AFME Response to EBA Consultation on Draft Guidelines on Internal Governance

(to be submitted via EBA online form)
27 January 2017

Question 1: Are the guidelines regarding the subject matter, scope, definitions, and implementation appropriate and sufficiently clear?

The draft Guidelines are generally appropriate. In some cases, they are very detailed. We would have preferred to have seen higher level guidelines rather than the granular detail contained in the draft Guidelines and we suspect that some competent authorities will prefer not to comply with some of the more detailed suggestions such as those we refer to below.

As a generality, the Guidelines also appear to have been drafted with dual board structures in mind, and those jurisdictions which have dual board structures will find it easier to comply with the guidelines then those with unitary board structures (but the Guidelines are still difficult for dual board firms because the general drafting is in some areas unclear). For example, the Guidelines' distinction between the management body acting in its supervisory function and the management body acting in its management function sit more easily with a dual board structure than a unitary board structure. We would therefore suggest the Guidelines need to be rewritten to ensure that they can easily be complied with by firms with unitary board structures as by those with dual board structures.

Specific comments:

Current descriptions in the Guidelines create confusion between roles of executive functions, management functions and supervisory functions, which makes the management body overloaded with subjects which should concern senior management. It should be made clear the Guidelines should not undermine the national company law as provided for Recital 55 of CRD4.

We note that the term 'key function holders' does not exist under either Directive 2013/36/EU (CRD4) or Directive 2014/65/EU (MiFID2). We question, therefore, the legal basis for introducing this term, although it is used in the existing EBA 2012 Guidelines. If, notwithstanding that, the term is to be used, we request additional clarification as to how 'key function holders' differ from 'material risk takers' as defined in Commission Delegated Regulation (EU) 604/2014. We also suggest that the definition should be limited to the Chief Finance Officer (CFO) and heads of key internal control functions of consolidated CRD institutions.

In paragraph 12, the scope of the Guidelines should be specified, taking into account entities belonging to a group. It is critical for effective risk management, and a level playing field with non-EU groups (see Q8), that duplication of formalities and documentation required at the different levels of a group organisation are avoided, where possible. According to these principles, for subjects handled by the group, subsidiaries should be able to benefit from lighter requirements, for example when developing low or non-regulated activities, or where their processes are largely directed from head office, and these may, in some cases, lead to exemptions. A general principle should also be added to give the possibility that many subsidiaries, where legally permissible, may rely on existing processes or rules defined at Group level, as adopted by the board, or covered by an outsourcing agreement, as appropriate.

On definitions, we also believe that it would be clearer to remove the word *"risks"* from the wording applied to *"Chief Financial Officer"*, as this implies the management of financial risks such as credit or market risks. In

addition, the *"Conflicts of interest"* definition appears to exclude internal conflicts (i.e. only conflicts including a personal interest within current definition), which we imagine is not the intention.

Question 2: Are there any conflicts between the responsibilities assigned by national company law to a specific function of the management body and the responsibilities assigned by the Guidelines, in particular within paragraph 23, to either the management or supervisory function?

AFME as a pan-European organisation does not have detailed knowledge of national company laws.

However, more generally, we understand those guidelines as putting forward three definitions:

- The management body in its supervisory function: corresponds to the supervisory function;
- The management body in its management function: combines the executive function (CEO and Deputy-CEOs in unitary board structures) and some functions of the management function (i.e. board of directors in unitary board structures);
- The management body: corresponds to supervisory and management/executive functions.

Those definitions match with the objectives of CRD4 about the separation of functions between executive and supervisory functions.

However, as each national law is different and because CRD4 expressly mentions in Recital 55 *"Different governance structures are used across Member States. In most cases a unitary or a dual board structure is used. The definitions used in this Directive are intended to embrace all existing structures without advocating any particular structure. They are purely functional for the purpose of setting out rules aimed at a particular outcome irrespective of the national company law applicable to an institution in each Member State. The definitions should therefore not interfere with the general allocation of competences in accordance with national company law"*, we strongly recommend that the guidelines expressly clarify that when the term 'management body' is used, Recital 55 of CRD4 applies, including that the term refers globally to both the management and the supervisory function and that the effective missions allocated to the 'management body' shall be allocated to the right body under applicable national law.

