CFO.

205. Where an entity fails to provide sufficient information regarding the suitability of an assessed individual to the competent authority, as required under Article 91(1e) of Directive 2013/36/EU, including the information under the RTS on the minimum content of information, the competent authority should inform the entity that the assessed person 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.

206. Competent authorities should start the assessment procedures as soon as the *ex-ante* suitability application is received as per Article 91(1d). This aims to identify any material concerns regarding the suitability of the individual. Competent authorities should aim to perform an initial assessment of the suitability in a timely manner before the prospective member takes up the position and should start an enhanced dialogue with the entity where material concerns regarding the suitability exist Section 24.

Notifications in exceptional circumstances

207. In the duly justified cases referred to in the second subparagraph of Article 91(1a) of the Directive 2013/36/EU, entities should be required to provide the complete documentation and information in RTS on the minimum content of information, together with the notification to the competent authority, within one month after the member has been appointed.

Timing of suitability assessments and re-assessments

208. 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 201 and 202 are provided by the entity. Where a competent authority establishes that additional documentation and information, including interviews or hearings, 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. Extensions of the assessment period of four month in the case of large entities should only be

made under exceptional circumstances. 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.

209. 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[55.]

210. The assessment of the individual and collective suitability of the members of the management body and, in case of large entities, the assessment of the individual suitability of the heads of internal control functions and the CFO should be performed also on an ongoing basis by competent authorities, as part of their ongoing supervisory activity.

211. Competent authorities should ensure that necessary re-assessments under sections 1, 2 and 3 of Title II are conducted by entities. If a re-assessment of suitability by a competent authority is prompted by a re-assessment by an entity, that competent authority should in particular take into account the circumstances that prompted the re-assessment by the entity.

212. Competent authorities should re-assess the individual or collective suitability of the members of the management body and the individual suitability whenever any material new facts or other circumstances that could affect the suitability of those members 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 entity and include within large entities heads of internal control functions and the CFO.

Assessment tools

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

214. Where appropriate, the interview process may also serve to re-assess the suitability of a member of the management body or key function holder and should in particular be used when there are material concerns about the suitability of the individual.

215. Competent authorities may attend or conduct meetings with the entity, 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 of the

[55] See footnote 20.

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

216. Competent authorities should use, as appropriate, supervisory findings from reviews of entities. 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 their position could reasonably be expected to take in order to prevent, remedy or stop the breach.

24. Enhanced dialogue between the competent authority and large entities under Article 91(1e) CRD (applies to Member States with *ex post* suitability assessments)

217. When receiving *ex ante* suitability application from large entities as referred to in Article 91(1d) of this Directive 2013/36/EU the competent authority should engage in an enhanced dialogue with large entities in case the competent authority has concerns regarding suitability of the notified prospective members of the management body in its management function or the chair of the supervisory function. The enhanced dialogue should address the identified concerns with a view to ensure that the prospective member is or becomes suitable when taking up their position or enable the competent authority to prevent the prospective member to take up their position.

218. When receiving the ex-ante suitability application from large entities, the competent authority should assess whether the information received is complete, request missing information and start the assessment. Based on the initial information received, the competent authority should make a preliminary assessment of the prospective member's suitability and establish if there are concerns regarding their suitability.

219. All aspects of the suitability required under Article 91 (2) to (6) of Directive 2013/36/EU should be assessed when determining if an enhanced dialogue is needed:

220. Competent authorities should document if the preliminary assessment under paragraph 218 has raised any concerns regarding the prospective member's suitability. Where this is the case, competent authorities should initiate the enhanced dialogue with the entity by informing it about the identified concerns. The initiation of the process and the concerns should be documented.

221. The concerns raised by the competent authority when initiating the enhanced dialogue should not be considered as a formal decision of the competent authority with regards to the prospective member's suitability. Potential concerns should be raised as a general principle only with the entity and only in exceptional cases also with the prospective member and only

after it has been raised to the large institution and necessary information could not been provided by it in a timely manner.

222. To address specific concerns identified within an individual's suitability assessment, the competent authority may share with the entity the preliminary findings and conclusions related to the notions defined in Title III, as applicable, and may require the entity to provide additional information and reasoning on how these concerns will be addressed, including a clear timeline.

223. The enhanced dialogue should be carried out before the prospective member takes up the position..

224. The entity should reply to the questions and requests from the competent authority as soon as possible and within the set timelines and with the means provided or requested by the competent authority.

