

EBA/CP/2023/07

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Draft consultation paper on

EBA Guidelines

on the assessment of adequate knowledge and experience of the management or administrative organ of credit servicers, as a whole, under Directive (EU) 2021/2167

Draft Guidelines on the assessment of adequate knowledge and experience of the management or administrative organ of credit servicers, as a whole, under Directive (EU) 2021/2167

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1. Responding to this consultation

The EBA invites 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:

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

Submission of responses

To submit your comments, click on the 'send your comments' button on the consultation page by 19.07.2023. 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.

2. Executive Summary

In accordance with the requirements introduced by the Directive (EU) 2021/2167, the European Banking Authority (EBA) is developing Guidelines on the assessment of adequate knowledge and experience of the management or administrative organ of credit servicers by credit servicers and competent authorities, as required by Article 5(2) of Directive (EU) 2021/2167. The Guidelines specify common criteria, taking into account the principle of proportionality, to assess the collective adequate knowledge and experience of the management or administrative organ, on the basis of the individual knowledge and experience of the members of these organs.

The Guidelines will apply to competent authorities and credit servicers independent of their governance structures (unitary structure, two tiers or other structures), without advocating or preferring any specific structure as set out in the defined scope of application.

Next steps

The Guidelines are being publicly consulted for a three-month period. It is expected that they will enter into force around early in 2024, three months after the publication of its translations in all official languages of the EU.

3. Background and rationale

1. As part of the establishment of the comprehensive strategy to address the issue of non-performing loans (NPLs) within the European Union, Directive (EU) 2021/2167 enables credit institutions to better deal with loans that become non-performing by improving conditions for the sale of credit to third parties. When credit institutions face a large build-up of NPLs and lack the staff or expertise to properly service them, they should be able either to outsource the servicing of those loans to a specialised credit servicer or to sell the credit to a credit purchaser.
2. Directive (EU) 2021/2167 lays down a common framework and requirements for credit servicers of a creditor's right under a non-performing credit agreement, or of the non-performing credit agreement itself, issued by a credit institution established in the Union and include requirements for the qualification of the management or administrative organ as a whole.
3. Directive (EU) 2021/2167 and these Guidelines do not apply to entities listed in Article 2(5)(a) of that Directive, including credit institutions. Credit institutions are authorised to service credit as part of their authorisation under Directive 2013/36/EU, which includes an assessment of the suitability of members of the management body.
4. Credit servicers should always act in good faith, treat borrowers fairly and respect their privacy at the same time they should effectively service credits. In order to protect the integrity of the market and to promote trust, it is important to ensure that the management or administrative organ of a credit servicer, as a whole, has adequate knowledge and experience to conduct the business in a competent and responsible manner, according to the activity to be carried out.
5. In this respect, Directive (EU) 2021/2167 establishes a Union-wide framework for both purchasers and servicers of non-performing credit agreements issued by credit institutions, whereby credit servicers should obtain authorisation from, and be subject to the supervision of competent authorities. This applies also to credit purchasers that are at the same time credit servicers and service credit for other credit purchasers as well. This authorisation requires, beside others, the suitability of the management or administrative organ of credit servicers. While some requirements, e.g. on the good repute of the members of the management or administrative organ, are directly encoded within the Directive, the requirement that the management or administrative organ, as a whole (i.e. that members of such organs collectively) must have adequate knowledge and experience is further specified by the Guidelines. The assessment of the adequate collective knowledge and experience is based on the assessment of the individual members.

6. The requirements for authorisation must be complied with at all times. Hence, credit servicers need to ensure that they meet the suitability requirements, including the requirement of adequate knowledge and experience and good repute, at all times, including where the business activities or the composition of the management or administrative organ change. Competent authorities have the power to withdraw the authorisation of credit servicers. Consequently competent authorities supervising credit servicers will also assess as part of their supervisory activities the credit servicers compliance with the suitability requirements.
7. The Guidelines will apply to all existing board structures or administrative organ 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, dual board structure or other board structures).
8. Considering all existing governance structures provided for by national laws, competent authorities will ensure the effective and consistent application of the Guidelines in their jurisdiction. For this purpose, competent authorities may further clarify the governing bodies and functions on the basis of the definitions provided in the Guidelines 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. Other than for the purposes of the legislation applicable to credit servicers specifically under Directive (EU) 2021/2167, the Guidelines do not aim to interfere with other legislation such as social, company or labour law, which needs to be complied with by credit servicers together with other and independently of EU legislation.