This can be illustrated by taking an example in these draft Guidelines. Paragraph 70 states that: *"The management body should define, adopt and maintain a governance policy to implement a clear organisational and operational structure with well-defined, transparent and consistent lines of responsibility taking into account the aspects set out in Annex I of these guidelines. The management body in its management function is responsible for the implementation of that policy. The management body in its supervisory function is responsible for overseeing its implementation and that it is fully operating as intended and should ensure that the institution's policy is aligned with the institution's overall internal governance arrangements, corporate culture and risk appetite"*. This paragraph clearly shows that the term 'management body' is used to cover both supervisory and management functions, whereas the Guidelines specify when needed between those two functions.

To give a further example, from a French perspective it is difficult to understand responsibilities assigned to CEOs versus management body in its supervisory function. Under French law, due to the *"collective responsibility of the management body"*, executive members can belong to the management body in its supervisory function: paragraph 17 & 24a do not match with the applicable law.

To be compliant with national laws, we would also recommend to delete the provision of paragraph 24a of the draft Guidelines, which provides that *"the management body in its supervisory function should have suitable members who do not perform executive function in the institution"*). In fact, CEO/COOs shall not be prevented

of being part of the management body in its supervisory function if it is allowed under national law. Paragraph 17 of the draft Guidelines raises the same concern. If paragraph 24a of the draft Guidelines is not deleted, it should at least provide that the management body in its supervisory function may comprise members that perform an executive function, if permitted by national law.

Some specific comments on certain aspects as follows:

On paragraph 23, we suggest the following change: *"The management body in its supervisory function should monitor and constructively challenge the strategy of the institution, management actions and ~~decisions and perform their role independently from the management body in its management function~~. The management body in its supervisory function should oversee the management body in its management function by monitoring and scrutinizing its performance ~~and the implementation of the institution's strategy and objectives in line with the strategy and objectives that have been defined and approved by the former.~~ The management body in its supervisory function should also ensure the integrity of the financial information and reporting, and internal control framework, including effective and sound risk management."*–The contradiction between this paragraph and the general affirmation that both board systems are taken into account is clear: if references to one or another function are to be *"understood as applying to the management body which is responsible for that function according to national law"* (paragraph 9) and under a unitary board system both functions fall under the same body, then naturally the functions will not be performed independently in the way that paragraph 23 expects. Both functions are performed, yet not independently from one another, rather in a coordinated manner. It should be stressed that, in unitary board structures, monitoring and constructive challenge will be performed altogether by the board, by all of its members, yet there is no legal framework that allows assigning supervisory duties or functions to some members in particular. Therefore, in unitary board systems, the wording in paragraph 23 as it stands in the draft Guidelines can only be read as compelling the Board to challenge itself and oversee itself.

In paragraph 29, we suggest that the wording *"should constructively participate in the discussions"* be revised, given that supervisory board members do not participate in management board meetings in the context of a unitary board system.

As currently drafted, paragraphs 30-33 imply that strategy is implemented only by the management board, and is set by the management board and supervisory board together. In a dual board structure, both setting and implementation is performed by the management board. In addition, paragraph 33 should differentiate between material developments threatening an institution as a whole - where there should be no undue delays - and other ad-hoc disclosures where time is not of the essence.

Q3: Are the guidelines in Title I regarding the role of the management body appropriate and sufficiently clear?

Please see our answers to Q1 & Q2 on the clarifications needed on the management body role and the definition of their supervisory or management functions. The current wording in the Guidelines creates confusion between roles of the executive function, management function and supervisory function and inconsistencies with national law, notably in relation to unitary board structures. It makes the supervisory function of the management body overloaded with subjects which should concern the management function.

