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## Final report on Consultation paper

~~joint~~ 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

# Guidelines on the assessment of suitability

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## Responding to this consultation

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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 dd.mm.yyyy. 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

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In accordance with the requirements introduced by Directive 2013/36/EU ~~as amended by Directive 2019/878/EU<sup>1</sup>~~ and Directive 2014/65/EU, the European Securities and Markets Authority (ESMA) and the European Banking Authority (EBA) jointly issue Guidelines on the notions of suitability, as required by Article 91 ~~(12(11) and 91a(8))~~ of Directive 2013/36/EU and Article 9(1) of Directive 2014/65/EU<sup>2</sup>, 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 institutions/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 terms ‘management body in its management function’ and ‘management body in its supervisory function’ should be interpreted throughout the Guidelines in accordance with the applicable law within each Member State.~~

The Guidelines specify 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 ~~all~~ key function holders ~~that have a significant influence over~~. The Guidelines foresee the direction/assessment of heads of internal control functions and the institution under CFO and also the overall responsibility of assessment other key function holders by the management body/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 significant CRD institutions/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), where they are not members of the management body. This should be done at the highest level of consolidation for significant CRD institutions that are part of a group but not subject to prudential consolidation by a significant consolidating CRD institution, and at the individual level if the significant CRD institution is not part of a group.~~ Competent authorities may also assess other key function holders on request.

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<sup>1</sup> 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

<sup>2</sup> ~~Directive 2014/65/EU entered into application on 3 January 2018.~~ 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).

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

The Guidelines take into account the changes introduced by Directive ~~2019/878/EU with regard to the consideration of money laundering and terrorist financing risks and criteria for assessing the independence of mind of members of the management body.~~ (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 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<sup>3</sup> 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, ~~institutions should~~ entities are required to take measures to ensure that diversity and gender balance ~~is~~ 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; ~~institutions are~~ entities therefore ~~required~~ 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.

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<sup>3</sup> 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

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1. Weaknesses in corporate governance, including inadequate oversight by and challenge from the supervisory function of the management body in a number of credit institutions and investment firms, have contributed to excessive and imprudent risk-taking in the financial sector which has led in turn to the failure of individual ~~institutions~~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 ~~2013/36/EU as amended by Directive 2019/878~~2014/65/EU and Directive ~~2014/65~~2013/36/EU include requirements to remedy weaknesses that were identified during the financial crisis regarding the functioning and composition of the management body ~~and,~~ the qualification of its members 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. ~~The management body, as defined in points (7) and (8) of Article 3(1) of Directive 2013/36/EU, should be understood as having management (executive) and supervisory (non-executive) functions.~~
5. The terms ‘management body in its management function’ and ‘management body in its supervisory function’ are used throughout these Guidelines without referring to any specific governance structure and references to the management (executive) or supervisory (non-executive) function should be understood as applying to the bodies or members of the management body responsible for that function in accordance with national law.
6. In Member States where the management body delegates, partially or fully, the executive function to a person ~~or an internal executive body (e.g. chief executive officer (CEO), management team or executive committee), the persons who perform those executive functions on the basis of that delegation should be understood as constituting the management function of the management body. For the purposes of these Guidelines any reference to the management body in its management function should be understood as including also the members of the executive body or the CEO, as defined in these Guidelines, even if they have not been proposed or appointed as formal members of the institution’s governing body or bodies under national law (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 ~~institution's~~entity's strategy, objectives and overall direction, and oversees and monitors management decision-making. The management body in its management function directs the ~~institution~~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 ~~institutions~~entities authorised in a third country ~~are subject to~~(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 ~~institutions~~entities within Member States, ~~and mandate to have robust governance arrangements in place as set out under Article 74 of this Directive. As these branches~~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 ~~individuals~~persons who effectively direct the branch. ~~For the assessment of the suitability of the CFO, the heads~~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 and, where identified by branches in a risk-based approach, other key function holders, it is expected that competent authorities 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 these Guidelines by analogy also to the respective functions in TCB.

11. These Guidelines set out the measures harmonised criteria for the assessment of the suitability of members of the management body, including the CEO, ~~even~~. Even when he or she the CEO is not part of the institution's governing body or bodies in accordance with national law company law, they are always a member of the management body. The Guidelines also foresee the assessment of the relevant institution's key function holders (i.e. the CFO and the heads of internal control functions where they are not part of the management body and, where identified by relevant institutions in a risk-based approach, other entity's key function holders) who have a significant influence over the direction of the business. These assessments are considered to be proportionate to ensure robust governance arrangements that ensure the effective and prudent management of institutions 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 an outsourcing a third party service provider, the management body retains responsibility for the activities performed on behalf of the institution 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.

13-14. Other than for the purposes of the legislation applicable to institutions 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 institutions/entities together with other and independently of EU legislation. ~~Those laws in Member States appear to be may have~~ divergent laws across the EU ~~and, which~~ limit the possible level of harmonisation in this particular area.

~~14-15.~~ The Guidelines take into account the European Commission's recommendation of 15 February 2005<sup>4</sup> 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<sup>5</sup>.

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

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<sup>6</sup>, competent authorities have intensified their 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<sup>7</sup>. 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

~~16-17.~~ To further harmonise the assessment of suitability within the EU banking and securities/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 ~~Article~~Articles 91(12)~~11~~ and 91a(8)<sup>8</sup> 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

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<sup>4</sup> 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>

<sup>5</sup> 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.pdf>

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

<sup>7</sup> Public Statement On the use of Artificial Intelligence (AI) in the provision of retail investment services

<sup>8</sup> For entities that are subject to Directive 2013/36/EU

Guidelines is related to the relevant competences of the EBA and ESMA. ~~Where requirements of the Guidelines apply to institutions that are subject to Directive 2013/36/EU, but not to institutions that are subject only to Directive 2014/65/EU, the Guidelines refer to credit institutions.~~

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.

17-19. Article 9(1) of Directive 2014/65/EU specifies that competent authorities granting authorisation in accordance with Article 5 of this Directive ~~shall~~ **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 ~~institutions that are 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.

18-20. 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.

19-21. 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.

20-22. 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.

21-23. 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.

22-24. Article 74(1) of Directive 2013/36/EU requires that ~~institutions~~entities subject to that Directive shall have robust internal governance arrangements, ~~including a clear organisational structure with well defined, transparent and consistent lines of responsibility,~~ and mandates the EBA to develop Guidelines thereon.

23-25. Article 91(1) of Directive 2013/36/EU requires that ~~institutions~~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 ~~(8)~~6 of this Article. In addition, Article 91~~(1h)~~ of this Directive ~~requires~~states that ‘where members of the management body do not at all times fulfil the above mentioned criteria and requirements set out in this paragraph, competent authorities ~~shall~~ have the ~~power~~necessary powers to ~~remove such~~either prevent new members from being part (for ex ante assessments) or remove them from the management body. ~~The ( for both ex ante and ex post assessments).~~ Article 91(1g) of Directive 2013/36/EU requires the competent authorities ~~shall in particular~~to verify ~~whether~~ the fulfilment of the mentioned requirements set out in this paragraph are still fulfilled where they have reasonable grounds to suspect that money laundering or terrorist financing is being or has been committed or attempted, or there is increased risk thereof in connection with ~~that institution~~the 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 ~~(8)~~6 of Directive 2013/36/EU requires all members of the management body to commit sufficient time to performing their functions in the ~~institution~~entity, limits the number of mandates a member of the management body of a significant ~~CRD institution~~entity can hold, requires adequate collective knowledge, skills and experience to be able to

understand the ~~institution's~~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.

24.29. Being a member of affiliated companies or affiliated entities does not in itself constitute an obstacle to acting with independence of mind.<sup>9</sup>

25.30. In accordance with ~~Article 91(1) and~~ Article 121 of Directive 2013/36/EU, members of the management body of a financial holding company or mixed financial holding company 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.

26.31. Furthermore, ~~institutions~~entities are required under Article 91(~~9) and (10)~~ of Directive 2013/36/EU to devote adequate human and financial resources to the induction and training of members of the management body, 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 ~~on and gender balance in~~ the management body, ~~including but not limited~~. In addition, listed entities will be subject to requirements under Directive (EU) 2022/2381 on improving the aspect gender balance among directors of gender balanced listed companies and related measures.

27.32. 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 group. In particular, they shall ensure that parent undertakings and subsidiaries subject to this Directive implement such governance arrangements, processes and mechanisms in their subsidiaries not subject to this Directive, including those established in third countries ( which includes offshore financial centres). These arrangements, processes and mechanisms shall also be consistent and well-integrated, and those subsidiaries shall also be able to produce any data and information relevant to the purpose of supervision.

28.33. 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

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<sup>9</sup> See also EBA Guidelines on Internal Governance and the conflict of interest policy under Section 13.

Directive 2014/65/EU on information and requirements for the authorisation of investment firms; the ITS under Article 7(5) of Directive 2014/65/EC; the RTS under Article 80(3) of Directive 2014/65/EU on the exchange of information between competent authorities when cooperating in supervisory activities, on-the-spot verifications and investigations; ~~and the findings and recommendations made in the EBA's report<sup>40</sup> on its review of the EBA Guidelines on the assessment of the suitability of members of the management body and key function holders (EBA/GL/2012/06).~~ 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<sup>11</sup>.