Legal basis

10. According to Article 5(1) (c) of Directive 2021/2167, the credit servicer's management or administrative organ, should have adequate knowledge and experience, as a whole, to conduct the business in a competent and responsible manner. Article 5(1)(b) requires that the members of the applicant's management or administrative organ are of sufficiently good repute and specifies further the assessment.
11. To further harmonise the assessment of the adequate knowledge and experience of the management or administrative organ, as a whole, within the EU financial sector in line with the requirements introduced by Directive (EU) 2021/2167, a mandate is given to the EBA to issue Guidelines on the adequate knowledge and experience of the management or administrative organ of credit servicers to conduct the business in a competent and responsible manner in line with Article 5(2) of Directive (EU) 2021/2167.

Rationale and objective of the Guidelines

12. To further specify the requirements under Article 5(1) of Directive (EU) 2021/2167, the Guidelines specify the notion of adequate collective knowledge and experience for the credit servicers management or administrative organ, as a whole, and aim at establishing harmonised criteria for the assessment of the adequate knowledge and experience of the individual members of the management or administrative organ of credit servicers which form the basis for the assessment of their collective suitability and ensure sound assessment processes.
13. The administrative or management organ should collectively possess adequate knowledge and experience to understand the credit servicer's activities and to conduct the business in a competent and responsible manner. This knowledge should be kept up to date, taking into account changes in the nature, scale and complexity of the credit servicer's activities. Adequate knowledge 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 needs to be assessed on a case by case basis. The Guidelines provide criteria for this assessment.
14. The terms 'administrative or management organ in its management function' and 'administrative or management organ in its supervisory function' or 'administrative or management organ' are used throughout these Guidelines without referring to any specific governance structure and references to the management (executive) or supervisory (non-executive) function. The Guidelines should be understood as applying to the organ or members of the management organ responsible for that function taking into account the legal form of the credit servicer. To ensure a sufficient level of harmonization of the assessed persons, the Guidelines provide for a definition of the terms 'management or administrative organ' and 'administrative or management organ in its supervisory function'.
15. To ensure a proper business conduct it must be ensured that the management or administrative organ is functioning well. This requires that all members of those organs also individually must meet certain knowledge and experience standards to enable an effective functioning of the organs, including the ability to discuss strategies and business objectives and to challenge and discuss proposals made by other members. Therefore the members of the management or administrative organ should have adequate knowledge and experience, to fulfil their individual position. The respective assessment entails if the inclusion of all individual knowledge and experiences results in an organ that has adequate knowledge and experience, as a whole. As the individual members of the management or the administrative organ, despite their overall responsibility, may have specific roles, the assessment process and criteria can differ to take into account the specific position held and the principle of proportionality.
16. Credit servicers should ensure that the management or administrative organ fulfils the adequate knowledge and experience requirements as further specified in the Guidelines on

an ongoing basis, by establishing appropriate and proportionate policies and procedures for this purpose.

17. Events which may potentially affect the required adequate knowledge and experience of the management or administrative organ or put into question the previous assessment's results, should lead to a re-assessment by the credit servicer and, where necessary, the competent authority. The Guidelines therefore specify also the assessment processes in a proportionate way.
18. Without prejudice to national law, to ensure that the requirements are met at all times, also when there are newly appointed members in the management or administrative organ, credit servicers should assess the knowledge and experience of proposed members prior to their appointment or of appointed members when duly justified as soon as practicable, but in any case within one month of their appointment in order to establish if the management or administrative organ, as a whole, possesses the adequate knowledge and experience.
19. Competent authorities should have processes in place for the assessment of the adequate collective knowledge and experience of members of the management or administrative organ of credit servicers. Competent authorities' processes should ensure that all these members are assessed. To ensure a proportionate supervision of credit servicers, the Guidelines should specify the supervisory processes, but leave sufficient flexibility to competent authorities to organize the supervisory tasks in a proportionate way, including if an assessment before or after the appointment of members is intended.
20. It is important to ensure that credit servicers and competent authorities intervene if the management or administrative organ, as a whole, is not suitable to conduct the business in a competent and responsible manner. Measures available to competent authorities may differ between Member States depending on the applicable national laws. Such measures can range from ordering a credit servicer to take action to improve the knowledge of a member or members, preventing a member of a credit servicer from performing tasks, temporarily banning or replacing a member or members of the management or administrative organ, or ultimately withdrawing the credit servicer's authorisation.