From a global point of view:

- The specific case of entities within a group should be taken into account (proportionality principle). On a practical standpoint for instance, imposing too detailed an agenda on local management bodies may induce excessive formalism, inefficient proceedings and very significant extension of the time spent during the board sessions for instance. This would be detrimental to the efficiency and agility of EU financial groups as compared to those under other jurisdictions. It could also, for instance favour, non-EU banks within the EU, should their European corporate holding be outside the EU.

- The independence criteria of members of the management body is not provided for in CRD4 and it should therefore be removed from these Guidelines. Should the independence criteria be maintained, the guideline should only refer to independence of mind of the members, as stipulated in the ECB Guide. Indeed, the notion of independence of the Guidelines may be very difficult to implement, if based on a very restrictive definition of 'independence', such as those provided in some national soft laws or laws but mainly for listed entities:
  - Some reasons lie in the limited number of board members of many regulated entities, the difficulty of finding adequate independent profiles and the costs it imposes;
  - Other reasons lie in the fact that in many cases, having systematically 'independent members' may not add much added value in the supervision process: it may create additional burdens and slow down decision-making processes. This is particularly the case for fully-owned subsidiaries of a group, which is not taken into account in the Guidelines.

  The restrictive approach of independent members of the management body may only be truly efficient and appropriate for heads of groups or listed entities. For fully-owned subsidiaries of a group, the notion of independence should be adapted, for instance by the fact that an independent member could be a parent company employee, who does not report to the business line of the subsidiary in which he/she is appointed.

- In addition, CRD4 does not require the risk committee to be composed of independent members, apart from members of the management body who do not perform executive functions. Also, the nomination committee, apart from the members of the management body who do not perform executive functions and members of the supervisory body, does not have to be composed of independent members. If the notion is nevertheless kept in the guidelines we suggest that instead of *"… the specialised committees should be composed of a sufficient number of independent members…"* it should read *"…the specialised committees <u>may</u> be composed of a sufficient number of independent members…"*. These requirements as they stand, go beyond of what is established in CRD4. It should be left to individual firms to decide how many independent directors are necessary.

- Moreover, the reference to the audit committee is out of scope of CRD4, which does not refer to the audit committee, which is covered by other directives and national laws. (paragraph 42, 43, 50, points 5.5 and 5.6...). We would question whether it is the intention of the EBA to include requirements from the Statutory Audit Directive in these Guidelines.

Some specific comments on certain aspects as follows:

In section 5.1 which deals with the 'setting up of committees', it should be clarified that any decision to set up specialised committees is up to the discretion of the respective board, if not a significant firm. Otherwise, composition requirements are as set out in CRD4. In addition, the audit committee should be included as a required committee for significant institutions as per the Statutory Audit Directive 2014/56/EU.

In paragraph 39, it would be useful to recognise the different roles of the supervisory function within unitary and dual board firms. Specifically, it would be helpful to provide guidance on how board committees could

impact the management function in a dual board firm, where there is no direct relationship as in a unitary board structure.

On paragraph 42, the Guidelines establish that the majority of the members of the risk committee should be independent. However, CRD4 already requires that members cannot perform executive functions in the entity and must have appropriate knowledge and expertise. Indeed, CRD 4 Article 76(3) sets out the requirements for the members of the risk committee, and these should not be modified. The number of members of the risk committee should be sufficient (as determined by the firm).

Paragraph 43 states that members of the risk committee should have individually and collectively appropriate knowledge skills expertise and professional experience concerning risk management and control practices and extends the same (mutatis mutandis) to members of the nomination committee and the audit committee. We agree that members of these committees should collectively have the appropriate knowledge skills expertise and professional experience, but not that each individual member needs to have them. This would be particularly challenging for a dual board structure that has a different set of individuals performing the supervisory function.

Paragraph 45 goes beyond local requirements. We suggest it should be optional in relation to certain entities of a group, such as non-listed entities or non-material entities exclusively controlled by a group. Only significant heads of groups, whose shares are quoted on a regulated market, should be concerned. The EBA should clarify the permissibility of group employees to perform roles in the supervisory function of the management body of fully-owned subsidiaries, including whether they can be considered to be independent for the purposes of these guidelines. Currently this would be a common approach to ensure suitable candidates are available to provide effective group governance in global financial groups.