225. Where the entity fails to provide the sufficient information necessary to resolve the issues raised by the competent authority during the enhanced dialogue, the competent authority should document this fact and assess the prospective members in line with Title III, As a general principle the competent authority may require preventing the prospective member to take up their position as long as the final decision of the competent authority is pending, unless the competent authority is satisfied that it is not possible for such information to be provided or that it would be disproportionate to prevent the prospective member to take up their position.

226. The enhanced dialogue should not impair/exclude the possibility for a competent authority to engage in other forms of interaction with entities in the context of the suitability assessment performed according to Section 1.

25. Decision of the competent authority

227. Competent authorities should take a decision[56] 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, within the maximum period referred to in paragraph 208 or, if the period has been suspended, within a maximum period of six months after the notification mentioned in paragraphs 201 has been received by the competent authority.

228. In the cases referred to in paragraph 209, 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.

[56] A decision in this context may be the internal result of the assessment documented by the competent authority, but could also be, depending on national law, an administrative act.

229. 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 entity.

230. Competent authorities should inform entities 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 209, is completed and the competent authority has not taken a negative decision.

231. The competent authority, considering the measures already taken by the entity, 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 entity to organise specific training for the members of the management body individually or collectively;

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

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

d. requiring the entity 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 entity's authorisation.

232. 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 Articles 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 entity.

26. Reasonable ground to suspect ML/TF activities or risks[57]

233. Where the competent authority becomes aware that there are reasonable grounds to suspect money laundering or terrorist financing in connection with the entity or that there is an increased risk thereof, in line with Articles 48n (4), 91 (1g) , 91a (8)(c), of Directive 2013/36/EU, it should assess the extent to which the members of the management body, key function holders addressed in Article 91a(5) of Directive 2013/36/EU and where applicable other key function holders, through their reputation, actions or inactions, directly or indirectly, contributed to these events or risks and in how far members are or remain suitable in light of such events or risks.

234. To establish whether 'reasonable grounds' exists or if there is an increased risk in connection with the entity where the person held or holds a position as an employee, key function holder or member of the management body, the competent authority should assess, in line with the process described in Section 8 (reputation, honesty and integrity), if money laundering or terrorist financing has been or is being committed or attempted or it is likely to be committed or attempted , taking into account at least the following situations:

    a. the competent authority has information that appears to be of sufficient validity (e.g. from court decisions, bearing the most evidential value, to reliable whistleblower reports) to assume that money laundering or terrorist financing has been or is being attempted, has occurred with the involvement of the entity, the members of its management body or key function holders;

    b. the entity has been found to be in a material breach of its AML/CFT obligations by a competent authority or AML/CFT supervisor; the entity has failed to implement adequate internal control framework in areas or ways that could materially affect its ability to identify, monitor and mitigate ML/TF risks;

    c. the entity has materially changed its business activity or business model in a manner that suggests that its exposure to ML/TF risk has significantly increased, without updating its AML/CFT systems and controls in a commensurate and proportionate way;

    d. a member of the management body or key function holder is alleged to have facilitated or committed a ML or TF, as defined by Article 1 of the Directive (EU) 2015/849; ;

[57] This section together with paragraph 86 and 87 will be submitted for consultation to AMLA during the EBA consultation period

235. When assessing the risk factors in paragraph 86, competent authorities should consider available information[58] from:

   a. information obtained from the AML/CFT supervisor;

   b. information obtained from own competent authority's investigations;

   c. the person's criminal records;

   d. information which can be obtained from public authorities at the national level, including Financial Intelligence Units or law enforcement agencies;

   e. competent authorities in case the person had previously undergone a suitability assessment in another Member State or third country;

   f. other reliable and trustworthy information sources (e.g. adverse media, investigative journalism, whistleblowing reports).

236. In situations where the competent authority becomes aware of one or several ML/TF risk factors, as listed in paragraph 86, the assessment should focus on such ML/TF risk factors would give rise to reasonable grounds to suspect ML/TF or an increased ML/TF risk, in relation to the entity. Where appropriate and on a risk-sensitive basis, the competent authority should consult with the AML/CFT supervisor in line with Articles 91(1i) and 91a(7) of Directive 2013/36/EU, Directive (EU) 2024/1640[59] and with the EBA Guidelines on cooperation (reference to be inserted). The competent authority should duly take into account the information received from the AML/CFT supervisor in their suitability assessment.

