ZBS | Združenje bank Slovenije
The Bank Association of Slovenia

Comments
of the Bank Association of Slovenia (“BAS”) on
Consultation paper on joint ESMA and EBA Guidelines on the assesment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU

Paragraph	Text	BAS Comment
Para 48, p. 30	“*In accordance with Article 91(4)(a) of Directive 2013/36/EU, all directorships held within the same group count as a single directorship.*” Q6: Are the guidelines with respect to the calculation of the number of directorships appropriate and sufficiently clear?	Paragraph 48 is not sufficiently clear, particularly as regards situations where a member of the management board holds a number of directorships in different groups or undertakings (which do not belong to the same institutional protection scheme, i.e. directorships in a banking group along with a number of directorships in other groups, for example insurance groups, investment firms or firms from the real sector of the economy). Our question in this regard is should multiple directorships in such different groups be counted as a single directorship or multiple directorships?
Para 127, p. 46-47	“Where members are appointed by the general shareholders’ meeting and where the assessment of the individual and collective suitability of members has been performed before the general shareholders’ meeting, institutions should provide this information to shareholders <u>before they appoint the members of the management body</u>. Where appropriate, the assessment should comprise different alternative compositions of the management body that can be introduced to the shareholders. <u>Where, in duly justified cases (e.g. if shareholders nominate members that have not been proposed by the institution), members were appointed by shareholders before an assessment of suitability was made, institutions should assess the suitability of the members and the composition of the</u>	In Slovenia, in most cases, candidates for supervisory board members are nominated and appointed directly at the general shareholders’ meeting in accordance with Article 275 of the Companies Act. Candidates’ names may be known in advance but in certain cases this happens within a very limited timeframe (e.g. 2–3 days in advance). Thus, the draft guidelines: 1. give Slovenian banks very little room to exercise any other option apart from the one provided with the notion of »*duly justified cases*«; 2. provide quite a limited timeframe for the ex-post FAP assessment, i.e. 3 weeks after the nomination (the assessment could be vague). In addition, the proposed FAP concept could result in too long a time span between the nomination of a candidate at the general shareholders’ meeting

	management body as soon as practicable and at the latest within three weeks after the appointment of the members. If the subsequent assessment by the institution resulted in a member being considered not suitable for his or her role, the competent authority should be informed without delay. The institution should inform shareholders about the assessment made and the need to appoint different members. *Differences in national company laws within EU limit the harmonisation of practices regarding ex ante assessment by institutions in particular where the shareholders appoint members of the management body that have not been proposed by the nomination committee or the management body. In this example, it is not always possible for institutions to do an ex ante assessment before the appointment and therefore an ex post assessment within a limited time period is envisaged.* Q12: Are the guidelines with regard to the timing (ex-ante) of the competent authority's assessment process appropriate and sufficiently clear?	and his/her operational status as member of the supervisory board in a bank (3 weeks + 4 to 6 months for all FAP assessments to be made). Furthermore, it is our opinion that the timeline for regulatory assessment (4–6 months) is far too long, because it has a negative impact on the length of the appointment process. We consider this timeline a serious obstacle in attracting appropriate candidates for supervisory boards in smaller banking systems. Therefore we propose the FAP process be shortened by the supervisor from 4–6 months to 2–3 months.
Para 166, p. 55	[…]… The draft guidelines require that an ex ante assessment by competent authorities is performed and that a decision is taken before the appointment of members of the management body and, for significant institutions, before the appointment of heads of internal control functions (…), unless duly justified reasons for an ex-post assessment exist. A three to four month period, to be determined by the competent authority, for the assessment is foreseen which can be suspended when additional information or documentation is needed. The current EBA guidelines published in 2012, which will be repealed after the finalisation of the consulted guidelines, took a neutral approach (competent authorities have been free to implement ex-ante or ex-post assessment processes)….[…]	In our opinion, the proposed ex-ante assessment for KFHs could prolong the employment process of such candidates. In certain cases this could result in situations where institutions have to operate without the head of the internal control function for several months (3 weeks + 4 to 6 months), which would undoubtedly increase their risks and deteriorate their internal control environment. Indeed – as already noticed in the draft guidelines (Q12) – the ex-ante assessment by the competent authority would prolong the institution's recruitment process, which will have to be accommodated within the institution's succession planning. However, it should be pointed out that in particular jurisdictions/environments/institutions (particularly the institutions which do not belong to large international banking groups) this could represent a major issue due to limited resources. For example, the notice period for resignation in banks is usually around two months. If a person

wants to apply for candidacy for a KFH in another bank, he/she has to resign from his/her previous position in this timeframe. In case the competent authority gives a negative FAP assessment (which could be subjective) for the new position (4 to 6 months), such a person could be left jobless in the end.

In case of negative (subjective) reassessments for KFHs, it is our opinion that such situations could result in:

1. an increase in the number of legal disputes between employees and institutions (it could be difficult in certain cases for the institution to prove the incompetence of a person in court);
2. the negative reputation of the prospective KFH in the entire banking system, which may even lead to such a person becoming unemployable. This is a major issue when an FAP assessment is vague and subjective and is as such shared with the competent authority. In this regard there is a great risk/possibility of injustice being done to a particular person.

Considering our above reservations, we propose creating an indicative threshold for balance sheet size below which such ex-ante assessments (or reassessments) are not made/required by the competent authority even for CRD significant institutions (e.g. EUR 15 bn on a consolidated level), and an exemption for the subsidiaries of large international banks/groups that do not exceed EUR 5 bn. Namely, even the largest CRD significant institutions in Slovenia represent only a minor part of the EU banking system, most of them having fewer than 500 employees.

Furthermore, it is our opinion that the timeline for regulatory assessment (4–6 months) is far too long, because it has a negative impact on the length of the recruitment process. We consider this timeline a serious obstacle in attracting appropriate candidates for KFHs in smaller banking systems. Therefore we propose the FAP process be shortened by the supervisor from 4–6 months to 2–3 months.

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