

EBA/GL/2017/12

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# Final report

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Joint ESMA and EBA Guidelines

on the assessment of the suitability of members of the  
management body and key function holders under  
Directive 2013/36/EU and Directive 2014/65/EU

# Guidelines on the assessment of suitability

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<b>Executive Summary</b>	<b>4</b>
<b>Background and rationale</b>	<b>6</b>
<b>1. Compliance and reporting obligations</b>	<b>16</b>
<b>2. Subject matter, scope and definitions</b>	<b>17</b>
<b>3. Implementation</b>	<b>22</b>
<b>4. Guidelines</b>	<b>23</b>
Title I - Application of the proportionality principle	23
Title II – Scope of suitability assessments by institutions	24
1. The institutions’ assessment of the individual suitability of members of the management body	24
2. The institutions’ assessment of the collective suitability of the management body	26
3. The CRD-institutions’ assessment of the suitability of key function holders	27
Title III – Notions of suitability listed in Article 91(12) of Directive 2013/36/EU	28
4. Sufficient time commitment of a member of the management body	28
5. Calculation of the number of directorships	30
6. Adequate knowledge, skills and experience	32
7. Collective suitability criteria	34
8. Reputation, honesty, and integrity	35
9. Independence of mind and independent members	37
9.1 Interaction between independence of mind and the principle of being independent	37
9.2 Independence of mind	38
9.3 Independent members of a CRD-institution’s management body in its supervisory function	39
Title IV – Human and financial resources for training of members of the management body	42
10. Setting objectives of induction and training	42
11. Induction and training policy	42
Title V –Diversity within the management body	44
12. Diversity policy objectives	44
Title VI – Suitability policy and governance arrangements	45
13. Suitability policy	45
14. Suitability policy in a group context	47
15. Nomination committee and its tasks	48

16. Composition of the management body and the appointment and succession of its members	48
Title VII – Assessment of suitability by institutions	49
17. Common requirements for the assessment of the individual and collective suitability of members of the management body	49
18. Assessment of the suitability of individual members of the management body	52
19. Assessment of the collective suitability of the management body	53
20. On-going monitoring and re-assessment of the individual and collective suitability of the members of the management body	53
21. Suitability assessment of key function holders by CRD-institutions	55
22. Institutions’ corrective measures	56
Title VIII – Suitability assessment by competent authorities	57
23. Competent authorities’ assessment procedures	57
24. Decision of the competent authority	59
25. Cooperation between competent authorities	61
<b>Annex I – Template for a matrix to assess the collective competence of members of the management body</b>	<b>63</b>
<b>Annex II – Skills</b>	<b>64</b>
<b>Annex III – Documentation requirements for initial appointments</b>	<b>66</b>
<b>5. Accompanying documents</b>	<b>70</b>
5.1. Draft cost-benefit analysis / impact assessment	70
5.2. Feedback on the public consultation and on the opinion of the Banking Stakeholder Group (BSG) and the Securities and Markets Stakeholders Group (SMSG)	85
Annex A – EBA benchmarking regarding the number of directorships, time commitment and training	131

## Executive Summary

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In accordance with the requirements introduced by Directive 2013/36/EU and Directive 2014/65/EU, the European Securities and Markets Authority (ESMA) and the European Banking Authority (EBA) jointly issue Guidelines on the notions of suitability, as required by Article 91 (12) of Directive 2013/36/EU and Article 9 (1) of Directive 2014/65/EU<sup>1</sup>, and on the assessment of suitability by institutions and competent authorities.

The directives aim to remedy weaknesses that were identified during the financial crisis regarding the functioning of the management body and its members. The Guidelines aim to further improve and harmonise the assessment of suitability within the EU financial sector, and to ensure sound governance arrangements in institutions.

The Guidelines apply to all institutions, independent of their governance structures (unitary board, dual board or other structures), without advocating or preferring any specific structure as set out in the defined scope of application. The terms 'management body in its management function' and 'management body in its supervisory function' should be interpreted throughout the Guidelines in accordance with the applicable law within each Member State.