4. Draft Guidelines

on the assessment of adequate knowledge and experience of members of the management or administrative organ, as a whole, of credit servicers under Directive (EU) 2021/2167

1. Compliance and reporting obligations

Status of these Guidelines

1. This document contains Guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010¹. In accordance with Article 16(3) of Regulation (EU) No 1093/2010, competent authorities and financial institutions must make every effort to comply with the Guidelines.
2. Guidelines set the EBA view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. Competent authorities as defined in Article 4(2) of Regulation (EU) No 1093/2010 to whom Guidelines apply should comply by incorporating them into their practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where Guidelines are directed primarily at institutions.

Reporting requirements

3. According to Article 16(3) of Regulation (EU) No 1093/2010, competent authorities must notify the EBA 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, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form available on the EBA website with the reference 'EBA/GL/2023/xx'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities. Any change in the status of compliance must also be reported to EBA.
4. Notifications will be published on the EBA website, in line with Article 16(3).

¹ 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, (OJ L 331, 15.12.2010, p.12).

2. Subject matter, scope and definitions

Subject matter

5. These Guidelines specify the requirements under Article 5(1), point (c) of Directive (EU) 2021/2167 of the European Parliament and of the Council² regarding the adequate knowledge and experience of the management or administrative organ, as a whole, of credit servicers, including the criteria for the assessment and the assessment process.

Addressees

6. These Guidelines are addressed to:
 - a. competent authorities as defined in Article 4(2) of Regulation (EU) No 1093/2010 (EBA authority) which are also designated pursuant to Article 21(3) of Directive (EU) 2021/2167³. They apply to the extent that those authorities have been designated as competent for ensuring the application and enforcement of those provisions of that Directive to which these guidelines relate; and
 - b. competent authorities referred to in Article 21(3) of Directive (EU) 2021/2167, and to credit servicers as defined in Article 3(8) of that Directive.

Scope of application

7. The Guidelines apply to all credit servicers of a creditor's right under a non-performing credit agreement, or of the non-performing credit agreement itself, issued by a credit institution established in the Union. On the contrary, the Guidelines do not apply to entities listed in Article 2(5)a) of Directive (EU) 2021/2167.
8. The Guidelines apply with regard to the assessment of the adequate knowledge and experience of credit servicers' management or administrative organ, as a whole, to conduct the business in a competent and responsible manner under Article 5(1) point c) of Directive (EU) 2021/2167. Where the organ consists of a management and a supervisory function, the Guidelines apply to both functions.
9. Credit servicers should comply with the Guidelines. Competent authorities should ensure that credit servicers comply with these Guidelines.

² Directive (EU) 2021/2167 of the European Parliament and of the Council of 24 November 2021 on credit servicers and credit purchasers and amending Directives 2008/48/EC and 2014/17/EU (OJ L 438, 8.12.2021, p. 1–37)

³ Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p.63).

Definitions

10. Unless otherwise specified, terms used and defined in Directive (EU) 2021/2167 have the same meaning in the Guidelines. In addition, for the purposes of these Guidelines, the following definitions apply:

Management or administrative organ	means the credit servicer's organs, which are appointed in accordance with national law, which are empowered to set the institution's strategy, objectives and overall direction, and which oversee and monitor management decision-making, and include the persons who effectively direct the business of the institution.
Administrative or management organ in its supervisory function	means the administrative or management organ acting in its role of overseeing and monitoring management decision-making.
Member	means a proposed or appointed member of the management or administrative organ, including representatives acting on behalf of legal persons being member of the management or administrative organ.

3. Implementation

Date of application

11. These Guidelines apply from [Instruction to editors – Please insert date three month after the publication on the EBA's website of the guidelines in of in all official languages of the EU, but not earlier than 31.12.2023]

Q1: Is the section on subject matter, scope, definitions and implementation appropriate and sufficiently clear?