29-34. These Guidelines should be read in conjunction with other relevant EBA and ESMA Guidelines, in particular the EBA's Guidelines covering internal governance, ~~including~~ remuneration, risk management ~~and outsourcing~~, ESG risks<sup>12</sup>, 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<sup>13</sup>.

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 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

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<sup>40</sup> ~~The review report can be accessed at:~~  
~~<https://www.eba.europa.eu/documents/10180/950548/EBA+Peer+Review+Report+on+suitability.pdf>~~

<sup>11</sup> E.g. the corporate governance principles for banks, published in July 2015 by the Basel Committee of Banking Supervisors.

<sup>12</sup> EBA/GL/2025/01 Guidelines on the management of environmental, social and governance (ESG) risks

<sup>13</sup> Joint guidelines on establishment of the system for the exchange of information relevant to the assessment of the fitness and propriety

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

~~30-37.~~ 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.

~~31-39.~~ 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 institution's entity's governance arrangements.

~~32-40.~~ 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 institution 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.

~~33-41.~~ All While all the staff of institutions entities should be suitable for performing their job. The, the heads of internal control functions, i.e. risk management, compliance and audit functions, have, under the overall responsibility of the management body, a key role in ensuring that the institution 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. This also applies to the CFO where he or she is not part in line with Article 91a of the management body Directive

2013/36/EU. Where identified on a risk-based approach by relevant institutions/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 institution/entity under the overall responsibility of the management body.

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

~~35-42.~~ 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 institution/entity of the suitability of that person and potentially a re-assessment of the collective suitability of the management body.

~~36-43.~~ 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. ~~For CRD institutions, this~~ This includes all material risks, as well as ESG risks and impacts, addressed in Directive 2013/36/EU ~~and~~ 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.

~~37-44.~~ 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 institution's/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.

~~38-45.~~ All members of the management body and key function holders must be of good repute, regardless of the nature, scale and complexity of the institution/entity and their specific position.

~~39-46.~~ The assessment of adequate knowledge, skills and experience and the other notions described in Article 91(~~1211~~) of Directive 2013/36/EU should take into account the nature, scale and complexity of the institution's/entity's activities, in line with the application of the proportionality principle and the specific position concerned.

~~40-47.~~ The members of the management body and key function holders should have sufficient knowledge, skills and experience to fulfil their individual position in an institution/entity, and the management body must collectively possess adequate knowledge, skills and experience to understand the institution's/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 institution's/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.

41-48. As part of the overall suitability assessment, individuals proposed as members of the management body of an institution/entity should also be able to demonstrate independence of mind to be able to effectively assess, challenge, oversee and monitor management decision-making.

42-49. Institutions/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 institution's/entity's structure, how the institution/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 institution's/entity's structure, business model and risk profile, taking into account also ICT risks, ESG risks and impacts.

43-50. While the diversity of the management body is not a criterion for the assessment of the members' individual suitability, diversity should ~~also~~ be taken into account when selecting and assessing members of management bodies. Diversity within the management body leads to a broader range of experience, knowledge, skills and values, and is one of the factors that enhance the functioning of the management body and address the phenomenon of group-think. Thus, a more diverse management body, in its supervisory and management functions, can reduce the phenomenon of groupthink and facilitate independent opinions and constructive challenging in the process of decision-making. Diversity, together with an adequate consideration of inclusion, ~~will help~~ helps to ensure that the diverse perspectives and opinions of the members of the management body are taken into account within the management body.

44-51. 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.

45-52. 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<sup>14</sup>. Institutions/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

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<sup>14</sup> More information on gender equality can be found under: <http://ec.europa.eu/justice/gender-equality/>

positions in order to ensure that there is overall a more gender-balanced pool of candidates for positions within the management body.

~~46-53.~~ Independent directors within the supervisory function of the management body help to ensure that the interests of all internal and external stakeholders are considered. Independence of mind ensures that independent judgement is exercised. In this respect it is important to prevent, manage or mitigate actual or potential conflicts of interest.

~~47-54.~~ ~~Institutions~~ 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 ~~CRD institutions~~ 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 ~~institution's~~ 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 ~~institution~~ entity and the effectiveness of the ~~institution's~~ entity's governance arrangements.

~~55.~~ ~~Institutions~~ 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 or when duly justified as soon as practicable, but in any case within one month of, unless the appointment, and conditions set out under Article 91(1a) 2<sup>nd</sup> subparagraph are met, and they should inform periodically update the information on their suitability.

~~48-56.~~ Where the competent authority carries out suitability assessments after the member takes up their position (ex post), in line with Article 91(1d) of the proposed appointment or 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 after the appointment. Indeed, where shareholders nominate and appoint members of the management body but at the general assembly, a prior assessment may not always be possible. latest 30 working days before the prospective member takes up their position.

~~49-57.~~ Competent authorities should have processes in place for the assessment of the suitability of members of the management body of all institutions/entities and the heads of internal control functions and the CFOs/chief financial officer of significant CRD institutions, where they are not part large entities in line with Articles 91(1d) and 91a(5) of the management body Directive 2013/36/EU, as set out in the Guidelines. Competent authorities may choose to assess a broader scope of key function holders. In particular competent authorities' processes should ensure that all these persons are assessed in a timely manner.

~~50-58.~~ 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 ~~his or her~~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.

51-59. 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. ~~Institutions~~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 ~~institution~~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 ~~institution~~entity.

52-60. Preventing money laundering and terrorist financing is essential for maintaining the stability and integrity of the financial system. Involvement of an ~~institution~~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, ~~institutions~~entities to identify the member of the management board<sup>15</sup> who is responsible for the implementation of the laws, regulations and administrative provisions necessary to comply with AMLD.

53-61. Without prejudice to the national transposition of Directive 2015/849/EU, a member of the management body should be identified as the individual responsible<sup>16</sup> for the implementation of the laws, regulations and administrative provisions necessary to comply with AMLD.<sup>17</sup>

54-62. Against this background, ~~institutions~~entities and competent authorities should be aware of the negative impact on an ~~institution's~~entity's safety and soundness that could be

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<sup>15</sup> For consistency, the Guidelines refer to the management body.

<sup>16</sup> The identification of a member of the management board as responsible for AML is for the purpose of allocation of duties and is without prejudice to the final responsibility of the management body for the day-to-day management of the ~~institution~~entity and its responsibility for all activities of the ~~institution~~entity.

<sup>17</sup> See also EBA Guidelines on Internal Governance.

produced in the event of a possible involvement of a member of the management body and/or a key function holder in ML/TF or of the institution/entity being unwilling or failing to take robust action to manage the risk of the institution's/entity's involvement in ML/TF.

55-63. Together with competent supervisory authorities responsible for ensuring compliance with anti-money laundering requirements under Directive (EU) 2015/849 (AML Supervisors) 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 institutions' 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 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.

56-64. It is crucial for competent authorities when assessing the suitability of members of the management body of all institutions/entities and heads of internal control functions and the CEO/ chief financial officer of significant CRD institutions/ large entities in line with Articles 91(1d) and 91a(5) of the Directive 2013/36/EU, and other key function holders, where they are not part of the management body 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<sup>18</sup>.

57-65. The Guidelines set out in Annex III For all entities, including those that do not fall under the scope of the RTS on information and documentation and information-, these RTS should be applied to be provided for initial<sup>19</sup> and ongoing assessments. However, submitted to

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<sup>18</sup> 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

<sup>19</sup> 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](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.

competent authorities to carry out the suitability assessments<sup>20</sup>. Competent authorities are not limited to ~~this~~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.

~~58-66.~~ It is important to ensure that institutions/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. ~~Measures~~In line with the Article 91(1b) Directive 2013/36/EU measures available to competent authorities ~~may differ between Member States depending on the applicable national laws. Such measures~~ can range from imposing conditions to ordering an institution/entity to take action to improve the skills and knowledge of a member, or to transferring responsibilities between members, prohibiting a member or an institution/entity from performing tasks, temporarily banning or replacing a member of the management body, or ultimately withdrawing the institution's/entity's authorisation. However, if a member of the management body ~~is or~~heads of internal control functions or the chief financial 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.

~~59-67.~~ ~~The Guidelines also take into account the recovery and resolution framework introduced by Directive 2014/59/EU (BRRD) and provide further guidance in this regard. During resolution and also as part of early intervention measures, the,~~ 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 ~~his or her~~their functions. ~~This appointment does~~These appointments do not depend on the assessment of the competent authority.

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<sup>20</sup> RTS on information and documentation to be submitted to the competent authorities to carry out the suitability assessments



EBA/GL/2021/06

ESMA35-36-2319

~~2 July 2021~~ 09 April 2025

## Draft Joint Guidelines

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

# 1. Compliance and reporting obligations

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## Status of these Guidelines

1. These Guidelines are issued pursuant to Article 16 of the ESA Regulations<sup>21</sup>. In accordance with Article 16(3), competent authorities and financial institutions shall make every effort to comply with the Guidelines.
2. These Guidelines set out appropriate supervisory practices within the European System of Financial Supervision and regarding how Union law should be applied. Competent authorities to which these Guidelines apply should comply by incorporating them into their supervisory practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where Guidelines are directed primarily at institutions/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](mailto: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](mailto: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.

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<sup>21</sup> 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

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### Subject matter

5.—These Guidelines specify ~~further~~, in accordance with ~~Article~~Articles 91(~~1211~~) of Directive 2013/36/EU<sup>22</sup> as amended by Directive (EU) 2024/1619<sup>23</sup> and Article 9(1) second subparagraph of Directive 2014/65/EU<sup>24</sup>, 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.