Paragraph 46 refers to the risk and nomination committees receiving regular reports of any breaches that may have occurred, as well as detailed information on and recommendations for corrective measures taken. In our view, such reporting should cover material breaches only. The Guidelines described in this paragraph may not always be applicable to subsidiaries fully integrated in a group. It should be specified that for entities fully integrated in the organisation of a group structure, the Committees can, subject to local law, rely on the existing processes of their parent company. In addition, the requirements may relate more to a risk committee than a nominations committee.

Paragraph 47 states that the risk committee should review the proposed appointment of external consultants that the supervisory function may decide to engage for advice or support. We do not consider this review to be necessary for all such appointments. Furthermore, points (a) and (d) should be reconsidered for a dual board structure, where the supervisory board does not set the risk appetite, strategy or corporate culture. Given (b) and (c) are dealing with the same subject matter, we would advise to merge these. Point (d) includes a requirement for the risk committee to advise the supervisory Board on risk strategy, but this is set by the management board. Finally, in point (g) *"all"* should be deleted in relation to *"financial products"* to factor in reasonable materiality and product grouping.

Paragraph 49 seems to go beyond CRD4 requirements. There should be coordination among the Board and its committees, but entities should be able to implement those coordination mechanisms they deem more appropriate in accordance with their corporate governance system (e.g. cross memberships in committees).

Paragraph 50 deals with the role of the internal audit committee. However, it is only mandated to look at the effectiveness of internal audit function in terms of reporting. It should be clarified which function should assess the broader effectiveness of internal audit.

In a group context, considering the proportionality principle, our view is that the written, clear and detailed description of the operational structure in paragraph 53 should be mainly applicable to heads of group, significant regulated entities and listed entities, but not necessarily to all entities within the group. The precisions required appear too detailed in the Guidelines. This should be softened.

Paragraph 54 set out the requirement that all members know how responsibilities are divided up between all key function holders, we would strongly argue that a materiality threshold be introduced for significant firms with large numbers of individuals in the population.

On paragraph 56, to avoid overloading the management bodies and interference of the management body in its supervisory function in day to day management of the institution, only material and important changes on the group structure should be considered for assessing the impact on the soundness of the institution's organisational framework.

Paragraph 57 says *"The management body should know and understand the organisation and operational structure of an institution ("Know Your Structure")* ~~*and ensure that it is in line with its approved business and risk strategy, and risk appetite*~~*."* We suggest deleting the latter part of this sentence as understanding the structure of institution in line with risk appetite is a confusing concept without further explanation.

Paragraph 60 requires all board members *"know the purpose and activities of its different entities"*, which is unachievable in certain circumstances. For the largest consolidated groups in the EU, they may have over 20,000 legal entities (inc. SPVs) within their group and so we would recommend limiting this requirement such that board members would be required to know the purpose and activities of only the most material entities within their group. In addition, we suggest the removal of sub-points (a)-(c) given the level of detail required exceeds that of other risks such as market or credit.

Paragraph 61 lists the requirements of the management body in relation to group structure and entities. We note that third country entities may be subject to local restrictions on what data can be disclosed cross-border, and request that the Guidelines explicitly take this into account.

Paragraphs 63 and 64 discourage the use of *"structures [that] may be used for a purpose connected with…. financial crime"*. This is meaningless and so wide as to cover many perfectly valid structures. It should be replaced *by "structures that are designed to encourage, or have the effect of encouraging… financial crime"*.

<u>Q4: Are the guidelines in Title II regarding the internal governance policy, risk culture and business conduct appropriate and sufficiently clear?</u>

As a general comment on this section, the expressions 'Governance Policy' and 'Governance Framework' are both used. There needs to be clarity as to the usage of each term, as 'Policy' and 'Framework' do not have identical meanings.