The Guidelines specify that all institutions have to assess the members of the management body. Institutions that are subject to Directive 2013/36/EU also have to assess all key function holders that have a significant influence over the direction of the institution under the overall responsibility of the management body. Competent authorities are required to assess all members of the management body. For significant CRD-institutions, competent authorities should assess the heads of internal control functions and the chief financial officer (CFO), where they are not members of the management body. This should be done at the highest level of consolidation, for significant CRD-institutions that are part of a group, but not subject to prudential consolidation by a significant consolidating CRD-institution and at the individual level, if the significant CRD-institution is not part of a group.

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

To ensure that members of the management body commit sufficient time to performing their functions, the Guidelines set a framework for assessing the time commitment expected of members of the management body and specify how the number of directorships is to be counted.

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<sup>1</sup> Directive 2014/65/EU enters into application on 3 January 2018

It is important to improve the diversity of management bodies to overcome the risk of ‘group think’; to this end, the Guidelines determine how diversity is to be taken into account in the process for selecting members of the management body.

Induction and training are key to ensure the initial and ongoing suitability of members of the management body; institutions are therefore required to establish training policies and to provide for appropriate financial and human resources to be devoted to induction and training.

## Next steps

The EBA and the ESMA have published their joint Guidelines on the assessment of the suitability of members of the management body which will enter into force on 30 June 2018. The existing EBA Guidelines, published on 22 November 2012, will be repealed at the same time. On the same date the EBA Guidelines on Internal Governance will come into force.

# Background and rationale

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1. Weaknesses in corporate governance, including inadequate oversight by and challenge from the supervisory function of the management body in a number of credit institutions and investment firms, have contributed to excessive and imprudent risk-taking in the financial sector which has led in turn to the failure of individual institutions and systemic problems.
2. Against this background, it has become obvious that the role and responsibilities of management bodies in both their supervisory and management functions should be strengthened in order to ensure sound and prudent management of credit institutions and investment firms, to protect the integrity of the market and the interest of consumers.
3. Directive 2013/36/EU and Directive 2014/65/EU include requirements to remedy weaknesses that were identified during the financial crisis regarding the functioning and composition of the management body and the qualification of its members.
4. The Guidelines are intended to apply to all existing board structures and do not advocate any particular structure. The Guidelines do not interfere with the general allocation of competences in accordance with national company law. Accordingly, they should be applied irrespective of the board structures used (unitary and/or dual board structure and/or other structures) across Member States. The management body, as defined in points (7) and (8) of Article 3(1) of Directive 2013/36/EU, should be understood as having management (executive) and supervisory (non-executive) functions.
5. The terms 'management body in its management function' and 'management body in its supervisory function' are used throughout these Guidelines without referring to any specific governance structure and references to the management (executive) or supervisory (non-executive) function should be understood as applying to the bodies or members of the management body responsible for that function in accordance with national law.
6. In Member States where the management body delegates, partially or fully, the executive function to a person or an internal executive body (e.g. chief executive officer (CEO), management team or executive committee), the persons who perform those executive functions on the basis of that delegation should be understood as constituting the management function of the management body. For the purposes of these Guidelines any reference to the management body in its management function should be understood as including also the members of the executive body or the CEO, as defined in these Guidelines, even if they have not been proposed or appointed as formal members of the institution's governing body or bodies under national law.
7. The management body is empowered to set the institution's strategy, objectives and overall direction and oversees and monitors management decision-making. The management body in its management function directs the institution. Senior management is accountable to the management body for the day-to-day running of the institution. The management body in its supervisory function oversees and challenges the management function and provides

appropriate advice. The oversight roles include reviewing the performance of the management function and the achievement of objectives, and monitoring and ensuring the integrity of financial information as well as the soundness and effectiveness of the risk management and internal controls.