Guidelines on the assessment of adequate knowledge and experience of members of the management or administrative organ

1 Application of the proportionality principle

12. Credit servicers should take into account their size, internal organisation and the nature, scale, and complexity of their activities when assessing the adequate knowledge and experience of their management and administrative organs, as a whole, and when developing and implementing related policies and processes that ensure that the requirements are met. Credit servicers, who service large portfolios of credit or more complex credit, should have more sophisticated policies and processes, while smaller credit servicers that service less complex credit may implement simpler policies and processes.
13. For the purpose of applying the principle of proportionality and in order to ensure the appropriate implementation of the governance requirements of Directive (EU) 2021/2167 as further specified by these Guidelines, the following criteria should be taken into account by credit servicers and competent authorities:
 - a. the size of the credit servicer in terms of the balance sheet total,
 - b. the volume of credits the credit servicer manages;
 - c. the complexity of the credit agreement managed and the securities provided;
 - d. the legal form of the credit servicer,
 - e. whether or not the credit servicer is part of a group subject to Directive 2013/36/EU on a consolidated basis and, if so, the proportionality assessment for the group;
 - f. whether the credit servicer is listed or not;
 - g. whether cross borders activities are provided and the size of the operations in each jurisdiction; and
 - h. the nature and complexity of all business activities the credit servicer performs, and the credit servicers organisational structure including outsourcing arrangements towards other credit service providers.

Q2: Is the section on proportionality appropriate and sufficiently clear?

2 Credit servicers' assessment of the adequate knowledge and experience of members of the management or administrative organ

14. Credit servicers should ensure that their management or administrative organ, as a whole, possesses adequate knowledge and experience to perform their duties at all times and to conduct the business in a competent and responsible manner. In accordance with Article 5(1)(b) of Directive (EU) 2021/2167 credit servicers should ensure that all members of these organs are of good repute.
15. Credit servicers, including firms that apply for authorisation under Title II, Chapter I of Directive (EU) 2021/2167, should perform the assessment or a re-assessment, in particular:
 - a. when applying for authorisation before commencing its activities;
 - b. when material changes to the composition of the management or administrative organ occur, including:
 - i. when appointing new members of the management or administrative organ, in a credit servicer;
 - ii. when members have left the management or administrative organ.
 - c. where material changes to the business model, underlying legal provisions or technologies used occurred.
16. The knowledge and experience assessments of the members of the management or administrative organ, as a whole, should be carried out before the individual members are appointed. Where applicable, the administrative or management organ in its supervisory function should be responsible for performing the final assessment.
17. By way of derogation of paragraph 16, the collective suitability assessments may, without prejudice to national law, be performed after the appointment of the member of the management or administrative organ in any of the following cases for which the credit servicer has duly provided a justification:
 - a. shareholders, owners or members of the credit servicer nominate and appoint members of the management or administrative organ at the shareholder's or equivalent meeting that have not been proposed by the credit servicer or by the management or administrative organ;
 - b. a complete assessment prior to the appointment of a member or the change of the composition of the management or administrative organ would disrupt the sound functioning of the management or administrative organ, including as a result of the following situations:

- i. where the need to replace members arises suddenly or unexpectedly, e.g. death of a member; and
 - ii. where a member needs to be removed as the member is not any longer suitable.
18. The assessment of adequate knowledge and experience should take into account all matters relevant to and available for the assessments. Credit servicers should consider the risks, including the reputational risk, arising in the event that any weaknesses are identified affecting the collective suitability of the members of the management or administrative organ.
19. Credit servicers should take into account the knowledge and experience of the individual member of the management or administrative organ when assessing the adequate collective knowledge and experience of the management or administrative organ and vice-versa.
20. Credit servicers should document the results of its assessment, and in particular any weaknesses identified between the necessary and the actual collective knowledge and experience of members of the management or administrative organ, and measures to be taken to overcome these shortcomings, including induction or training to be provided.
21. The assessment of the initial and ongoing individual and collective adequate knowledge and experience of the management or administrative organ and the reputation of their members is the responsibility of credit servicers.
22. To ensure the appropriate ongoing supervision, credit servicers should inform the competent authority of the proposed appointment of members or without undue delay after the appointment of members.
23. Where the assessment is also carried out by competent authorities for supervisory purposes, the responsibility to assess and ensure the suitability of the management or administrative organ continues to remain with the credit servicer.