We also note that there is an inherent tension between ensuring all arrangements, processes and mechanisms are overseen by the management body of each legal entity, while also ensuring that they are overseen by any consolidating institution and its management body. While paragraph 76 seems designed to recognise the need for group-wide arrangements, processes and mechanisms, the drafting elsewhere in Title II requires each management body to approve a range of specific arrangements and policies. We would urge the EBA to

consider language that recognises that some arrangements, processes and mechanisms can and should be managed at a consolidating entity level, with the responsibility apportioned to them management body of the specific subsidiary limited to ensuring the arrangements and policies meet local legal requirements and overseeing the subsidiaries compliance with the arrangement or policy. This principle should be available both for EEA headquartered institutions and subsidiaries of non-EEA headquartered institutions, for at least some aspects of the matters set out in the guidelines, on the basis that some issues should be managed on a group-wide basis, to ensure consistency and strong controls.

For example, with regard to the requirement for an internal governance policy, or policies on conflicts of interest, corporate values, codes of conduct, internal alert procedures and outsourcing, there is considerable benefit and logic in ensuring these are group wide policies and not determined or set on a legal entity by legal entity basis. Where a group-wide policy is appropriate, requiring its formal adoption by a subsidiary management body risks creating a procedural box checking process that takes away time from the management body's substantive oversight of the specific business in that subsidiary. We would suggest Title II including a general provision permitting subsidiaries to rely on group arrangements policies, with subsidiary management body oversight focused on compliance with those arrangements and policies. It should be clarified whether the subsidiary board should take any action to adopt these group policies, or whether they should be directly applicable.

Paragraph 70 references Annex I of the Guidelines, which lists the aspects that institutions should take into account in their internal governance policy. However, we are concerned by the suggestion that these should be covered by a single policy, for the following reasons:

(i) Many aspects of the corporate governance policy are determined by mandatory provisions of national law and, therefore, they are not up to the management body to decide on or approve.

(ii) The majority of the listed aspects have been already documented and approved by the relevant corporate bodies (by-laws, Board regulations, corporate governance reports, etc.) in accordance with national law requirements. Therefore, these corporate documents should qualify as part of the internal governance policy of the institution.

(iii) Some aspects do not seem to be the subject matter of a corporate policy, which is supposed to be general strategic principles with a vocation of lasting over time. Thus, some are facts changing from time to time (e.g. range of products, subsidiaries and joint ventures, etc.), others are matters that need to be supervised, rather than approved (weaknesses identified by each internal control functions and measures taken to address them, recommendations made by the internal audit function and measures taken to implement them, etc.).

Additionally, for unitary board structures, we are concerned that the supervisory function of the management body should not be overloaded with tasks that are of an executive nature, as this may prevent the board from sufficiently fulfilling its supervisory mission.

In Annex I, as referenced in paragraph 70, it should be clarified what is meant by "free provision of services" under 7e.

Paragraph 72 states that the compliance function should analyse how the governance policy affects the institution's compliance with legislation, regulations and internal policies and should report all identified compliance risks and issues of non-compliance to the management board. The compliance function cannot be responsible for analysing all legislation; it should be responsible for conduct compliance and other functions should be responsible for analysis of legislation within their subject matter expertise; and secondly, reporting to the management board should cover only material risks and material issues of non-compliance.

Paragraphs 75-79 discusses governance policy in a group context. It would be useful to clarify whether the expectation is for firms to draft separate policies for each non-EU entity within its prudential consolidation and have a central group policy that can apply to all EU entities. In our view a group wide policy should suffice, and this would reduce unnecessary administrative burden on firms with multiple legal entities.

As stated already, the extension, in paragraph 75, of the proposed Guidelines to *"all consolidated or sub-consolidated subsidiaries of a credit institution"* will significantly increase the reporting burden for them. We also fear it might not add real value for low- or non-regulated subsidiaries. Already, such subsidiaries often are in a detrimental situation vis-à-vis their competitors that do not belong to a credit institution, be it in terms of customer service, speed of reply, cost of doing business etc. Such a situation creates a hurdle for banking groups to develop rental, leasing or consumer finance activities, for instance, whereas they add value for the customers thanks to the synergies or the international coverage a bank can bring to such markets. It would be only natural that such activities are more easily exempted from prudential consolidation when a pure risk approach does not require it. In this respect, the proportionality principle developed in Title III of the Guidelines is welcome but probably not sufficient. We would suggest that EBA enrich its guidelines towards EU Competent Authorities with a view to facilitate exemptions for non-listed entities, and low- or non-regulated business.