8. Considering all existing governance structures provided for by national laws, competent authorities should ensure the effective and consistent application of the Guidelines in their jurisdiction in accordance with the rationale and objectives of the Guidelines themselves. For this purpose, competent authorities may clarify the governing bodies and functions to which the tasks and responsibilities set forth in the Guidelines pertain, when this is appropriate to ensure the proper application of the Guidelines in accordance with the governance structures provided for under the national company law.
9. Investment firms as defined by and falling under the scope of Directive 2014/65/EU may be set up as limited companies or as other legal forms, including those cases where investment firms are natural persons or investment firms are legal persons managed by a single natural person (as described under Article 9(6) of MiFID II). In some situations, the management body may comprise a small group of individuals who will each perform both executive and supervisory functions. Where these Guidelines refer to the management body in its management and supervisory functions, and, pursuant to national law, these functions are not assigned to different bodies or different members within one body, the activities of both functions should nonetheless be performed by the management body.
10. Branches in a Member State of institutions authorised in a third country are subject to suitability requirements equivalent to those applicable to institutions within Member States. As those branches do not have a management body independent of their head office, such branches and competent authorities should assess the individuals who effectively direct the branch. For the assessment of the suitability of the CFO, the heads of internal control functions and, where identified by branches on a risk based approach, other key function holders, it is expected that competent authorities apply these Guidelines by analogy.
11. These Guidelines set out the measures for the assessment of the suitability of members of the management body, including the CEO, even when he or she is not part of the institutions governing body or bodies in accordance with national law. The Guidelines also foresee the assessment of the CRD institution's key function holders (i.e. the CFO and the heads of internal control functions where they are not part of the management body and, where identified by institutions on a risk based approach other key function holders) who have a significant influence over the direction of the business. These assessments are considered to be proportionate to ensure robust governance arrangements that ensure the effective and prudent management of institutions as required in particular by Articles 74, 88 and 91 of Directive 2013/36/EU.
12. Where the Guidelines refer to the CEO, CFO, heads of internal control functions and other key function holders, they do not intend to impose the appointment of such persons unless prescribed by the relevant EU or national law. If activities of an internal control function are performed by an outsourcing provider, the management body retains responsibility for the activities performed on behalf of the institution.

13. Other than for the purposes of the legislation applicable to institutions specifically under Directive 2013/36/EU and Directive 2014/65/EU, the Guidelines do not aim to interfere with other legislation such as social, company or labour law, which needs to be complied with by institutions together with other and independently of EU legislation. Those laws in Member States appear to be divergent across the EU and limit the possible level of harmonisation in this particular area.
14. The Guidelines take into account the European Commission's recommendation of 15 February 2005<sup>2</sup> on the role of non-executive or supervisory directors of listed companies and on the committees of the supervisory board, and the results of the EBA's review of its Guidelines on the assessment of the suitability of members of the management body and key function holders of credit institutions.
15. The existing EBA Guidelines, published on 22 November 2012 on the EBA's website<sup>3</sup>, will be repealed after the entry into force of the joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders.

## Legal basis

16. To further harmonise the assessment of suitability within the EU banking and securities sector in line with the requirements introduced by Directive 2013/36/EU and Directive 2014/65/EU, a mandate is given to the EBA to issue Guidelines on the notions of suitability jointly with ESMA in line with Article 91(12) of Directive 2013/36/EU and Article 9(1) of Directive 2014/65/EU. The joint adoption of these Guidelines is related to the relevant competences of the EBA and ESMA. Where requirements of the Guidelines apply to institutions that are subject to Directive 2013/36/EU, but not to institutions that are subject only to Directive 2014/65/EU, the Guidelines refer to CRD-institutions.
17. Article 9(1) of Directive 2014/65/EU specifies that competent authorities granting authorisation in accordance with Article 5 of this Directive shall ensure that investment firms and their management bodies comply with Article 88 and Article 91 of Directive 2013/36/EU. Investment firms that are not directly subject to the requirements of Directive 2013/36/EU are also therefore subject to the same suitability requirements as institutions that are subject to Directive 2013/36/EU.
18. Article 9(3) of Directive 2014/65/EU requires that the management body of an investment firm defines, oversees and is accountable for the implementation of governance arrangements that ensure effective and prudent management of the investment firm including the segregation of duties in the investment firm and the prevention of conflicts of interest, and in a manner that promotes the integrity of the market and the interest of clients.

