

# Statement

On the Consultation paper for the

## **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 (“fit and proper-Guidelines”)**

### **A. Introduction**

The Association of International Banks in Germany e.V. (VIB) welcomes the opportunity to comment on the 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, published on 24 February 2026.

The draft Guidelines form part of the broader implementation of the amendments introduced by Directive (EU) 2024/1619 (CRD VI) and aim to further harmonise supervisory expectations regarding the suitability assessment of members of the management body and key function holders across the European Union. In particular, the draft Guidelines address the interaction between the revised CRD framework, MiFID II and the requirements applicable to third-country branches.

The VIB generally supports measures that contribute to a consistent, transparent and proportionate application of fit and proper requirements within the Single Market. Harmonised standards can strengthen legal certainty, facilitate supervisory convergence and contribute to a level playing field for institutions operating across borders.

At the same time, it must be ensured that the Guidelines remain within the scope of the Level 1 framework and do not create additional requirements beyond the mandate set out in CRD VI and MiFID II. This is particularly important for internationally active banking groups operating in Germany, whose governance structures often involve cross-border reporting lines, group-wide policies and matrix organisations.

Against this background, a differentiated and proportionate approach appears necessary. While common supervisory expectations may support consistency, the application of the Guidelines should take due account of existing group governance arrangements, the allocation of responsibilities between home and host supervisors, and the legal and operational limitations faced by subsidiaries and branches of international banking groups. In particular, the Guidelines should avoid creating duplicative documentation requirements, unclear extensions of the scope of key

function holders, or a de facto individualisation of responsibility that would go beyond the collective responsibility of the management body under the CRD framework.

## **B. Extension of the supervisory framework to key function holders (Question 2)**

The proposed extension of supervisory power to key function holders in general appears to exceed the framework established under CRD VI.

### **1. Reference**

Title II, Section 3, paragraph 44 second sentence of the draft Guidelines states:

*“Where the assessment for some key function holders is also carried out by competent authorities for supervisory purposes (...).”*

### **2. Reasoning**

This provision appears to go beyond the scope of the framework established under CRD VI. While CRD VI requires institutions to ensure the suitability of key function holders internally, it does not establish a general supervisory suitability assessment regime for all key function holders.

In effect, it introduces the basis for a broader supervisory suitability regime for key function holders generally, although CRD VI does not provide for such a regime. CRD VI expressly provides for supervisory assessments only with regard to the heads of internal control functions and the chief financial officer of large entities (Article 91a (5) CRD VI). By contrast, in relation to key function holders, competent authorities are merely empowered to request information where necessary for the purpose of effective supervision (Article 91a (4) CRD VI).

The wording of the draft Guidelines could therefore be interpreted as establishing a systematic supervisory suitability assessment framework extending beyond the categories expressly referred to in Article 91a (4), (5) CRD VI.

### **3. Suggestion**

Replacement of Title II, Section 3, paragraph 44 sentence 2 of the draft guidelines by the following:

*“The entities shall provide up-to-date information on the suitability of key function holders upon request by the competent authorities.”*

## **C. Extension of the supervisory framework to „key function holders”, „other key function holders” and to „other than large entities” (Question 9)**

The introduction of a basis for extending supervisory powers to key function holders generally, to “other key function holders” and to entities other than large entities appears to go beyond the framework established under CRD VI.

## I. Key function holder

### 1. Reference

The draft Guidelines refer, in the context of “supervisory procedures” to both “other key function holder” and “key function holder”.

Title VIII, Section 23, paragraph 193:

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

### 2. Reasoning

As stated above in response to Question 2, CRD VI does not establish a general supervisory framework for key function holders. Rather, Article 91a (5) CRD VI is expressly limiting the supervisory power to the heads of internal control functions and the chief financial officer of large institutions.

Paragraph 193 of the draft Guidelines would allow competent authorities to extend similar supervisory procedures to other key function holders and to entities other than large entities. This would give competent authorities discretion to broaden the supervisory suitability framework beyond the categories expressly provided for in CRD VI.

Such discretion risks inconsistent implementation across Member States and may result in national gold-plating. This would be particularly burdensome for cross-border banking groups operating under different home and host supervisory regimes.

### 3. Suggestion

Deletion of the second and third sentence of Title VIII, Section 23, paragraph 193 as:

~~*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.*~~

## II. Other key function holders

### 1. Reference

The draft Guidelines introduce the additional category of “other key function holders”. Reference is made to:

- Title VIII, Section 23, paragraph 193  
*„Where deemed necessary by competent authorities similar procedures should be specified for other key function holders in large entities”*  
  
and
- Title VIII, Section 26, paragraph 233  
*“key function holders addressed in Article 91a (5) of Directive 2013/36/EU and where applicable other key function holders”*

## **2. Reasoning**

Art. 3 (1) point 9a CRD VI defines “key function holders” as follows:

*“...means the persons who have significant influence over the direction of an institution but are not members of the management body, 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”*

CRD VI refers exclusively to “key function holders” and does not establish a separate category of “other key function holders”.

The relevant provisions of the draft Guidelines therefore appear to introduce a basis for competent authorities to extend supervisory suitability assessments beyond the scope defined under CRD VI. This could effectively result in a broader supervisory regime for additional categories of staff not envisaged by the Level 1 text.

Moreover, granting competent authorities discretion to introduce such additional supervisory procedures may result in inconsistent supervisory practices across Member States.

In particular, the term “other key function holders” should not be used as a basis for introducing additional supervisory approval or assessment procedures for persons who are not covered by Article 91a (5) CRD VI.

## **3. Suggestion**

Deletion of the following passages:

- Title VIII, Section 23, paragraph 193:  
~~*„Where deemed necessary by competent authorities similar procedures should be specified for other key function holders in large entities”*~~
- Title VIII, Section 26, paragraph 233:  
~~*“...and where applicable other key function holders”*~~

## **III. Other than large entities**

### 1. Reference

Title VIII, Section 23, paragraph 193 of the draft Guidelines states:

*„Additionally, competent authorities should consider setting out similar supervisory procedures for assessing the suitability of key function holder in entities **other than large entities.**“*

### 2. Reasoning

Art. 91a (1), in conjunction with Art. 91 (1) and Art 21a (1) CRD VI limits the relevant supervisory framework to large entities.

The wording of the draft Guidelines would, however, provide a basis for competent authorities to extend supervisory suitability assessments to institutions other than large entities. This would go beyond the scope of Art. 91a (5) CRD VI.

### 3. Suggestion

Deletion of the following sentence in Title VIII, Section 23, paragraph 193:

~~*Additionally, competent authorities should consider setting out similar supervisory procedures for assessing the suitability of key function holder in entities other than large entities.*~~