237. For the purposes of paragraph 233 and if, the competent authority, after consultation with the AML/CFT supervisor, gathered sufficient information that there are reasonable grounds to suspect that ML/TF is being or has been committed or attempted, or that there is an increased risk thereof, in connection with the entity, it should consider the existence of such reasonable grounds in the assessment of the suitability of members of the management body individually and collectively and key function holders. Where the behaviour or the actions of a specific member of the management body or a key function holder contributed to the conclusion that there are reasonable grounds to suspect that ML/TF is being or has been committed or attempted, or that there is an increased risk thereof, the competent authority should take those facts into account when assessing the good repute of that person. In any case, where the person themselves committed or attempted ML/TF, or the person is, or has become, a designated person under EU sanctions lists, the competent authority should

[58] This information might entail a negative assessment on the increased AML risk only where there are reasonable grounds according to paragraph 229.

[59] Directive (EU) 2024/1640 of the European Parliament and of the Council of 31 May 2024 on the mechanisms to be put in place by Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing

conclude that Article 91(2a) of Directive 2013/36/EU with specific reference to the requirements to be of good repute and act with honesty and integrity, in relation to that person is impacted or even no longer fulfilled, considering the level of conclusiveness of the respective findings or decisions .

27. Cooperation between competent authorities

238. 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. Information regarding the applications that were withdrawn by person or where the assessment was negative should also be provided. 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.

239. Competent authorities should 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. When doing so, competent authorities should consult the ESAs Exchange of Information System established by the JC/GL 2024 88 joint guidelines[60] on the basis of Article 31 (a) of the ESAs founding regulations, and request information on the prospective member, where applicable.

240. 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 entity's management body or key function holders. Competent authorities may also request access to the Central AML/CFT database referred to in Article 11 of Regulation (EU) 2024/1620[61]. In addition, in situations where the risk of ML/TF associated with the entity or member is increased, competent authorities should also, where

[60] Final Report on Joint Guidelines on the system established by the European Supervisory Authorities for the exchange of information relevant to the assessment of the fitness and propriety of holders of qualifying holdings, directors and key function holders of financial institutions and financial market participants by competent authorities

[61] Regulation (EU) 2024/1620 of the European Parliament and of the Council of 31 May 2024 establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism and amending Regulations (EU) No 1093/2010, (EU) No 1094/2010 and (EU) No 1095/2010

appropriate, seek information from other relevant stakeholders, including the Financial Intelligence Units and law enforcement agencies, to inform their suitability assessment.

241. Competent authorities receiving such requests by means of the ESAs Exchange of information System referred to in paragraph 239 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 208. 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 entity, or other relevant information for the assessment of suitability.

242. 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 entities 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.

243. 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.

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

245. Where a competent authority decides that a member of the management body or a key function holder 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.

Question 9: Are the changes made in Title VIII appropriate and sufficiently clear?

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

246. 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.

247. 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.

248. 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.

249. 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 entity) 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.

250. 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.

Question 10: Are the changes made in Title IX appropriate and sufficiently clear?

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 and has been updated following CRDVI.

Annex II – Skills

This is the non-exhaustive list of relevant skills, referred to in paragraph 65, that entities 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 their 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 entity'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 their 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 their 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 they are 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 they can devote sufficient time to the job and can discharge their 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 their 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.

Question 11: Are the changes made to Annex 1 and Annex II appropriate and sufficiently clear?

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 provides an overview of the changes that are proposed to the Guidelines as well as of the alternative options.

The EBA's Guidelines on the assessment of the suitability of members of the management body and key function holders issued (EBA/GL/2021/06) issued 02 July 2021 have been revised to reflect amendment of Directive 2013/36/EU by Directive (EU) 2024/1619 (CRD VI) and minor other adjustments have been made to align the Joint guidelines with suitability requirements under MiCAR.

A. Problem identification

The joint guidelines have been revised in response to the changes introduced by Directive (EU) 2024/1619. These updates specifically address the impacts brought about by CRD VI, while maintaining consistency in other areas

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[62]. 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 and other key function holders of credit institutions ,investment firms

[62] 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

in the EU and third country branches, with a view to improving their internal governance and the performance and involvement of their management and internal control functions.

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

The baseline scenario is the lack of new guidelines, and reliance instead on the old guidelines that do not reflect the changes introduced by CRD VI.

D. Options considered

Changes to the Guidelines are limited to changes introduced by CRD VI. Among the policy options considered are described below:

Policy issue 1: The link between CRD VI and MiFID 2

Article 9 MiFID imposes investment firms to follow the requirements of CRD Articles 88 and 91, which specifies the suitability requirements for the management body. Before amendment, Article 91 of the CRD was covering both members of the management body and key function holders. Article 9 of the MIFID was not updated in parallel to CRD VI to include reflect the split of the articles in the CRD into separate Article 91 covering the assessment of the member of the management body and Article 91a covering the assessment of key function holders. It therefore does not include a reference to the new Article 91a, which requires the assessment of the suitability of the KFHs.