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<sup>2</sup> Commission Recommendation 2005/162/EC, available under the following link: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:052:0051:0063:EN:PDF>

<sup>3</sup> The report on the review of the guidelines can be found under the following link: <https://www.eba.europa.eu/documents/10180/950548/EBA+Peer+Review+Report+on+suitability.pdf>

19. Article 16(2) of Directive 2014/65/EU requires investment firms to establish adequate policies and procedures to ensure compliance of the firm including its managers, employees and tied agents with its obligations under this Directive.
20. According to Article 13 of Directive 2013/36/EU, competent authorities shall refuse to grant authorisation as a credit institution if the members of the management body do not meet the requirements referred to in Article 91(1) of that Directive.
21. According to Article 9(4) of Directive 2014/65/EU the competent authority shall refuse authorisation as an investment firm if it is not satisfied that the members of the management body of the investment firm are of good repute, possess sufficient knowledge, skills and experience and commit sufficient time to perform their functions in the investment firm, or if there are objective and demonstrable grounds for believing that the management body of the firm may pose a threat to its effective, sound and prudent management and to the adequate consideration of the interest of its clients and the integrity of the market.
22. Article 74 of the Directive 2013/36/EU requires that institutions subject to that Directive shall have robust internal governance arrangements, including a clear organisational structure with well-defined, transparent and consistent lines of responsibility and mandates the EBA to develop Guidelines thereon.
23. Article 91(1) of Directive 2013/36/EU requires that members of the management body shall at all times be of good repute and possess sufficient knowledge, skills and experience to perform their duties, and that they meet the requirements in paragraphs (2) to (8) of this Article. The same requirements apply to investment firms according to Article 9(1) of Directive 2014/65/EU.
24. Article 91(2) to (8) of Directive 2013/36/EU requires all members of the management body to commit sufficient time to perform their functions in the institution, limits the number of mandates a member of the management body of a significant institution can hold, requires adequate collective knowledge, skills and experience to be able to understand the institution's activities, including the main risks and requires them to act with honesty, integrity and independence of mind.
25. Article 109 (2) of Directive 2013/36/EU requires the parent undertakings and subsidiaries subject to this Directive to meet the obligations set out in Articles 74 to 96 of the Directive on a consolidated or sub-consolidated basis, to ensure that their governance arrangements, processes and mechanisms are consistent and well-integrated and that any data and information relevant to the purpose of supervision can be produced. In particular, they shall ensure that parent undertakings and subsidiaries subject to this Directive implement such governance arrangements, processes and mechanisms in their subsidiaries not subject to this Directive. Those arrangements, processes and mechanisms shall also be consistent and well-integrated, and those subsidiaries shall also be able to produce any data and information relevant to the purpose of supervision.
26. In accordance with Article 121 of Directive 2013/36/EU, members of the management body of a financial holding company or mixed financial holding company should be of good repute and possess sufficient knowledge, skills and experience as referred to in Article 91(1) of that Directive

to perform those duties, taking into account the specific role of a financial holding company or mixed financial holding company.

27. Furthermore institutions are required under Article 91(9) and (10) of Directive 2013/36/EU to devote adequate human and financial resources to the induction and training of members of the management body, to engage a broad set of qualities and competences when recruiting members to the management body and for that purpose to put in place a policy promoting diversity on the management body.
28. The present Guidelines take into account the regulatory technical standards (RTS) under Article 8(2) of Directive 2013/36/EU on the information to be provided for the authorisation of credit institutions; the implementing technical standards (ITS) under Article 8(3) of Directive 2013/36/EU on standard forms, templates and procedures for the provision of the information required for the authorisation of credit institutions; the RTS under Article 7(4) of Directive 2014/65/EU on information and requirements for the authorisation of investment firms; the ITS under Article 7(5) of Directive 2014/65/EC; the RTS under Article 80(3) of Directive 2014/65/EU on the exchange of information between competent authorities when cooperating in supervisory activities, on-the-spot verifications and investigations; and the findings and recommendations made in the EBA's report<sup>4</sup> on its review of the EBA Guidelines on the suitability assessment of the members of the management body and key function holders (EBA/GL/2012/06). They also take into account international governance standards and principles<sup>5</sup>.
29. These Guidelines should be read in conjunction with other relevant EBA and ESMA Guidelines, in particular the EBA's Guidelines covering internal governance, including remuneration, risk management and outsourcing, the supervisory review process, and disclosures.