It should also be clarified in paragraph 75 whether a 'comply or explain' approach would meet the *"consistent and well-integrated"* requirement for governance arrangements, processes and mechanisms (i.e. as set out in FAQs of EBA Internal Governance 2011 version).

We propose the following amendment to paragraph 76: *"At the consolidated or sub-consolidated level, the consolidating institution and competent authorities should ensure the adherence ~~that a~~ to the group-wide written internal governance policy describing arrangements, processes and mechanisms ~~is implemented and complied with~~ by all institutions ~~and other entities~~ within the scope of prudential consolidation~~, including their subsidiaries not subject to Directive 2013/36/EU".~~*

The Guidelines' requirement in paragraph 77 is too extensive and demanding. Specific legal requirements should be taken into account at the local level but are not manageable directly by the parent company.

The extra-territorial application of Paragraph 78 includes third country subsidiaries in the scope of prudential consolidations. This may put third country subsidiaries of EU entities at a competitive disadvantage with respect to local entities, which may be subject to less restrictive local regulations, for example on remuneration.

The requirement to disclose every conflict case (and how they are mitigated), noted in paragraphs 90-103, would be excessively burdensome for significant firms. Materiality thresholds or types of conflicts in which authorities envisage the requirement captured should be clarified.

Paragraph 95 requires an institution to issue a statement in respect of the mitigation or remedying of any conflict of interest that is identified. Again, this should be restricted to material conflicts of interest. Additionally, there are already many national laws which provide mechanisms for addressing conflicts of interest and establishing relevant transparency requirements. The requirement to issue a statement may cut across these.

Internal alert procedures (a.k.a. whistleblowing) are described in paragraphs 96ff. These should be permitted to be operated via a third-party company or another member of the institution's group.

Q5: Are the guidelines in Title III regarding the principle of proportionality appropriate and sufficiently clear?

The Guidelines are appropriate and sufficiently clear, save as set out below:

Concerning the purpose of application of the principle of proportionality, a clarification is needed in paragraph 112 to provide that this is a list of indicators, which is not binding.

Q6: Are the guidelines in Title IV regarding the internal control framework appropriate and sufficiently clear?

Regarding paragraph 116, in a group context, when entities are fully integrated in the different processes of their parent company, the internal control framework of an entity may depend on the internal control framework of its parent company. Thus, for efficiency's sake and better risk management, the Guidelines should leave the possibility for some subsidiaries to rely on existing processes or rules defined at group level, as adopted by the board or covered by an outsourcing agreement, as appropriate.

Paragraph 131 should permit institutions to consider the appropriate levels of risk, subject to other regulatory requirements. Certain risks are managed on an entity basis and they offset each other or be mitigated with diversification, so a business line approach may not be most appropriate.

Paragraph 141 requires institutions to establish regular and transparent reporting mechanisms for the purpose of reporting the management of risks to the management body and relevant committees. We agree that the high-level framework should be documented in the Risk Management Framework and approved by the management body. However, it would create an unnecessary administrative burden for significant institutions if every individual detail and change thereto require such approval.

Paragraph 158 deals with the Risk Management Function's (RMF) role in evaluating material changes to an institutions overall risk. *"Material changes"* should be clarified to clearly set out what would require the RMF's involvement. It is our view that its involvement should be restricted to only material impacts on the risk profile of the institution, so that reporting is not required where there are no material findings.

On paragraph 174, we request clarification that this requirement relates to decision made by the management body (as per paragraph 173) and not any decisions in which the CRO is involved.