Q3: Is the section 2 on the suitability assessment by credit servicers appropriate and sufficiently clear?
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3 Individual members adequate knowledge and experience criteria

24. When assessing the adequate knowledge and experience of the management body, as a whole, the credit servicer should assess all individual members of the organ to establish that they have together adequate knowledge and experience to ensure the effective functioning of the organ, including that each member has the ability to present their views, discuss strategies and business objectives and that collective decisions making processes involve appropriate discussion, challenge and oversight. For that purpose, there should be a sufficient

number of members with knowledge in each area to allow a discussion of decisions to be made.

25. Members of the management or administrative organ should have an up-to-date understanding of the business of the credit servicers and all of 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 or administrative organ.
26. Members of the management or administrative organ should have a clear understanding of the credit servicer's governance arrangements, their respective role and responsibilities and, where applicable, the group structure and any possible conflicts of interest that may arise therefrom.
27. Members of the management or administrative organ should be able to contribute to the implementation of an appropriate corporate and risk culture, corporate values and behaviour within the management or administrative organ to conduct the business in a competent and responsible manner.
28. The assessment of adequate knowledge and experience should consider:
 - a. the role and duties of the position and the required capabilities;
 - b. the knowledge attained through education, training and practice;
 - c. the practical and professional experience gained in previous positions and other current directorships; and
 - d. the knowledge and experience acquired and demonstrated by the professional conduct of the member.
29. 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.
30. The assessment should not be limited to the educational degree of the member or proof of a certain period of service in a credit servicer or other firms in areas responsible for the management of credits and non performing loans. A more thorough analysis of the member's practical experience with regard to the activities of the credit servicer should be conducted, as the knowledge gained from previous occupations depends on the nature, scale and complexity of the business as well as the function that the member performed within it.
31. When assessing the adequate knowledge and experience of a member, consideration should be given to theoretical and practical experience relating to:

- a. banking and financial markets in particular with regard to risk management, credit risk and loan origination, non performing loans (NPLs), forbearance and foreclosure;
- b. relevant legal requirements for the servicing of loans and applicable regulatory framework;
- c. consumer and borrower protection;
- d. sequestration, insolvency and bankruptcy procedures;
- e. contractual law;
- f. accounting and auditing;
- g. anti money laundering and anti terrorist financing obligations;
- h. data protection requirements;
- i. the ability to assess the effectiveness of a credit servicers' arrangements that ensure effective governance, oversight and internal controls;
- j. the interpretation of financial information, the identification of key issues based on this information, and appropriate controls and measures;
- k. managerial knowledge.

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

- a. the nature of the position held and its hierarchical level;
- b. the length of service;
- c. the nature and complexity of the business where the position was held, including its organisational structure;
- d. the scope of competencies, decision-making powers, and responsibilities of the member;
- e. the relevant technical knowledge gained through the position;
- f. the number of subordinates;
- g. additional knowledge gained from academical activities.

33. Where applicable, members of the administrative or management organ in its supervisory function should be able to effectively challenge and monitor decisions made by the administrative or management organ in its management function.

4 Collective adequate knowledge and experience criteria

34. The management or administrative organ, as a whole, should have adequate knowledge and experience to conduct the business in a competent and responsible manner according to the activities carried out by the credit servicer and ensuring the protection and fair treatment of borrowers.
35. The composition of the management or administrative organ should reflect the adequate knowledge and experience necessary to fulfil all of its responsibilities. This includes that the management or administrative organ collectively has an appropriate understanding of those areas for which the members are collectively accountable for and to ensure that the business is conducted in a competent and responsible manner.
36. The management or administrative body, as a whole, should have adequate knowledge and experience with regard to the aspects listed under paragraph 31 and in addition regarding:
- a. all business activities of the credit servicer and the management of main risks related to it, including fraud detection and prevention in the context of credit risk management;
 - b. the legal and regulatory environment;
 - c. financial accounting and reporting;
 - d. risk management, compliance and internal audit;
 - e. information technology and security;
 - f. local and cross borders markets, where applicable;
 - g. managerial skills and experience;
 - h. the ability to plan strategically.
37. When assessing the collective adequate knowledge and experience of the management or administrative organ, credit servicers should assess separately the management body in its management and supervisory functions. The assessment of the adequate collective knowledge and experience should provide a comparison between the required adequate knowledge and experience of the management or administrative organ body, as a whole, and the management or administrative organ's actual collective knowledge and experience. The assessment should cover all business activities of the credit servicer and material organisational aspect as well as the underlying processes.