~~6.5. The Guidelines also specify elements regarding the suitability of the heads of internal control functions and the chief financial officer (CFO), where they are not part of the management body, and, where identified on a risk-based approach by those institutions, of other key function holders, as part of the governance arrangements referred to in Articles 74 and 88 of Directive 2013/36/EU and Articles 9(3), 9(6) and 16(2) of Directive 2014/65/EU, and on the related assessment processes, governance policies and practices, including~~The 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

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<sup>23</sup> 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)

<sup>24</sup> 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).

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.

## Addressees

- ~~7.9.~~ 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 ~~–(‘institutions’)-, (‘entities’)~~. Certain requirements are explicitly addressed to significant institutions and do therefore not apply to other entities.

## Scope of application<sup>25</sup>

- ~~10. Unless otherwise specified as directly referring to either CRD~~ These Guidelines apply to competent authorities; Titles I to VII and Section 26 apply to the following entities:
- a. institutions, ~~or relevant~~ 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, ~~these Guidelines apply to all~~ 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

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<sup>25</sup> See also illustration of the scope of application annexed to the guidelines

criteria under Article 12(1) of Regulation (EU) 2019/2033<sup>26</sup>, 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);
- 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<sup>27</sup>, 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, as defined therein, they should apply the guidelines as applicable under point(a) or (b) of this paragraph.

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<sup>26</sup> Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms

<sup>27</sup> Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms (IFR)

g. ~~CRD institutions~~ 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..

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.

9.12. 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.

10.13. 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. ~~The management body, as defined in points (7) and (8) of Article 3(1) of Directive 2013/36/EU, should be understood as having management (executive) and supervisory functions (non-executive)<sup>28</sup>.~~

11.14. 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 ~~in accordance with national law.~~

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<sup>28</sup> See also recital 56 of Directive 2013/36/EU.

~~12-15.~~ In Member States, where the management body ~~delegates, partially or fully, the executive functions to a person or an internal executive body (e.g. chief executive officer (CEO), management team or executive committee), the appoints persons who perform that effectively direct the business of the institutions, those executive functions on the basis of that delegation should be understood as constituting persons belong in accordance with Article 3(1)(8a) of Directive 2013/36/EU to the management function of the management body. For the purposes of these Guidelines, any reference to the management body in its management function should be understood as including also the members and are therefore be assessed for their suitability in line with Article 91 of such an executive body or the CEO, as defined in these Guidelines, even if they have not been proposed or appointed as formal members of the institution's governing body or bodies under national law~~ this Directive.

~~13-16.~~ In Member States where some responsibilities assigned in these Guidelines to the management body are directly exercised by shareholders, members or owners of the ~~institution~~ entity rather than the management body, ~~institutions~~ 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.

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

~~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.

~~15-18.~~ Any references to 'risks' in these Guidelines should include also money laundering and terrorist financing risks and ~~environmental, social and governance risk factors~~ ESG risks .

## Definitions

~~16-19.~~ 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:

### **Institutions**

~~means institutions as defined in point 3 of Article 3(1) of Directive 2013/36/EU having also regard to Article 3(3) of that Directive, and investment firms as defined in Article 4(1)(1) of Directive 2014/65/EU.~~

means institutions as defined in point 3 of Article 3(1) of Directive 2013/36/EU ~~and~~ having also regard to Article 3(3) of that Directive, and investment firms as defined in Article 4(1)(1) of Directive 2014/65 ~~to which/EU and third country branches established in accordance with Article 2(2)21c of Directive 2019/2034 applies~~2013/36/EU.

### **~~CRD institutions~~Entities**

### **Relevant institutions**Large 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 that do not meet all of the conditions for qualifying as small and non-interconnected investment firms under Article 12(1), point (3), of Regulation (EU) 2019/2033. No 575/2013 that are mentioned in Article 91(1d) or 91a(5) of Directive 2013/36/EU~~

### **Significant** ~~CRD institutions~~entities

Means ~~CRD~~ institutions referred to in Article 131 of Directive 2013/36/EU (global systemically important institutions (G-SIIs), and other systemically important institutions (O-SIIs), and, as appropriate, other CRD institutions determined by the competent authority or national law, based on an assessment of the institutions' size and internal organisation, and the nature, scope and complexity of their activities, and ~~for the purposes of~~ in accordance with Article 913(3) of this Directive 2013/36/EU 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** ~~relevant institutions and listed institutions~~entities

~~means relevant institutions or respectively institutions whose financial instruments are admitted to trading on a regulated market as referred to in the list to be published by ESMA in accordance with Article 56 of Directive 2014/65/EU, in one or more Member~~

<b>Staff</b>	<p><u>States.<sup>29</sup> means entities as defined in Article 3(1) of the Directive (EU) 2022/2381<sup>30</sup></u></p> <p>means all employees of an <u>institution entity</u> 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.</p>
<b>Suitability</b>	<p>means the degree to which an individual is deemed to have good repute and to have, individually and collectively with other individuals, adequate knowledge, skills and experience to perform his/her/their duties. Suitability also covers the honesty, integrity and independence of mind of each individual and <del>his or her</del><u>their</u> ability to commit sufficient time to perform <del>his or her</del><u>their</u> duties.</p>
<b>Member</b>	<p>means a proposed or appointed member of the management body.</p>
<b>Chief executive officer (CEO)</b>	<p>means the person who is responsible for managing and steering the overall business activities of an <u>institution entity and is part of the management body in its management function</u></p>
<b>Key function holders</b>	<p><u>means persons as defined in point 9a of Article 3(1) of Directive 2013/36/EU.</u></p>
<b><u>Key function holders</u> Significant influence over the direction of an entity</b>	<p><del>means persons who to have significant influence over a position with the direction of ability and powers to participate in the institution, but who are neither members of operating and financial policy decisions at the level below the management body nor the CEO. They include or the heads of internal control functions and the CFO, where they are not members of the level below senior management body, and, where identified on a risk based approach by relevant institutions, other key function holders.</del></p> <p><del>Other key function holders might include heads of significant business lines, European Economic</del></p>

<sup>29</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

<sup>30</sup> 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

	<p><del>Area/European Free Trade Association branches, third country subsidiaries and other internal functions.</del></p>
<b>Heads of internal control functions</b>	<p><del>means the persons at the highest hierarchical levels as defined in chargepoint 9c of effectively managing the day-to-day operation Article 3(1) of the independent risk management, compliance and internal audit functions. Directive 2013/36/EU</del></p>
<b>Chief financial officer (CFO)</b>	<p><del>means the person who is overall responsible for managing all of the following activities: financial resources management, financial planning and financial reporting. means persons as defined in point 9d of Article 3(1) of Directive 2013/36/ EU</del></p>
<b>Prudential consolidation</b>	<p>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.</p>
<b>Consolidating <u>institution entity</u></b>	<p>means an <u>institution entity</u> 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<sup>31</sup> or by the prudential requirements on the basis of the consolidated situation in accordance with Article 7 of Regulation (EU) 2019/2033.</p>
<b>Diversity</b>	<p>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.</p>
<b>Geographical provenance</b>	<p>means the region where a person has gained a cultural, educational or professional background.</p>
<b>Induction</b>	<p>means any initiative or programme to prepare a person for a specific new position as a member of the management body.</p>

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<sup>31</sup> 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](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)

<b>Training</b>	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.
<b>Shareholder</b>	means a person who owns shares in an <u>institutionentity</u> or, depending on the legal form of an <u>institutionentity</u> , other owners or members of the <u>institutionentity</u> .
<b>Directorship</b>	means a position as a member of the management body of an <u>institutionentity</u> or another legal <u>entityperson</u> . Where the management body, depending on the legal form of the entity <u>or legal person</u> , is composed by a single person, this position is also counted as a directorship.
<b>Non-executive directorship</b>	means a directorship in which a person is responsible for overseeing and monitoring management decision-making without executive duties within an entity.
<b>Executive directorship</b>	means a directorship in which a person is responsible for effectively directing the business of an entity.
<b>AML/CFT supervisor</b>	means a <u>competentsupervisory authority, as defined under point 45 of Article 2(a) of Regulation (EU) 2024/1624</u> responsible for the supervision of <u>institutions'entities'</u> compliance with provisions of <u>Directive (EU) 2015/849, point 45 of Article 2 (1) Regulation (EU) 2024/1624.</u>

## 3. Implementation

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### Date of application

17-20. These Guidelines apply from 6 month after the publication of all translations of the GL, but not later than 31 December 2021.12.2026.

### Repeal

The EBA and ESMA Guidelines on the assessment of the suitability of members of the management body and key function holders (EBA/GL/2017/122021/06- ESMA35-36-2319 ) of 26 September 20172 July 2021 are repealed with effect from 31 December 2021 XXXX.

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

## 4. Guidelines

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### Title I - Application of the proportionality principle

**18-21.** The proportionality principle aims to match governance arrangements consistently with the individual risk profile and business model of the **institutions/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.

**19-22.** **Institutions/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 **institutions/entities** should have more sophisticated policies and processes, while in particular small and less complex **institutions/entities** may implement simpler policies and processes. **Institutions/Entities** should note that the size or systemic importance of an **institution/entity** may not, by itself, be indicative of the extent to which an **institution/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.

**20-23.** 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 **institution's/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.