## Rationale and objective of the Guidelines

30. As required by Article 91 of Directive 2013/36/EU and Article 9 of Directive 2014/65/EU, the Guidelines specify the notion of sufficient time commitment, the notion of adequate individual and collective knowledge, skills and experience; the notions of honesty, integrity and independence of mind with which the members of the management body should comply; the notion of adequate human and financial resources for induction and training; and the notion of diversity which is to be taken into account when recruiting members of the management body.
31. The Guidelines aim to establish harmonised criteria for the assessment of the suitability of the members of the management body and key function holders, to ensure sound assessment processes as part of the institution's governance arrangements.
32. The Guidelines encompass the assessment of members of the management body in its management function and members of the management body in its supervisory function. The suitability of both functions is equally important for the well-functioning of an institution. As the members of the management body have specific roles, the assessment process and criteria can

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<sup>4</sup>The review report can be accessed at:  
<https://www.eba.europa.eu/documents/10180/950548/EBA+Peer+Review+Report+on+suitability.pdf>

<sup>5</sup> E.g. the Corporate governance principles for banks, published in July 2015 by the Basel Committee of Banking Supervisors.

differ. Members of the management body representing a Member State, a public authority of a Member State or a public entity must also be suitable at all times.

33. All staff of institutions should be suitable to perform their job. The heads of internal control functions, i.e. risk management, compliance and audit functions have, under the overall responsibility of the management body, a key role in ensuring that the institution adheres to its risk strategy and complies with regulatory and other legislative requirements, in ensuring robust governance arrangements and in supporting the management body. Their suitability is therefore of utmost importance and more detailed suitability requirements and processes are necessary. This also applies to the CFO where he or she is not part of the management body. Where identified on a risk based approach by institutions, the suitability of other key function holders should also be ensured, as those individuals have significant influence over the direction of the institution under the overall responsibility of the management body.
34. The ongoing suitability of all members of the management body and key function holders is crucial for the proper functioning of an institution, and therefore institutions are required to assess the suitability of all these persons.
35. Events which may potentially affect the required knowledge, skills and experience of a member of the management body or a key function holder, or that person's reputation, honesty, integrity, independence of mind or time commitment, should lead to a re-assessment by the institution of the suitability of that person and potentially a re-assessment of the collective suitability of the management body.
36. Members of the management body should have sufficient time to carry out their respective responsibilities appropriately. Members of the management body should have sufficient time to cover all the necessary subjects in depth, and in particular the management of the main risks. For CRD-institutions, this includes all material risks addressed in Directive 2013/36/EU and Regulation (EU) No 575/2013, including the valuation of assets and the use of external credit ratings and internal models relating to those risks.
37. Members of the management body should also have sufficient time to acquire, maintain and enhance their knowledge and skills – if necessary through additional training. This is to ensure that they to understand the institution's structure and development and relevant changes in the legal and economic environment, as well as to maintain up-to-date knowledge and to deliver a high level of performance at all times.
38. All members of the management body and key function holders must be of good repute, regardless of the nature, scale and complexity of the institution and their specific position. The assessment of adequate knowledge, skills and experience and the other notions described in Article 91(12) of Directive 2013/36/EU should take into account the nature, scale and complexity of the institution's activities, in line with the application of the proportionality principle and the specific position concerned.
39. The members of the management body and key function holders should have sufficient knowledge, skills and experience to fulfil their individual position in an institution, and the management body must collectively possess adequate knowledge, skills and experience to understand the institution's activities including the main risks. These knowledge, skills and

experience should be kept up to date, taking into account changes in the nature, scale and complexity of the institution's activities. Adequate knowledge, skills and experience cannot be determined by having experience expressed only in terms of a period of time in a certain position or a specific educational degree, but needs to be assessed on a case by case basis.