Q4: Are the sections 3 and 4 on the individual and collective criteria for the assessment of members of the management or administrative organ appropriate and sufficiently clear?

5 Assessment of knowledge and experience of individual members

38. As part of the assessment of the management or administrative organ suitability, credit servicers should assess the knowledge and experience of individual members. For that purpose, credit servicers should:
- a. gather information through various channels and instruments (e.g. diplomas and certificates, recommendation letters, curricula vitae, interviews, questionnaires);
 - b. require the assessed individual to provide accurate information and to provide proof of that information, where necessary;
 - c. validate, to the extent possible, the correctness of the information provided by the assessed individual;
 - d. where applicable, evaluate within the management organ in its supervisory function the assessment results; and
 - e. where necessary, identify necessary corrective measures.
39. Credit servicers should document a description of the position of the member for which an assessment was performed, including the role of that position within the credit servicer and should specify the results of the assessment in relation to knowledge and experience and the results of the assessment of good repute under Article 5(1)(b) of Directive (EU) 2021/2167.

6 Assessment of the collective adequate knowledge and experience of the management or administrative organ

40. Where applicable, in assessing the collective adequate knowledge and experience, credit servicers should assess the composition of the management organ in its management and its supervisory functions separately.
41. Credit servicers should perform an assessment using their own appropriate methodology in line with the criteria set out in these Guidelines and document the results.
42. When assessing a member's knowledge and experience, credit servicers should, within the same time period, also assess the collective suitability of the management or administrative body. In particular, it should be assessed what knowledge and experience the individual brings to the collective one or, in the case of a member that has left the management or administrative organ, the knowledge and experience that might, following the change of composition of the organ, be missing.

Q5: Are the sections 5 and 6 on the individual and collective assessment of members of the management or administrative organ appropriate and sufficiently clear?

7 Credit servicers' corrective measures

43. If a credit servicer's assessment or re-assessment concludes that the management or administrative organ, as a whole, does not possess collectively the adequate knowledge and experience, the credit servicer should take appropriate corrective measures in a timely manner.
44. Appropriate corrective measures may include, but are not limited to: adjusting responsibilities between members; replacing certain members; recruiting additional members; training single members; or training for the management organ collectively to ensure the adequate collective knowledge and service of the management or administrative body.
45. If a credit servicer's assessment or re-assessment identifies easily remediable shortcomings in the adequate knowledge and experience of the management or administrative organ, the credit servicer should take appropriate corrective measures to overcome those shortcomings in a timely manner, including, where relevant, through appropriate training of all or individual members.
46. When a credit servicer intends to request the authorisation to commence its activities, such measures should be implemented before the authorisation is requested.
47. In any case, competent authorities should be informed without delay of any material shortcomings identified concerning any of the members of the management organ and the management body's collective composition. The information should include the measures taken or envisaged to remedy those shortcomings and the timeline for their implementation.

Q6: Is section 7 on corrective measures appropriate and sufficiently clear?

8 Assessment by competent authorities

48. Competent authorities should specify the supervisory procedures applicable to the assessment of adequate knowledge and experience of the management or administrative organs, as a whole, of credit servicers and the good repute of its members. Competent authorities should ensure that a description of supervisory procedures is publicly available.
49. Competent authorities should ensure that their supervisory procedures allow them to address cases of non-compliance with the requirement that the management or administrative organ, as a whole, has adequate knowledge and experience.

Q7: Is section 8 on the assessment by competent authorities appropriate and sufficiently clear?

5. Accompanying documents

5.1. Draft cost-benefit analysis / impact assessment

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

A. Problem identification

As part of the establishment of the comprehensive strategy to address the issue of non-performing loans (NPLs) within the European Union, Directive (EU) 2021/2167 enables credit institutions to better deal with loans that become non-performing by selling the credit to a credit purchaser, who may task a credit servicer with its administration.