Option 1A: Follow the legal text and not refer to Article 91a

This option follows the legal text, but may lead to inconsistency, as it will lead to different practices across financial entities covered by the Guidelines. In particular, while all financial entities in the scope will have to comply with Article 91a, the non-CRD investment firms, that are under MIFID, will not have to comply with it.

Option 1B: Extend the scope of application of the joint GLs to cover the assessment of key functions holders of non-CRD investment firms and third country branches

Option B will ensure that continuity with the previous regime is maintained (until the CRD revision) and will reflect the existing supervisory practices. This approach will tackle the MiFiD-related inconsistency on KFH (Article 91a).

To ensure consistency and continuity with previous practices Option 1B was chosen as a way forward for investment firms. The suitability assessment of key function holders should be part of the assessment of robust governance arrangements as required under Article 26 of Directive 2019/2034/EU, unless the investment firms meet all the criteria in Article 12(1) of Regulation (EU) 2019/2033 to be considered small and non-complex.

Policy issue 2: Assessment of KFHs in third country branches

Article 48g of the CRDVI requires that third-country branches have at least two persons effectively directing their business subject to prior approval by the competent authorities. Those persons shall be of good repute and possess sufficient knowledge, skills and experience and commit sufficient time to the performance of their duties. Article 48g specifies that Article 74 of the CRD applies to third country branches, which means that third country branches should robust governance arrangement.

Considering the above articles, the following options could be considered with respect to the assessment of KFHs in third country branches.

Option 2A: KFHs do not need to be assessed

Article 48g refers to persons directing the business, and does not explicitly refer to KFHs. This could be interpreted as not covering KFHs. This option means that KFHs will not be assessed and will go against the requirement in Article 74 to have robust governance.

Option 2B: KFH should be assessed by the third country branch

This option means that Article 74 requiring robust governance arrangements will be fulfilled, and therefore, that KFHs in third country branches should be suitable. This applies in particular to heads of internal control functions and other senior persons that are responsible for such combined functions in light of Article 76(6). To be suitable, KFHs need to be assessed. Since the requirements cannot apply to the firm owning the branch, as it is outside the EU, this requirement can only be under the responsibility of the third country branch.

The preferred option is 2B as it ensures the fulfilment of Article 48g and Articles 74 and 76(6).

Policy issue 3: Do CAs assess the suitability of KFHs for TCB and investment firms?

According to Article 91a (1), large entities should ensure that key function holders are at all times of sufficiently good repute, act with honesty and integrity and possess sufficient knowledge, skills and experience necessary to perform their duties, and send to the information related to their suitability to the competent authorities for a suitability assessment to be performed. The CRD

does not specify such a requirement for any other entities that fall in the scope of the CRDVI, namely not large third country branches and investment firms.

According to the guidelines, the CAs should specify the supervisory procedures applicable to the suitability assessment of members of the management body of large entities. With regard to entities other than large entities, the following options were considered:

Option 3a: Not specify any further requirements with regard to the suitability application for entities other than large entities

Option 3b: Specify that CAs should at least consider the submission of a suitability application for entities other than large entities

Option 3c: Specify that CAs should require the submission of a suitability application for entities other than large entities

Option 3a does not require competent authorities to conduct or to consider conducting a suitability assessment for entities other than large entities. While it is in line with the legislation, this approach may lead to important gaps in assessment in cases where such an assessment may be beneficial, based on the CAs supervisory judgment of the entities under its scope of supervision. Option 3c, on the other hand requires that all entities provide their suitability application, and that CAs conduct the suitability assessment for all, which may lead to an inefficient use of resources.

Option 3b requires the competent authorities to consider conducting the suitability assessment for entities other than large entities, thereby given the room to competent authorities to decide, based on their supervisory judgement if certain cases require a competent authority involvement with respect to the assessment of the KFHs, for example if third country branches are treated as large subsidiaries. Therefore, this option is the preferred option. The guidelines therefore specify that the competent authorities should consider similar supervisory procedures for assessing the suitability of members of the management body of entities other than large entities.

Policy issue 4: Time period for the enhanced dialogue

Where CA has concerns as to whether the prospective member fulfils the requirements, it shall engage in an enhanced dialogue with the institution to address the identified concerns with a view to ensure that the prospective member is or becomes suitable when taking up their position.

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.

Option 4A: 6 months

The deadline for the assessment under enhanced dialogue should be in accordance with Article 15 of Directive 2013/36/EU and not exceed 6 months, without any intermediary deadlines. Such an approach is in line with the legal text, but in case of doubts about the assessment towards the end of the period, may leave CA without sufficient time to request additional documentation and information.