40. As part of the overall suitability assessment, individuals proposed as members of the management body of an institution should also be able to demonstrate independence of mind to be able to effectively assess, challenge, oversee and monitor management decision-making.
41. Institutions need to provide sufficient resources for induction and training of members of the management body. Receiving induction should make new members familiar with the specificities of the institution's structure, how the institution is embedded in its group structure (where relevant), and business and risk strategy. Ongoing training should aim to improve and keep up to date the qualifications of members of the management body so that at all times the management body collectively meets or exceeds the level that is expected. Ongoing training is a necessity to ensure sufficient knowledge of changes in the relevant legal and regulatory requirements, markets and products, and the institution's structure, business model and risk profile.
42. While the diversity of the management body is not a criterion for the assessment of the members' individual suitability, diversity should also be taken into account when selecting and assessing members of management bodies. Diversity within the management body leads to a broader range of experience, knowledge, skills and values, and is one of the factors that enhance the functioning of the management body and address the phenomenon of 'group-think'. Thus, a more diverse management body, in its supervisory and management functions, can reduce the phenomenon of 'group think' and facilitate independent opinions and constructive challenging in the process of decision making.
43. A diverse composition within the management body could be achieved by taking into account such aspects as educational and professional background, age, gender and geographical provenance.
44. In this respect a gender balanced composition of the management body is of particular importance. This is mentioned in Directive 2013/36/EU as well as in Directive 2014/65/EU and is also expressed by other initiatives at EU level that aim to improve gender diversity<sup>6</sup>.
45. Independent directors within the supervisory function of the management body help to ensure that the interests of all internal and external stakeholders are considered. Independence of mind ensures that independent judgement is exercised. In this respect it is important to prevent, manage or mitigate actual or potential conflicts of interest.
46. Institutions are primarily responsible for ensuring that members of the management body fulfil the suitability criteria as defined in the Guidelines on an ongoing basis, and need to establish appropriate policies and procedures for this purpose. The nomination committee required for significant institutions has a key role in assessing the suitability, diversity and composition of the

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<sup>6</sup> More information on gender equality can be found under: <http://ec.europa.eu/justice/gender-equality/>

management body. Where no nomination committee is established, the management body in its supervisory function as part of the institution's governance arrangements is responsible for fulfilling the tasks that are normally performed by the nomination committee, to ensure the effective and prudent management of the institution and the effectiveness of the institution's governance arrangements.

47. Institutions should assess the suitability of proposed members and members of the management body prior to their appointment or when duly justified as soon as practicable, but in any case within one month of the appointment, and should inform the competent authority of the proposed appointment or without delay after the appointment. Indeed, where shareholders nominate and appoint members of the management body at the general assembly, a prior assessment may not always be possible.
48. Competent authorities should have processes in place for the assessment of the suitability of members of the management body of all institutions and the heads of internal control functions and the CFOs of significant institutions, where they are not part of the management body, as set out in the Guidelines. Competent authorities may choose to assess a broader scope of key function holders. In particular competent authorities' processes should ensure that all these persons are assessed in a timely manner.
49. The Guidelines do not harmonise the point in time when assessments of the suitability of members of the management body should be made. While an assessment before a member takes up the position would ensure that the member is suitable from the beginning of his or her mandate, the Guidelines took into account the practicalities under such a process. A higher level of harmonisation would be desirable within the banking union, but could not be achieved in the current circumstances due, amongst other, to the existing fragmented national frameworks. .
50. The suitability assessment conducted by competent authorities is prudential and preventive in nature and highly dependent on the available information. It is distinct from criminal or administrative infringement procedures. Institutions have to ensure that members of the management body and key function holders are suitable for their respective roles. When concerns have been raised, it is up to the institution to demonstrate that the individual meets reputation, honesty and integrity standards.
51. It is crucial for competent authorities when assessing the suitability of members of the management body of all institutions and heads of internal control functions and the CFO of significant institutions, where they are not part of the management body, to have access to and to assess specific information about the persons.
52. The Guidelines set out in Annex III the documentation and information to be provided for initial<sup>7</sup> and ongoing assessments. However, competent authorities are not limited to this information;