According to Article 5(1) c) of Directive 2021/2167, the credit servicer’s management or administrative organ, should have adequate knowledge and experience, as a whole, to conduct the business in a competent and responsible manner.

To further harmonise the assessment of adequate knowledge and experience of the management or administrative organ, as a whole, within the EU financial sector in line with the requirements introduced by Directive (EU) 2021/2167, a mandate is given to the EBA to issue Guidelines on the adequate knowledge and experience of the management or administrative organ of credit servicers to conduct the business in a competent and responsible manner in line with Article 5(2) of Directive (EU) 2021/2167.

B. Policy objectives

Credit servicers should always act in good faith, treat borrowers fairly and respect their privacy at the same time they should effectively service credits. In order to protect the integrity of the market and to promote trust, it is important to ensure that the management or administrative organ of a credit servicer, as a whole, has adequate knowledge and experience to conduct the business in a competent and responsible manner, according to the activity to be carried out.

C. Baseline scenario

The baseline scenario for the impact assessment includes the requirements on the assessment of the fitness and propriety of management and administrative organs set out in Directive (EU)

2021/2167. The assessment of costs and benefits is limited to the specifications of requirements provided in the guidelines and does not include an assessment of the requirements directly encoded in the Directive.

D. Options considered

Scope of the Guidelines

The mandate within Directive (EU) 2021/2167 requires that the EBA develops guidelines on the criteria for the assessment of the adequate knowledge and experience of the management or administrative organ of credit servicers, as a whole. The setting of guidelines limited to the assessment criteria would not lead to an effective harmonisation of such assessments. A higher level of harmonisation will be achieved by setting additional guidelines on the points of time or events where assessments are necessary and the assessment processes as well as on the follow up of assessment results. Therefore, the EBA is setting out additional guidelines in line with its mandate under Article 16 of the EBA Founding Regulation (EU) 1093/2010.

Assessment approach and process

While the Directive requires that the management or administrative organ has adequate knowledge and experience, as a whole, the assessment of all members is foreseen under the Guidelines. On this basis the collective suitability is assessed. A certain level of knowledge and experience is necessary for each member to ensure that the organs function effectively. There is no other option.

The Directive requires, beside others, an assessment of the adequate knowledge and experience of the management and administrative, as a whole. The requirement applies not only at authorisation, but also ongoing. The respective clarification of the points of time within the guidelines therefore do not trigger additional costs, but clarify the required assessments process.

Corrective measures

The approach taken ensures that identified weaknesses are remedied under the appropriate supervision by competent authorities and therefore has a beneficial effect on the continuous functioning of the management or administrative organ. The approach taken allows for training or the replacement of members. In any case, such measures would be needed to ensure compliance with the suitability requirements under the Directive. Therefore these additional guidelines do not create additional costs.

Setting guidelines for competent authorities

The Guidelines set high level principles for competent authorities to set out their supervisory processes in a transparent way. Transparency to the processes reduces the costs for credit servicers when assessments by competent authorities are required. Given the newly introduced

requirements and considering that the level of supervisory involvement towards such firms will be lower as compared to credit institutions, it has been seen appropriate to limit the provided guidelines to high level principles rather than setting out the expected supervisory processes in the guidelines.

Such an approach is more proportionate and will reduce the overall supervisory costs as the market of credit servicing and the volumes of credit to be serviced differs between Member States.

5.2. Questions for the public consultation

Q1: Is the section on subject matter, scope, definitions and implementation appropriate and sufficiently clear?

Q2: Is the section on proportionality appropriate and sufficiently clear?

Q3: Is the section 2 on the suitability assessment by credit servicers appropriate and sufficiently clear?

Q4: Are the sections 3 and 4 on the individual and collective criteria for the assessment of members of the management or administrative organ appropriate and sufficiently clear?

Q5: Are the sections 5 and 6 on the individual and collective assessment of members of the management or administrative organ appropriate and sufficiently clear?

Q6: Is section 7 on corrective measures appropriate and sufficiently clear?

Q7: Is section 8 on the assessment by competent authorities appropriate and sufficiently clear?