Paragraphs 178 and 179 state that the compliance function should advise the management body on all laws, regulations, and standards the institution needs to comply with and assess the possible impact of any changes in the legal or regulatory environment on the institution's activities. The compliance function cannot be responsible for all legislation; it should be responsible for conduct compliance, and other functions should be responsible for legislation within their subject matter expertise.

On paragraph 182, we request examples where local laws hamper more strict procedures implemented by the group. The example of less stringent data sharing requirements could easily be interpreted as more stringent data privacy requirements. It would also be useful to provide guidance on what the expected actions of the Head of Compliance should be when they receive a notification as per this section.

On paragraph 189, for the parent company of the group, the IAF does not have an automatic access to minutes of the management body in its supervisory function, otherwise, it should give the right to senior management to audit the management body. On a similar basis, the IAF does not audit social partners' activities. We suggest that "unfettered access" may be implying a greater obligation than is intended, and that including the term *"upon request"* after *"access"* would reduce practical implementation issues for significant firms.

Q7: Are the guidelines in Title V regarding transparency of the organization of the institution appropriate and sufficiently clear?

The guidelines are appropriate and sufficiently clear.

Q8: Are the findings and conclusions of the impact assessments appropriate; please provide to the extent possible an estimate of the cost to implement the Guidelines differentiating of one-off and ongoing costs?

Due to the number of policies and procedures that an institution must adopt, implement, monitor and assess, the implementation of the Guidelines will probably involve additional staff costs.

However, such costs are difficult to predict. Indeed, such costs depend on the basis on which the guidelines must apply: consolidated or individual basis. Should the Guidelines have to be implemented at the level of each subsidiary, it will lead to extensive direct costs for institutions (administrative burden, remuneration of independent directors etc.) and indirect costs (inefficient time allocation of managers, for instance). A financial group should define the general principles. Its local subsidiaries should focus on adjusting such principles. For proper running of groups, it should not pretend that it must re-discuss all aspects listed in the Guidelines.

In this respect, it is necessary to highlight again the contradiction entailed in the Guidelines that are supposed to be applied undifferentiated at both group and the (sub)consolidated subsidiary. In the Guidelines, the subsidiary is sometimes considered as if its individuality were diluted into a seamless group. In some other respects, it is considered as an independent entity. This contradicts EU regulations: there are numerous considerations related to tax, personal data-protection, banking or trade secrecy, internal outsourcing formalization, internal controls, liquidity management, that prevent a group being managed as a single legal entity.

The mechanical outcome of the draft Guidelines would be a paradoxical deterioration of internal governance and risk management.

Another unwelcome consequence of the reporting and formalism burden created for subsidiaries within a EU financial group would be some breaches in the level playing field for subsidiaries involved in low- or non-regulated activities. Already, because of existing regulations on internal controls and governance, subsidiaries often are in a detrimental situation vis-à-vis their competitors that do not belong to a credit institution be it in terms of customers' service, speed of reply, cost of doing business etc. Such a situation will further deteriorate, including vis-à-vis subsidiaries belonging to a non-EU credit institution. It will create an additional competitive disadvantage for EU banking groups to develop rental, leasing, consumer finance activities for instance, whereas they add value for private individuals or SMEs thanks to their specific synergies, international coverage, funding capacities they bring to such markets.

The proportionality principle is not sufficient to re-establish a fair level playing field. It would be only natural that such activities are more easily exempted of prudential consolidation when a pure risk approach does not require it. We would suggest that EBA enrich its Guidelines towards EU Competent Authorities with a view to facilitate exemptions for low- or non-regulated business.

However, we believe it is possible for EBA Guidelines to really add value in the internal governance of financial groups, provided their specific organisation including with for instance matrix organisation is acknowledged in the Guidelines and by all regulators at least with the Single Supervision Mechanism (SSM). A financial group headed by a credit institution should define its general governance principles that should indeed apply to the whole group.

It is therefore of utmost importance that EBA takes into account separately these two different levels in its future Guidelines, and that it is fully accepted by all Competent Authorities within SSM.