**21-24.** 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 **institutions/entities** and competent authorities:

- a. the size of the **institution/entity** in terms of the balance sheet total, the client assets held or managed, and/or the volume of transactions processed by the **institution/entity** or its subsidiaries within the scope of prudential consolidation;
- b. the legal form of the **institution/entity**, including whether or not the **institution/entity** is part of a group and, if so, the proportionality assessment for the group;
- c. whether the **institution/entity** is listed or not;

- d. the type of authorised activities and services performed by the institution entity (see also Annex 1 of Directive 2013/36/EU and Annex 1 of Directive 2014/65/EU);
- e. the geographical presence of the institution 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 institution's entity's organisational structure;
- g. the risk strategy, risk appetite and actual risk profile of the institution entity, also taking into account the result of the annual capital adequacy assessment;
- h. the authorisation for institutions entities to use internal models for the measurement of capital requirements, where relevant;
- i. the type of clients<sup>32</sup>; and
- j. the nature and complexity of the products, contracts or instruments offered by the institution entity.

## Title II – Scope of suitability assessments by institutions entities

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

**22-25.** Institutions 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

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<sup>32</sup> 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.

institution entity<sup>33</sup>. This assessment should be limited to newly appointed members;

- ii. when re-appointing members of the management body, if the requirements of the position have changed or if the member is appointed to a different position within the management body. This assessment should be limited to the members whose position has changed and to the analysis of the relevant aspects, taking into account any additional requirements for the position;
- c. on an ongoing basis in accordance with paragraphs 2630 and 2731.

23-26. The initial and ongoing assessment of the individual suitability of the members of the management body is the responsibility of institutions entities, without prejudice to the assessment carried out by competent authorities for supervisory purposes.

24-27. Institutions 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 institution entity and, where the institution entity is significant, whether or not the limitation of directorships under Article 91(3) of Directive 2013/36/EU is being complied with.

25-28. 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

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<sup>33</sup> Please also refer to the ~~(draft) RTS under Article 7(4)~~ Commission Delegated Regulation (EU) 2017/1943 of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and draft ITS under Article 7(5) of Directive 2014/65/EU of the Council with regard to regulatory technical standards on the procedures for granting information and refusing requests/requirements for the authorisation of investment firms, available on ESMA's website, 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 ~~(draft) ITS on the procedures and~~ Commission Implementing Regulation (EU) 2017/461 of 16 March 2017 laying down implementing technical standards with regard to common procedures, forms in respect of and templates for the consultation process between the relevant competent authorities for proposed acquisitions and increases of qualifying holdings in credit institutions and investment firms respectively, available on the EBA and ESMA websites: <https://www.eba.europa.eu/regulation-and-policy/other-topics/its-on-the-procedures-as-referred-to-in-Article-24-of-Directive-2013/36/EU-of-the-European-Parliament-and-forms-in-respect-of-acquisitions-and-increases-of-qualifying-holdings> and <https://www.esma.europa.eu/sites/default/files/library/2015/11/2015-613-final-report-and-assessment-rts-its.pdf> of the Council

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<sup>34</sup>. The level and nature of the sufficient knowledge, skills and experience required from a member of the management body in its management function ~~may differ~~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. Institutions 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.

26-30. 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 ~~institution~~entity, including cases where members do not comply with the ~~institution's~~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 ~~that institution and~~ the entity as further specified in particular in situations where information available suggests that the institution:Section 26;
  - ~~i. has not implemented appropriate internal controls or oversight mechanisms to monitor and mitigate ML/TF risks (e.g. identified by supervisory findings from on-site inspections or off-site inspections, supervisory dialogue or in the context of sanctions);~~
  - ~~ii. has been found to be in breach of its AML/CFT obligations in the home or host Member State or in a third country;~~
  - ~~iii. has materially changed its business activity or business model in a manner that suggests that its exposure to ML/TF risk has significantly increased; or~~

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<sup>34</sup> EBA/GL/2021/05 EBA guidelines on internal governance under Directive 2013/36/EU

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

~~27-31.~~ Institutions/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.

~~28-32.~~ Institutions/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 institutions/entities assessment of the collective suitability of the management body

~~29-33.~~ Institutions/Entities should ensure, in fulfilling the obligation set out in Article 91(7**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 institution/entity's activities, including the main risks. Notwithstanding the experience, knowledge and skills requirement for each member of the management body, institutions/entities should ensure that the overall composition of the management body reflects an adequately broad range of knowledge, skills and experience to understand the institution/entity's activities, including their main risks.

~~34.~~ Institutions/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.

~~30-35.~~ 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 institution/entity<sup>35</sup>;
  - ii. when re-appointing members of the management body, if the requirements of the position have changed or if the members are appointed to a different position within the management body;
  - iii. when appointed or reappointed members cease to be members of the management body;
- c. on an ongoing basis, in accordance with paragraph 31.36.

31.36. Institutions/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 institution's/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 that institution and the entity as further specified in particular in situations where information available suggests that the institution~~
  - ~~i. has not implemented appropriate internal controls or oversight mechanisms to monitor and mitigate ML/TF risks (e.g. identified by supervisory findings from on-site inspections or off-site inspections, supervisory dialogue or in the context of sanctions);~~
  - ~~ii. has been found to be in breach of its AML/CFT obligations in the home or host Member State or in a third country; or~~
- ~~iii. c. has materially changed its business activity or business model in a manner that suggests that its exposure to ML/TF risk has significantly increased Section 26;~~
- d. in any event that can otherwise materially affect the collective suitability of the management body.

32.37. Where re-assessments of the collective suitability are performed, institutions/entities should focus their assessment on the relevant changes in the institution's/entity's business activities, strategies and risk profile and in the distribution of duties within the management

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<sup>35</sup> See footnote 17.29.

body and their effect on the required collective knowledge, skills and experience of the management body.

33-38. InstitutionsEntities should base their suitability assessments on the notions defined in Title III and should implement a suitability policy and processes as set out in Titles VI and VII.

34-39. The assessment of the initial and ongoing collective suitability of the management body is the responsibility of institutionsentities. 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 institutionsentities.

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

40. While all institutionsEntities 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.

35-41. All entities should ensure that their staff are able to perform their functions adequately, relevant institutions 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) 3<sup>rd</sup> 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 36-42.

36-42. Relevant institutionsEntities should monitor on an ongoing basis the reputation, honesty, integrity, knowledge, skills and experience of key function holders to identify, in the light of any relevant new fact, situations where a re-assessment should be performed. In particular a re-assessment should be made in the following cases:

- a. where there are concerns regarding their suitability;
- b. in the event of a material impact on the reputation of the individual;

- c. where there are reasonable grounds to suspect that money laundering or terrorist financing has been or is being committed or attempted or there is an increased risk thereof in connection with ~~that institution and in particular in situations where the institution:~~ the entity as further specified in paragraphs 86 and 87 as well as Section 26;
  - i. ~~has not implemented appropriate internal controls or oversight mechanisms to monitor and mitigate ML/TF risks (e.g. identified by supervisory findings from on-site inspections or off-site inspections, supervisory dialogue or in the context of sanctions);~~
  - ii. ~~has been found to be in breach of its AML/CFT obligations at home or abroad;~~  
or
  - iii. ~~has materially changed its business activity or business model in a manner that suggests that its exposure to ML/TF risk has significantly increased;~~
- d. as part of the review of the internal governance arrangements by the management body;
- e. in any event that can otherwise materially affect the suitability of the individual.

37.43. 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.

38.44. Assessing the initial and ongoing suitability of key function holders is the responsibility of the institutions/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 institutions/entities.

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

## Title III —Notions of suitability listed in Article 91(~~1211~~) of Directive 2013/36/EU

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

~~39.45.~~ Institutions Entities should assess whether or not a member of the management body is able to commit sufficient time to performing ~~his or her~~their functions and responsibilities including understanding the business of the ~~institution~~entity, its main risks and the implications of the business and the risk strategy. Where the person holds a mandate in a significant ~~CRD~~ institutionentity, this should include an assessment to ensure that the limitation of the maximum number of directorships under Article 91(3) of Directive 2013/36/EU or Article 9(2) of Directive 2014/65/EU, as applicable, is being complied with.

~~40.46.~~ Members should also be able to fulfil their duties in periods of particularly increased activity, such as a restructuring, a relocation of the institutionentity, an acquisition, a merger, a takeover or a crisis situation, or as a result of some major difficulty with one or more of its operations, taking into account that in such periods a higher level of time commitment than in normal periods may be required.

~~41.47.~~ In the assessment of sufficient time commitment of a member, institutionsentities should take ~~at least~~ the following into account:

- a. the number of directorships in financial and non-financial companies held by that member at the same time, taking into account possible synergies when they are held within the same group, including when acting on behalf of a legal person or as an alternate of a member of the management body;
- b. the size, nature, scope and complexity of the activities of the entity where the member holds a directorship and, in particular, whether or not the entity is a non-EU entity;
- c. the member's geographical presence and the travel time required for the role;
- d. the number of meetings scheduled for the management body;
- e. the directorships in organisations which do not pursue predominantly commercial objectives held by that member at the same time;
- f. any necessary meetings to be held, in particular, with competent authorities or other internal or external stakeholders outside the management body's formal meeting schedule;
- g. the nature of the specific position and the responsibilities of the member, including specific roles such as CEO, chairperson, or chair or member of a committee, whether the member holds an executive or non-executive position, and the need of that member to attend meetings in the companies listed in point (a) and in the institutionentity;

- h. other external professional or political activities, and any other functions and relevant activities, both within and outside the financial sector and both within and outside the EU;
- i. the necessary induction and training;
- j. any other relevant duties of the member that ~~institutions~~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, ~~including the benchmarking provided e.g. of competent authorities or~~ by the EBA<sup>36</sup>.