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<sup>7</sup> Please refer to the draft RTS under Article 7(4) of Directive 2014/65/EU and draft ITS under Article 7(5) of Directive 2014/65/EU on the information to be provided at authorisation:  
[http://ec.europa.eu/finance/securities/docs/isd/mifid/rts/160714-rts-authorisation\\_en.pdf](http://ec.europa.eu/finance/securities/docs/isd/mifid/rts/160714-rts-authorisation_en.pdf) and  
[https://www.esma.europa.eu/sites/default/files/library/2015-1858 - final report - draft implementing technical standards under mifid ii.pdf](https://www.esma.europa.eu/sites/default/files/library/2015-1858_-_final_report_-_draft_implementing_technical_standards_under_mifid_ii.pdf) . See also the Consultation Paper on draft RTS on authorisation published by the EBA.

e.g. within the supervisory process, a competent authority can also gather additional information on the suitability of persons. Relevant information that can be taken into account in the assessment of suitability can also come from other sources, such as internal whistleblowing or from external sources, when this information is deemed to be reliable.

53. It is important to ensure that institutions and competent authorities intervene if a member of the management body, a member proposed for such a position or the management body collectively is not suitable. This also applies to key function holders. Measures available to competent authorities may differ between Member States depending on the applicable national laws. Such measures can range from imposing conditions to ordering an institution to take action to improve the skills and knowledge of a member, or to transferring responsibilities between members, prohibiting a member or an institution from performing tasks, temporarily banning or replacing a member of the management body, or ultimately withdrawing the institution's authorisation.

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## Guidelines

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

# 1. Compliance and reporting obligations

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## Status of these guidelines

1. These guidelines are issued pursuant to Article 16 of the ESA Regulations<sup>8</sup>. In accordance with Article 16(3), competent authorities and financial institutions shall make every effort to comply with the guidelines.
2. These guidelines set out appropriate supervisory practices within the European System of Financial Supervision and of how Union law should be applied. Competent authorities to which these guidelines apply should comply by incorporating them into their supervisory practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where guidelines are directed primarily at institutions.

## Reporting requirements

3. According to Article 16(3) of Regulation (EU) No 1093/2010 and Article 16(3) of Regulation (EU) No 1095/2010, competent authorities must notify the EBA and ESMA as to whether they comply or intend to comply with these guidelines, or otherwise with reasons for non-compliance, by ([dd.mm.yyyy]). In the absence of any notification by this deadline, the competent authority will be considered to be non-compliant by the EBA and ESMA. Notifications should be sent by submitting the form available on the EBA website to [compliance@eba.europa.eu](mailto:compliance@eba.europa.eu) with the reference 'EBA/GL/2017/12' and with the form available on the ESMA website to [managementbody.guidelines@esma.europa.eu](mailto:managementbody.guidelines@esma.europa.eu) with the reference [...]. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authority. Any change in the status of compliance must also be reported to the EBA and ESMA.
4. Notifications will be published on the EBA website, in line with Article 16(3) of Regulation (EU) No 1093/2010 and on the ESMA website, in line with Article 16(3) of Regulation (EU) No 1095/2010.

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<sup>8</sup> ESMA - Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC.