Option 4B: 4 month with exceptional extension of 2 months

CAs should set out a maximum period for their assessment of suitability which should not exceed four months from the date when the relevant notifications are provided by the entity. Considering the enhanced dialogue, it should be possible to conclude the assessments in 4 months. Two months additional time that could be added for other assessments, in case that there are remaining doubts and there is need for additional information and documentation.

The preferred option is 4B, as it would allow some flexibility to the CAs in case there doubts related to the assessment, while still fitting within the 6 months maximum deadline envisaged by the CRD VI.

E. Cost benefit analysis

Overall, the new joint guidelines are assessed to bring more benefits than costs to the main stakeholders (See Table 1). The joint guidelines are proportionate and tailored to new CRD VI requirements. It is expected that the impact of the new joint guidelines will be small, because the impact derives only from changes introduced by the CRD VI.

The changes that are expected to have most impact are the following:

- The new Guidelines require that an *ex-ante* application of suitability of the a member of the management body in its management function or the chair of the management body in its supervisory function is submitted to the CA. The *ex-ante* applications are applicable only to CAs that have *ex-post* assessment and is limited to large entities in accordance with Articles 91(1d) and 91a(5)of Directive 2013/36/EU and the members of the MB in its executive/management function, and the chair of MB in its supervisory function. The impact is hence small.
- Enhanced dialogue to address suitability concerns applies in the context of the "*ex ante* application regime", which applies to Member States with *ex post* assessments. Where the CA has concerns as to whether the prospective member fulfils the requirements, it shall engage in an enhanced dialogue with the institution to address the identified concerns with a view to ensure that the prospective member is or becomes suitable when taking up their position. The enhanced dialogue will entail additional actions regarding the regular supervisory process and CAs should keep some documentation of the process.
- The criteria regarding the assessment of the knowledge, skills and experience of a member of the management body and KFHs where updated to consider a level playing field between entities, in particular considering that some entities will also be subject to the requirements under MiCAR.

- The requirements include the need to consider knowledge and expertise on ESG risks for the assessment of the members of the MB in line with Article 88(7) CRD, and requirements for induction and training of members of the MB that cover ESG and ICT-related risks. There were additional safeguards for appointments by regional or local elected bodies. All these additional requirements will have a small additional cost, as are mostly complementary to requirements that already where in place.

Table 1. Costs and benefits of the guidelines

Stakeholders	Costs	Benefits
Financial institutions in the scope of GLs	Minor impact, as the changes with respect to previous guidelines is limited	Additional clarifications to facilitate the application of the guidelines
Third country branches in the scope of GLs	Cost of compliance, due to the need to fulfil the requirements if not previously applied	Harmonisation of the practices across sectors Additional clarifications to facilitate the application of the guidelines Level playing field between entities
Investment firms in the scope of GL	Minor impact, as the changes with respect to previous guidelines is limited	Additional clarifications to facilitate the application of the guidelines
Competent authorities	Additional actions regarding the regular supervisory process and may need to keep some documentation of the enhanced dialogue process	Harmonisation of the practices across sectors
Clients of financial entities	None	Consideration of important aspects like ESG

5.2 Questions for public consultation

Question 1: Are subject matter, scope of application, definitions and date of application appropriate and sufficiently clear?

Question 2: Are the changes made in Title II appropriate and sufficiently clear?

Question 3: Independent non-executive directors:

The Joint GL set out provisions on independent non-executive members of the MB. The Joint GL apply in a proportionate manner and distinguish between different types of entities (GSII, OSII and other institutions) and specify that for institutions other than significant ones only one independent director as a minimum is required. Furthermore, the Joint GL provide criteria for the assessment of "being independent". In light of the above, the EBA and ESMA would appreciate further input on the impact of the independence criteria.

Do you have any views on the provisions regarding these independence criteria? Please explain any aspects that may influence the effectiveness, clarity, or implementation of these independence criteria across different business models/types of institutions.

Question 4: Are the changes made in Title III appropriate and sufficiently clear?

Question 5: Are the changes made in Title IV appropriate and sufficiently clear?

Question 6: Are the changes made in Title V appropriate and sufficiently clear?

Question 7: Are the changes made in Title VI appropriate and sufficiently clear?

Question 8: Are the changes made in Title VII appropriate and sufficiently clear?

Question 9: Are the changes made in Title VIII appropriate and sufficiently clear?

Question 10: Are the changes made in Title IX appropriate and sufficiently clear?

Question 11: Are the changes made to Annex 1 and Annex II appropriate and sufficiently clear?

Question 12: Is the table on scope of application of the Joint Guidelines appropriate and sufficiently clear?