~~42.48.~~ Institutions~~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 ~~institutions~~entities may differentiate the expected time commitment only between executive and non-executive directorships.

~~43.49.~~ A member of the management body should be made aware of the expected time commitment required to spend on ~~his or her~~their duties. ~~Institutions~~Entities may require the member to confirm that ~~he or she~~they can devote that amount of time to the role.

~~44.50.~~ ~~Institutions~~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.

~~45.51.~~ An ~~institution~~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.

~~46.52.~~ ~~Institutions~~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 ~~his or her~~their function, the institution should re-assess the member's ability to respect the required time commitment for ~~his or her~~their position.

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<sup>36</sup> ~~Figures for the year 2015 are included as an Annex to the impact assessment of these Guidelines.~~

## 5. Calculation of the number of directorships

47-53. 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 CRD institution/entity must comply with the limitation of directorships set out in Article 91(3) of Directive 2013/36/EU.

48-54. 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.

49-55. 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 5056 to 5561, that single directorship should count as a single executive directorship when it includes at least one executive directorship; otherwise it should count as a single non-executive directorship.

50-56. In accordance with Article 91(4)(a) of Directive 2013/36/EU, all directorships held within the same group count as a single directorship.

51-57. In accordance with Article 91(4)(b)(ii) of Directive 2013/36/EU, all directorships held within undertakings in which the institution/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 institution/entity and the single directorship in its qualifying holdings together count as two directorships.

52-58. When multiple institutions/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 institution/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.

53-59. 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).

**54-60.** 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 ~~that~~ Directive [2013/36/EU](#). However, such activities should be taken into account when assessing the time commitment of the concerned member.

**55-61.** 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

**56-62.** Members of the management body should have an up-to-date understanding of the business of the ~~institution~~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.

**57-63.** Members of the management body should have a clear understanding of the ~~institution's~~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 ~~institution~~entity<sup>37</sup>.

**58-64.** 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<sup>38</sup> should have good knowledge, skills and relevant experience regarding ML/TF risk

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<sup>37</sup> See also the EBA's Guidelines on Internal Governance: <https://www.eba.europa.eu/regulation-and-policy/internal-governance>

<sup>38</sup> The identification of a member of the management body as responsible for AML is for the purpose of allocation of duties and is without prejudice to the final responsibility of the management body in its management function for the day-to-day management of the ~~institution~~entity and its responsibility for all activities of the ~~institution~~entity.

identification and assessment, and AML/CFT policies, controls and procedures. This person should have a good understanding of the extent to which the ~~institution's~~ entity's business model exposes it to ML/TF risks.

~~59.65.~~ In this respect, the ~~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.

~~60.66.~~ To properly assess the skills of the members of the management body, ~~institutions~~ 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.

~~61.67.~~ 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.

~~62.68.~~ The assessment should not be limited to the educational degree of the member or proof of a certain period of service in an ~~institution~~ 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.

~~63.69.~~ 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 ~~institution's~~ 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 ~~institution~~ entity including ~~environmental, governance and~~

socialESG risks and risk factors as well as information and communication technology risks);

- e. accounting and auditing;
- f. the assessment of the effectiveness of an institution's arrangements, ensuring effective governance, oversight and controls;
- g. the interpretation of an institution's financial information, the identification of key issues based on this information, and appropriate controls and measures;
- 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;

64-70. 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<sup>39</sup>, paragraph 24 of the Guidelines on suitability assessments under Regulation (EU) 2023/1114<sup>40</sup> should be additionally adhered to 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;

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<sup>39</sup> 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

<sup>40</sup> 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

e. the technical knowledge gained through the position;

f. the number of subordinates;

g. additional knowledge gained from academical activities.

~~65-71.~~ 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 ~~institutions~~entities or other firms.

## 7. Collective suitability criteria

~~66-72.~~ The management body should collectively be able to understand the ~~institution's~~entity's activities, including as well as the main 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~~Section, these criteria should be applied separately to the management body in its management function and the management body in its supervisory function.

~~67-73.~~ 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 ~~institution~~entity operates.

~~68-74.~~ 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 ~~institution's~~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.

~~69-76.~~ 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.

~~70-77.~~ 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 ~~that~~ the management body collectively ~~has~~having an appropriate understanding of ~~these~~the areas for which the members are collectively accountable, and the skills to effectively manage and oversee the ~~institution~~entity, including the following aspects:

- a. the business of the institution entity and main risks related to it;
- b. each of the material activities of the institution entity;
- c. relevant areas of sectoral/financial competence, including financial and capital markets, solvency and models, environmental, governance and social risks and risk factors;
- d. financial accounting and reporting;
- e. risk management, compliance and internal audit;
- f. information and communication technology and security, including the requirements within Regulation (EU) 2024/1689<sup>41</sup> 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
- j.k. the ability to plan strategically;
- k.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<sup>42</sup> 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.

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<sup>41</sup> 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)

<sup>42</sup> 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

71-79. 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

72-80. 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 7381 to 7787. The assessment of reputation, honesty and integrity should also consider the impact of the cumulative effects of minor incidents on a member's reputation.

73-81. 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.

74-82. 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;

~~b.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.

75-83. 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<sup>43</sup>. Other adverse reports with relevant, credible and reliable information (e.g. as part of whistleblowing procedures) should also be considered by institutions/entities and competent authorities.

76-84. 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 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, ~~civil lawsuits, administrative or~~ criminal proceedings,
- ~~d.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 him or her/them, or in which the member has a significant share.

77-85. 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:

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<sup>43</sup> 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](http://ec.europa.eu/justice/fundamental-rights/charter/index_en.htm)

- a. any evidence that the person has not been transparent, open and cooperative in ~~his~~ ~~or her~~ 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<sup>44</sup>, 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

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<sup>44</sup> <https://www.fatf-gafi.org/en/countries/black-and-grey-lists.html>

~~78-88.~~ When assessing the independence of members, ~~institutions~~entities should differentiate between the notion of ‘independence of mind’, applicable to all members of an ~~institution’s~~entity’s management body, and the principle of ‘being independent’, required for certain members of a relevant ~~institution’s~~entity’s management body in its supervisory function. The criteria for the assessment of ‘independence of mind’ are provided in ~~section~~Section 9.2 and for the assessment of ‘being independent’ in ~~section~~Section 9.3.

~~79-89.~~ 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 member of the management body regardless of whether or not the member is considered as ‘being independent’ in accordance with ~~section~~Section 9.3. All members of the management body should engage actively in their duties and should be able to make their own sound, objective and independent decisions and judgments when performing their functions and responsibilities.

~~80-90.~~ ‘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

~~81-91.~~ When assessing the independence of mind as referred to in paragraph ~~79,~~institutions~~89,~~entities should assess whether or not all members of the management body have:

- a. the necessary behavioural skills, including:
  - i. ~~courage, conviction~~the ability to present their views, discuss strategies and strength to 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.

82-92. When assessing the required behavioural skills of a member referred to in paragraph 82-91(a), ~~his or her~~their past and ongoing behaviour, in particular within the institution, should be taken into account.

83-93. When assessing the existence of conflicts of interest referred to in paragraph 82-91(b), ~~institutions~~entities should identify actual or potential conflicts of interest in accordance with the institution's conflict of interest policy<sup>45</sup> and assess their materiality. At least the following situations that could create actual or potential conflicts of interests should be considered:

- a. economic interests (e.g. shares, other ownership rights and memberships, holdings and other economic interests in commercial customers, intellectual property rights, loans granted by the institution to a company owned by members of the management body);
- b. personal or professional relationships with the owners of qualifying holdings in the institution;
- c. personal or professional relationships with staff of the institution or entities included within the scope of prudential consolidation (e.g. close family relationships);
- d. other employments and previous employments within the recent past (e.g. ~~five~~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.<sup>46</sup>

84-94. 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<sup>47</sup>.

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<sup>45</sup> Please refer to the EBA's Guidelines on Internal Governance regarding the conflict of interest policy for staff.

<sup>46</sup> Please refer to EBA guidelines on internal governance under CRD and EBA guidelines on internal governance under IFD

<sup>47</sup> Please refer to the EBA's Guidelines on Internal Governance regarding the conflict of interest policy for staff.

~~95. Institutions~~ 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.

~~85-96.~~ 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.

~~86-97.~~ 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.<sup>48</sup>

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

~~87-98.~~ Having independent members, as referred to in paragraph 89-90, and non-independent members in the management body in its supervisory function is considered good practice for all relevant institutions, entities.

~~88-99.~~ 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. ~~the following relevant institutions~~ Significant and listed entities should have a management body in its supervisory function that includes a sufficient number of independent members:

- ~~i. significant CRD institutions;~~

- ~~ii. listed relevant institutions;~~

- b. ~~relevant institutions~~ 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:

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<sup>48</sup> Please refer to the EBA's Guidelines on Internal Governance para 114.

- i. ~~relevant institutions/entities~~ that are wholly owned by a ~~relevant institution an entity~~, in particular when the subsidiary is located in the same Member State as the parent ~~relevant institution 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 the ~~relevant institutions/entities~~ by improving oversight of management decision-making and ensuring that:
      - ~~e.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 ~~could~~should also help to mitigate or offset undue dominance by individual members of the management body representing a particular group or category of stakeholders;
      - ~~e.ii.~~ no individual or small group of members dominates decision-making; and
      - ~~f.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.

~~89-100.~~ Without prejudice to paragraph ~~91-102~~, in the following situations it is presumed that a member of a ~~relevant institution's~~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 ~~institution entity~~ within the scope of prudential consolidation, unless ~~he or she~~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 ~~relevant institution entity~~;

- d. the member is an employee of or is otherwise associated with a controlling shareholder of the relevant institution 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 ~~institution's~~ highest hierarchical level, which 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 relevant institution 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 relevant institution 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 relevant institution 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 ~~his or her~~ their role and remuneration for employment in line with point (c), significant fees or other benefits from the relevant institution 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 relevant institution entity or another entity in the scope of prudential consolidation or a person in a situation referred to under points (a) to (h).

90-101. The mere fact of meeting one or more situations under paragraph ~~89~~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 ~~89~~100, the ~~relevant institution~~entity may demonstrate to the competent authority that the member should nevertheless be considered as 'being independent'. To this end ~~relevant institutions~~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.

91-102. For the purpose of paragraph ~~90 relevant institutions~~101 entities should consider that being a shareholder of ~~a relevant institution~~an entity, having private accounts or loans or using other services, other than in the cases explicitly listed within this ~~section~~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.**

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

### 10. Setting objectives of induction and training

92.106. Institutions/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 institution’s/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 ~~institution. Institutions~~entity. Entities should allocate sufficient resources for induction and training for members of the management body individually and collectively.

93.107. 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.

94.108. 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~~Section 6 not later than one year after taking up the position. Where appropriate, the ~~institution~~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

95.109. ~~Institutions~~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.

96.110. 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 ~~his or her~~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 ~~institution~~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.<sup>49</sup>

97.111. 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

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<sup>49</sup> The Annex to the impact assessment of these Guidelines includes EBA benchmarking results (2015 data) for training resources and training days provided by institutions.

also include where appropriate the induction and training objectives for specific positions according to their specific responsibilities and involvement in committees;

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

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

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

~~98.112.~~ 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.

~~99.113.~~ ~~Institutions~~ 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.

~~100.114.~~ 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.

~~101.115.~~ ~~Institutions~~ 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 4: Are the changes made in Title IV appropriate and sufficiently clear?**

## Title V – Diversity within the management body

### 12. Diversity policy objectives

~~102.116.~~ In accordance with Article 91(~~108~~) of Directive 2013/36/EU, all ~~institutions~~ entities should have and implement a policy proportionally promoting diversity and gender balance on the management body, in order to promote a diverse ~~pool~~ 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. Institutions Entities should aim at an appropriate representation of ~~all genders~~ 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.

~~103-117.~~ 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 institutions 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 CRD institutions entities should include a quantitative target for the representation of the under-represented gender in the management body. Significant CRD institutions 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. ~~The target should be defined for the management body collectively, but may be broken down into the management and supervisory functions where a sufficiently large management body exists. In all other institutions, in particular with a management body of fewer than five members, the target may be expressed in a qualitative way.~~ 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.

~~104-120.~~ When setting diversity objectives, institutions and gender balance targets, entities should consider diversity benchmarking results published by competent authorities, the EBA or other relevant international bodies or organisations<sup>50</sup>

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<sup>50</sup> 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>

~~105.121.~~ 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 ~~institution~~entity and to ensure that the interests of staff are taken into account.

~~106.122.~~ Significant ~~CRD institutions~~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 ~~CRD institution~~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.

~~107.123.~~ In order to facilitate an appropriately diverse pool of candidates for management body positions, ~~institutions~~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.

~~108.124.~~ In order to support a diverse composition of the management body ~~institutions~~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.<sup>51</sup>

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

## Title VI – Suitability policy and governance arrangements

### 13. Suitability policy

~~109.125.~~ 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 ~~institution's~~entity's suitability policy should be aligned with the ~~institution's~~entity's overall corporate governance framework,

<sup>51</sup> See also the section on diversity in the EBA Guidelines on Internal Governance.

corporate culture and risk appetite and that the processes under the policy are fully operating as intended. This also includes that the institution's 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.

110-126. The suitability policy should include or refer to the diversity policy to ensure that diversity is taken into account when recruiting new members.

111-127. 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).

112-128. The policy should be clear, well documented and transparent to all staff within the institution 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.

113-129. Internal control functions<sup>52</sup> should provide effective input to the development of the suitability policy in accordance with their roles. Notably, the compliance function should analyse how the suitability policy affects the institution's 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.

114-130. 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:

- a. the process for the selection, appointment, re-appointment and succession planning of members of the management body and the applicable internal procedure for the assessment of the suitability of a member, including the internal function responsible for providing support for the assessment (e.g. human resources);
- b. the criteria to be used in the assessment, which should include the suitability criteria set out in these Guidelines;
- c. how, as part of the selection process, the diversity policy for members of the management body of significant CRD institutions entities and the target for the under-represented gender in the management body are to be taken into account;

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<sup>52</sup> See also the EBA's Guidelines on Internal Governance: <https://www.eba.europa.eu/regulation-and-policy/internal-governance>

- d. the communication channel with the competent authorities; and
- e. how the assessment should be documented.

~~115-131.~~ ~~Relevant institutions~~ 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 ~~relevant institutions~~ entities as key function holders in addition to the heads of internal control functions and the CFO, ~~where they are not part of the management body.~~

~~116-132.~~ The management body in its supervisory function and the nomination committee where established should monitor the effectiveness of the ~~institution's~~ 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

~~117-133.~~ In accordance with Article 109(2) and (3) of Directive 2013/36/EU, the consolidating ~~CRD~~ institution should ensure that a group-wide policy for the assessment of suitability of all members of the management body and key function holders is implemented consistently and well integrated in all subsidiaries within the scope of prudential consolidation, including those not subject to Directive 2013/36/EU, even when they are established in third countries, including in offshore financial centres.

~~118-134.~~ The policy should be adjusted to the specific situation of ~~the credit~~ institutions that are part of the group and subsidiaries within the scope of prudential consolidation that are not themselves subject to the requirements under Article 91 and 91a of Directive 2013/36/EU. Competent bodies or functions within the consolidating ~~CRD~~ institution and its subsidiaries should interact and exchange information for the assessment of suitability as appropriate.

~~119-135.~~ The consolidating ~~CRD~~ institution should ensure that the suitability assessment complies with all specific requirements in any relevant jurisdiction. Regarding ~~institutions and~~ entities within a group located in more than one Member State, the consolidating ~~CRD~~ institution should ensure that the group-wide policy takes into account differences between national company laws and other regulatory requirements.

~~120-136.~~ The consolidating ~~CRD~~ institution should ensure that subsidiaries established in third countries that are included in the scope of prudential consolidation have consistently implemented the group policy in a way that complies with the requirements of Articles 74, 88 and 91 of Directive 2013/36/EU, as long as this is not unlawful under the laws of the third country. For this purpose, the EU parent undertakings and subsidiaries subject to Directive 2013/36/EU must ensure that the suitability standards applied by the subsidiary located in a third country at least meet the ones applied in the European Union.

121-137. The suitability requirements of Directive 2013/36/EU and these Guidelines apply to ~~CRD~~ institutions independently of the fact that they may be subsidiaries of a parent institution in a third country. Where an EU subsidiary of a parent institution in a third country is a consolidating ~~CRD~~ institution, the scope of prudential consolidation does not include the level of the parent institution located in a third country and other direct subsidiaries of that parent institution. The consolidating ~~CRD~~ institution should ensure that the group-wide policy of the parent institution in a third country is taken into consideration within its own policy insofar as this is not contrary to the requirements set out under relevant EU or national law, including these Guidelines.

122-138. 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<sup>53</sup>

123-139. Significant ~~CRD institutions~~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.

124-140. 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.

125-141. 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 this end. Where a nomination committee is not established, the assessment referred to under points (b) and (c) of Article 88(2) of that Directive should be performed at least every two years.

126-142. 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.

127-143. 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~~Section is not applicable.

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<sup>53</sup> 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>

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

128-144. 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.

129-145. 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.

130-146. 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.

131-147. 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. Institutions 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.

132-148. 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.

~~133-149.~~ 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 ~~institution's~~ 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 ~~institution's~~ entity's diversity policy.

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

## Title VII – Assessment of suitability by ~~institutions~~ entities

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

~~134-150.~~ ~~Unless otherwise specified in the Guidelines, the~~ The management body in its supervisory function or, where established, the nomination committee should ensure that the individual and collective suitability assessments of the members of the management body are carried out before they are appointed. They may liaise with other committees (e.g. risk and audit committee) and internal functions (e.g. human resources, legal or control functions). The management body in its supervisory function should be responsible for determining the final suitability assessments.

~~135.~~ ~~By way~~ Without prejudice to Article 91 (1a) of derogation of paragraph 134 the individual and collective suitability assessments may be performed after the appointment 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 member in any business of the following cases for which entity, can otherwise not be met, the institution has provided duly justification:

- ~~a.~~ shareholders, owners or members ~~assessment of the institution nominate and appoint~~ newly appointed members of the management body ~~at the shareholders' or equivalent meeting that have not been proposed by the institution or by the management body, e.g. slate system;~~
- ~~b.~~ a complete suitability assessment prior to the appointment of a member would disrupt the sound functioning of the management body, including as a result of the following may, after consultation with the competent authority, be completed after they take up their position. Such exceptions should be limited to situations:

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

~~ii.~~ 151. ~~or members or~~ where a member ~~is~~ or members are removed because ~~he or she is~~ they are no longer suitable and the entity would due to this not any longer meet the requirements for authorisation.

~~136.~~ 152. The suitability assessments should take into account all matters relevant to and available for the assessments. ~~Institutions~~ 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.

~~137.~~ 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, ~~institutions~~ 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.

~~138.~~ 154. ~~Where, in the duly justified cases referred to in paragraph 135,~~ 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, ~~institutions~~ 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 ~~institution~~ entity resulted in a member being considered not suitable for ~~his or her~~ their position, the member and the competent authority should be informed without delay. ~~Institutions~~ Entities should also inform shareholders about the assessment made and ~~the need to appoint different members~~ act in line with Article 91(1b) of the Directive 2013/36/EU.

~~139.~~ 155. ~~Institutions~~ 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.

~~140.~~ 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 ~~paragraph 135~~ 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.

~~141-157.~~ Institutions 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.

~~142-158.~~ Institutions 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.

~~143-159.~~ Institutions 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~~ Section 23. This should include the documentation and information ~~listed in Annex III~~ in line with the RTS on the minimum content of information<sup>5455</sup>.

~~144-160.~~ Institutions Entities should, keep up to date the information on the suitability of members of the management body and review it at the request of least annually. Entities should inform competent authorities about material changes and where requested by the competent authorities, provide ~~additional~~ 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

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<sup>54</sup> 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

<sup>55</sup> 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](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](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.

the principle of proportionality with regard to the size, internal organisation, nature, scale and complexity of the entity's activities.

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

~~145-162.~~ Institutions Entities should require members of the management body to demonstrate their suitability by providing ~~at least~~ the documentation that is required by competent authorities for the assessment of suitability, in accordance with Title VIII ~~and Annex III of these Guidelines.~~ 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<sup>56</sup>.

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.

~~146-164.~~ As part of the assessment of the suitability of an individual member of the management body, ~~institutions~~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;

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<sup>56</sup> 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.

- 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~~Section 22.

~~147.165.~~ 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. ~~In this assessment institutions should take into account the existence of reasonable grounds to suspect that ML/TF is being or has been committed or attempted or that the risk thereof could be increased.~~

~~148.166.~~ ~~Institutions~~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 ~~CRD institution~~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

~~149.167.~~ When assessing the collective suitability of the management body, ~~institutions~~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 ~~(7) of Directive 2013/36/EU~~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.

~~150-168.~~ Institutions Entities should perform an assessment of the collective suitability of the management body using either:

- a. the suitability matrix template included in Annex I. Institutions 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.

~~151-169.~~ When assessing the suitability of an individual member of the management body, institutions entities should, within the same time period, also assess the collective suitability of the management body in accordance with ~~section~~ 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<sup>57</sup>. In particular, it should be assessed what knowledge, skills and experience the individual brings to the collective suitability of the management body and whether the overall composition of the management body reflects an adequately broad range of knowledge, skills and experience to understand the institution's activities and main risks.

~~152-170.~~ When assessing the collective suitability in line with Title III (~~Section 7~~), institutions, 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

~~153-172.~~ 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.

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<sup>57</sup> Regarding the composition of committees please refer also to the relevant EBA Guidelines on Internal Governance.

154,173. 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;
- 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;
- e.d. the ability of the management body to focus on strategically important matters;
- e.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;
- e.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;
- f.g. any performance objectives set for the institution and the management body;
- g.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;
- h.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
- i.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;
- j.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, including following such adverse findings made by in accordance with the internal or external auditors or competent authorities regarding the adequacy of the institution's AML/CFT systems and controls. criteria specified in paragraph 235.

155-174. 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. ~~Institutions~~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. ~~Institutions~~Entities should note that the absence of criminal convictions alone may not be sufficient to dismiss allegations of wrongdoing.

156-175. Significant ~~CRD-institutions~~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 ~~institutions~~entities should perform a suitability re-assessment at least every two years- ~~Institutions~~ 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, ~~institutions~~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.

157-176. 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.

158-177. 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.

~~159-178.~~ 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.

~~160-179.~~ Institutions/Entities should inform the competent authority where re-assessments due to material changes occurred any new facts or other circumstances that could affect the suitability of the members of the management body become known. Significant CRD institutions/entities should inform the competent authority at least annually of any re-assessments of collective suitability made.

~~161-180.~~ Institutions/Entities should document the re-assessments, including their outcome and any measures taken as a result of the re-assessment. Institutions/Entities should submit the documentation supporting the re-assessment at the request of the competent authority.

~~162-181.~~ 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 relevant institutions/entities

~~182.~~ The responsible function within a relevant institution 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. Significant CRD institutions,

~~163-183.~~ Large entities referred to in paragraph 172 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, where they are not part of the management body. 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.

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

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

~~165-185.~~ Where an assessment by a competent authority is also required, ~~relevant institutions~~ 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 ~~he or she is~~ they are assessed as not being suitable by the competent authority for that position.

## 22. Institutions' Entities' corrective measures

~~166-186.~~ 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 ~~institution~~ entity should replace that member. ~~With the exception of criteria relevant to the assessment of reputation, honesty and integrity, if, unless~~ an ~~institution's~~ entity's assessment or re-assessment identifies easily remediable shortcomings in the member's knowledge, skills or experience and the institution should take appropriate corrective measures ~~to overcome those shortcomings in a timely manner.~~

~~167-187.~~ If an ~~institution's~~ entity's assessment or re-assessment concludes that the management body is not collectively suitable, the ~~institution~~ entity should take appropriate corrective measures in a timely manner.

~~168-188.~~ When an ~~institution~~ 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.<sup>58</sup>

~~169-189.~~ 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.

~~170-190.~~ 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. ~~Significant CRD institutions~~ Large entities should also inform competent authorities about any shortcomings identified regarding heads of

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<sup>58</sup> See footnote 28.

internal control functions and the CFO, ~~where they are not part of the management body.~~  
The information should include the measures taken or envisaged to remedy those shortcomings and the timeline for their implementation.

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 7: 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

~~171.~~192. Competent authorities should specify the supervisory procedures applicable to the suitability assessment of members of the management body of institutions, ~~as well as the heads of internal control functions and the CFO, where they are not part of the management body, in the case of significant CRD institutions.~~ When specifying the supervisory procedures, ~~competent authorities should consider that a suitability assessment performed after the member has taken up his or her position could lead to the need to remove a non-suitable member from the management body or to a situation where the management body collectively has ceased to be suitable.~~large entities. Competent authorities should ensure that ~~a description of those assessment procedures is publicly available.~~ consider similar supervisory procedures for assessing the suitability of members of the management body of entities other than large entities.

~~172.~~193. ~~The suitability assessments of~~ Competent authorities should specify the supervisory procedures applicable to the assessment of suitability of heads of internal control functions and the CFO, ~~where they are not part of the management body, for significant CRD institutions, should be performed~~ 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.

a. ~~significant consolidating CRD institutions;~~

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

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

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.

~~173.~~196. The supervisory procedures should ensure that newly appointed members of the management body, the management body as a collective body ~~and, for significant CRD institutions referred to in paragraph 172 of entities and,~~ newly appointed heads of internal control functions and the CFO, ~~where they are not part of the management body,~~ 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 ~~paragraphs 22~~ paragraph 25 b) ii) and ~~3035 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**

~~174.~~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, institutions/entities should be required to inform competent authorities ~~without delay~~ of any vacant positions within the management body. ~~Institutions~~ without undue delay.

### **Notifications of new appointments**

201. Competent authorities should ~~also be required~~ require entities to notify ~~competent authorities of the intended appointment, in cases where the competent authority assesses 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 extent 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, or the appointment, in cases where the competent authorities assess the suitability after the appointment, decision of a member of the management body and, where applicable, key function holder. Such notifications should, ~~in cases where the competent authority assesses the suitability before the appointment,~~ be made not later than two weeks in due time after the institution/entity decided to propose the member for appointment or, in cases where 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.

~~175-203.~~ 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 and include the complete documentation and information in Annex III.

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**

~~176-207.~~ In the duly justified cases referred to in paragraph 136, institutionsthe second subparagraph of Article 91(1a) of the Directive 2013/36/EU, entities should be required to provide the complete documentation and information in Annex III RTS on the minimum content of information, together with the notification to the competent authority, within one-month ~~of~~after the member beinghas been appointed.

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

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

### Timing of suitability assessments and re-assessments

~~179-208.~~ 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 ~~175 to 177~~ 201 and 202 are provided by the ~~institution~~ 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.

~~180-209.~~ 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<sup>59</sup>:

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

210. The assessment of the individual and collective suitability of the members of the management body and, in case of ~~significant CRD institutions~~ large entities, the assessment of the individual suitability of the heads of internal control functions and the CFO, ~~where they are not part of the management body~~, should be performed 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 ~~institutions~~ entities. If a re-assessment of suitability by a competent authority is prompted by a re-assessment by an ~~institution~~ entity, that competent

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<sup>59</sup> See footnote ~~28~~ 20.

authority should in particular take into account the circumstances that prompted the re-assessment by the ~~institution. In particular, competent~~entity.

~~182-212. Competent~~ authorities should re-assess the individual or collective suitability of the members of the management body and the individual suitability ~~of heads of internal control functions and the CFO, where they are not part of the management body, within significant CRD institutions referred in paragraph 172 whenever significant~~whenever any material new facts or ~~evidence~~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 ~~institution, individual members of the management body~~entity and, ~~include~~ within ~~significant institutions referred to in paragraph 173, large entities~~ heads of internal control functions and the CFO, ~~where they are not part of the management body.~~

### Assessment tools

~~183-213.~~ For ~~significant CRD institutions~~large entities, competent authorities should use interviews where appropriate for the purpose of suitability assessments. Interviews may also be performed for other ~~institutions~~entities on a risk-based approach, taking into account the criteria set out in Title I as well as the individual circumstances of the ~~institution~~entity, the assessed individual, and the position for which an assessment is made.

~~184-214.~~ 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 ~~any new facts or circumstances that may raise~~material concerns about the suitability of the individual.

~~185-215.~~ Competent authorities may attend or conduct meetings with the ~~institution~~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 management body. The frequency of such meetings should be set using a risk-based approach.

~~186-216.~~ 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 ~~his or her~~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 be 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.

## 24.25. Decision of the competent authority

187-227. Competent authorities should take a decision<sup>60</sup> based on the assessment of individual and collective suitability of members of the management body and the assessment of heads of internal control functions and the CFO, ~~where they are not members of the management body,~~ within the maximum period referred to in paragraph 179-208 or, if the period has been suspended, within a maximum period of six months after the ~~start of that period~~ notification mentioned in paragraphs 201 has been received by the competent authority.

188-228. In the cases referred to in paragraph 184-209, 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.

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

190-229. 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 ~~institution~~ entity.

191-230. Competent authorities should inform ~~institutions~~ 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

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<sup>60</sup> 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.

taken by silence, when the maximum period for the assessment, as referred to in paragraph ~~179~~209, is completed and the competent authority has not taken a negative decision.

~~192~~231. The competent authority, considering the measures already taken by the institutionentity, 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 institutionentity to organise specific training for the members of the management body individually or collectively;
- b. requiring the institutionentity to change the division of tasks amongst the members of the management body;
- c. requiring the institutionentity to refuse the proposed member or to replace certain members;
- d. requiring the institutionentity to change the composition of the management body to ensure the individual and collective suitability of the management body;
- e. removing the member from the management body;
- f. where appropriate, imposing administrative penalties or other administrative measures (e.g. setting out specific obligations, recommendations or conditions), including ultimately withdrawing the institution'sentity's authorisation.

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

~~194~~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 ~~Article~~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 institutionentity.

## 26. Reasonable ground to suspect ML/TF activities or risks<sup>61</sup>

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<sup>61</sup> This section together with paragraph 86 and 87 will be submitted for consultation to AMLA during the EBA consultation period

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; ;

235. When assessing the risk factors in paragraph 86, competent authorities should consider available information<sup>62</sup> from:

- a. information obtained from the AML/CFT supervisor;

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<sup>62</sup> This information might entail a negative assessment on the increased AML risk only where there are reasonable grounds according to paragraph 229.

- 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<sup>63</sup> 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 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 .

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<sup>63</sup> 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

## 25.27. Cooperation between competent authorities

195-238. 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 ~~may~~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<sup>64</sup> on the basis of Article 31 (a) of the ESAs founding regulations, and request information on the prospective member, where applicable.

196-240. 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 ~~institution's~~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<sup>65</sup>. In addition, in situations where the risk of ML/TF associated with the ~~institution~~entity or member is increased, competent authorities should also, where appropriate, seek information from other relevant

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<sup>64</sup>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

<sup>65</sup> 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

stakeholders, including the Financial Intelligence Units and law enforcement agencies, to inform their suitability assessment.<sup>66</sup>

~~197-241.~~ 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 ~~179~~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 institution entity, or other relevant information for the assessment of suitability.

~~198-242.~~ 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 institutions 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.

~~199-243.~~ 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.

~~200-244.~~ 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.

~~201-245.~~ Where a competent authority decides that a member of the management body or a head of the internal control key function and the CFO, where they are not part of the management body, as referred to in paragraph 172, 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.

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<sup>66</sup> See also: Joint guidelines on cooperation and information exchange for the purpose of Directive (EU) 2015/849 between competent authorities supervising credit and financial institutions available under <https://eba.europa.eu/regulation-and-policy/anti-money-laundering-and-counteracting-financing-terrorism>

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

**Question 8: 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

**203-246.** 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.

**204-247.** 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.

**205-248.** 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)(I) of BRRD, resolution authorities should provide competent authorities as soon as possible with the required documents to enable them to perform a suitability assessment.

**206-249.** 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 institution/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)(I) of BRRD. The

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

207-250. 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.

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

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

## Annex II – Skills

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This is the non-exhaustive list of relevant skills, referred to in paragraph 5965, that ~~institutions~~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 ~~his or her~~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 ~~institution's~~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 ~~his or her~~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 ~~his or her~~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 ~~he or she is~~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 ~~he or she~~they can devote sufficient time to the job and can discharge ~~his or her~~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 ~~his or her~~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.

## ~~Annex III – Documentation elements for initial appointments~~

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

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

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

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

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

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

### ~~2. Suitability assessment by institution~~

~~2.1 The following details should be provided:~~

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

### 3. Knowledge, skills and experience

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

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

### 4. Reputation, honesty, integrity

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

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

~~4.3 Information concerning the following:~~

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

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

## ~~5. Financial and non-financial interests~~

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

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

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

## ~~6. Time commitment~~

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

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

- ~~b. a list of the predominantly commercial mandates that the individual holds including whether or not the privileged counting rules<sup>67</sup> in Article 91(4) of CRD apply;~~
- ~~c. where the privileged counting rules apply, an explanation of any synergies that exist between the companies;~~
- ~~d. a list of those mandates which are pursuing predominantly non-commercial activities or are set up for the sole purposes of managing the economic interests of the individual;~~
- ~~e. the size of the companies or organisations where those mandates are held including for example, total assets, whether or not the company is listed, and number of employees;~~
- ~~f. a list of any additional responsibilities associated with those mandates (such as the chair of a committee);~~
- ~~g. estimated time in days per year dedicated to each mandate; and~~
- ~~h. number of meetings per year dedicated to each mandate.~~

## ~~7. Collective knowledge, skills and experience~~

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

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

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

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<sup>67</sup> This is where the individual avails himself or herself of the possibility of holding several mandates that are part of the same group, or within undertakings where the institution holds a qualifying holding or in institutions that are part of the same institutional protection schemes.

## 5. Accompanying documents

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### 5.1. Draft cost-benefit analysis / impact assessment

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

~~Directive (EU) 2019/878 of 20 May 2019 amends Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures. The new Directive is to be implemented by Member States by 28 December 2020. The EBA and ESMA issued Joint Guidelines on the Assessment of the suitability of members of the management body and key function holders in 2017. The Joint Guidelines have been amended to reflect the introduced changes. 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<sup>68</sup>. As a joint mandate of the EBA and ESMA, these Guidelines are also expected to enhance cross-sectoral consistency and reduce potential risk originating from regulatory arbitrage within the EU financial system.

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

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

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

### C. Baseline scenario

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

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

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

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<sup>68</sup> 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>

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 ~~Directive~~ 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 ~~remedy weaknesses identified regarding the representation of~~ follow the under-represented gender. Most changes are of a technical nature requirements of CRD Articles 88 and ~~concern~~ 91, which specifies the change of 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 ~~Directive 2013/36~~ 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 that, 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 also to financial and mixed financial holding companies and the amendments to Article 91 of that Directive, concerning the risks of money laundering and terrorist financing that have to be taken into account in the assessment. Regarding those changes no alternative options have been identified that require assessment, to third country branches, which means that third country branches should robust governance arrangement.~~

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

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

#### **Option A: 2A: KFHS do not need to be assessed**

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

#### **Option B:**

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

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

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

~~While there are some costs to implement such measures, they are expected honesty and integrity and possess sufficient knowledge, skills and experience necessary to be very limited and not caused by the Guidelines as such, but by the general legal framework established in the European Union.~~

~~Option B has been retained.~~

~~Additional changes have been introduced perform their duties, and send to add a new title on exchange of the information on related to their suitability assessment between to the competent authorities and resolution authorities to further harmonise practices and ensure supervisory convergence.~~

~~Option A:~~

~~Amending the Guidelines to clarify how competent authorities and resolution authorities should exchange information on the for a suitability assessment after replacement of members of the management body and provide further guidance in this respect. In particular, how competent authorities 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 resolution authorities investment firms.~~

~~According to the guidelines, the CAs should specify the supervisory procedures applicable to the exchange of information regarding suitability assessments assessment of members of the management body and their of large entities. With regard to entities other than large entities, the replacement in line following options were considered:~~

~~**Option 3a: Not specify any further requirements with Articles 27, 28 and 34(1)(c) and 81(2) of BRRD regard to the suitability application for entities other than large entities**~~

~~Option B:~~

~~In addition to **Option A**, providing further guidance on how the suitability assessment **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 be made and 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 what timeline 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 A has been retained.~~

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 KFMs, 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

<u>Stakeholders</u>	<u>Costs</u>	<u>Benefits</u>
<u>Financial institutions in the scope of GLs</u>	<u>Minor impact, as the changes with respect to previous guidelines is limited</u>	<u>Additional clarifications to facilitate the application of the guidelines</u>

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

## 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?