EBA - Regulation (EU) No 1093/2010 of The European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC

## 2. Subject matter, scope and definitions

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### Subject matter

5. These Guidelines specify the requirements regarding the suitability of members of the management body of credit institutions, investment firms, financial holding companies and mixed financial holding companies and, in particular, in accordance with Article 91(12) of Directive 2013/36/EU<sup>9</sup> and the second subparagraph of Article 9(1) of Directive 2014/65/EU<sup>10</sup>, the notions of sufficient time commitment; honesty, integrity and independence of mind of a member of the management body; adequate collective knowledge, skills and experience of the management body; and adequate human and financial resources devoted to the induction and training of such members. The notion of diversity to be taken into account for the selection of members of the management body is also specified in accordance with the above mentioned articles.
6. The Guidelines also specify requirements regarding the suitability of the heads of internal control functions and the chief financial officer (CFO) of credit institutions and certain investment firms, where they are not part of the management body, and, where identified on a risk-based approach by those institutions, of other key function holders, as part of the governance arrangements referred to in Articles 74 and 88 of Directive 2013/36/EU and Articles 9(3), 9(6) and 16(2) of Directive 2014/65/EU, and on the related assessment processes, governance policies and practices, including the principle of independence applicable to certain members of the management body in its supervisory function.

### Addressees

7. These Guidelines are addressed to competent authorities as defined in Article 4(1)(26) of Directive 2014/65/EU and in Article 4(1)(40) of Regulation (EU) 575/2013<sup>11</sup> including the European Central Bank with regards to matters relating to the tasks conferred on it by Regulation (EU) No 1024/2013<sup>12</sup>; credit institutions as defined in Article 4(1)(1) of Regulation

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<sup>9</sup> Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

<sup>10</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast) (OJ L 173, 12.6.2014, p.349).

<sup>11</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p.1).

<sup>12</sup> 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).

(EU) 575/2013; mixed financial holding companies as defined in Article 4(21) of Regulation (EU) 575/2013; and investment firms as defined in Article 4(1)(1) of Directive 2014/65/EU.

## Scope of application

8. Competent authorities should ensure that credit institutions, mixed financial holding companies and investment firms, as referred to in paragraph 7, as well as financial holding companies, as defined in Article 4(20) of Regulation (EU) 575/2013, comply with these Guidelines. Unless otherwise specified as directly referring to CRD-institutions, these Guidelines apply to all institutions, as defined therein.
9. CRD-institutions, as defined in these Guidelines, should comply with these Guidelines on an individual, sub-consolidated and consolidated basis, including their subsidiaries not subject to Directive 2013/36/EU, in accordance with Article 109 of that Directive.
10. The Guidelines intend to embrace all existing board structures and do not advocate any particular structure. The Guidelines do not interfere with the general allocation of competences in accordance with national company law. Accordingly, they should be applied irrespective of the board structures used (unitary and/or a dual board structure and/or other structures) across Member States. The management body, as defined in points (7) and (8) of Article 3(1) of Directive 2013/36/EU, should be understood as having management (executive) and supervisory functions (non-executive)<sup>13</sup>.
11. The terms 'management body in its management function' and 'management body in its supervisory function' are used throughout these Guidelines without referring to any specific governance structure and references to the management (executive) or supervisory (non-executive) function should be understood as applying to the bodies or members of the management body responsible for that function in accordance with national law.
12. In Member States where the management body delegates, partially or fully, the executive functions to a person or an internal executive body (e.g. chief executive officer (CEO), management team or executive committee), the persons who perform those executive functions on the basis of that delegation should be understood as constituting the management function of the management body. For the purposes of these Guidelines, any reference to the management body in its management function should be understood as including also the members of such an executive body or the CEO, as defined in these Guidelines, even if they have not been proposed or appointed as formal members of the institution's governing body or bodies under national law.
13. In Member States where some responsibilities assigned in these Guidelines to the management body are directly exercised by shareholders, members or owners of the institution rather than the management body, institutions should ensure that such

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<sup>13</sup> See also recital 56 of Directive 2013/36/EU

responsibilities and related decisions are exercised, as far as possible, in line with the Guidelines applicable to the management body.

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

## Definitions

15. Unless otherwise specified, terms used and defined in Directive 2013/36/EU, Regulation (EU) 575/2013 and Directive 2014/65/EU have the same meaning in the Guidelines. In addition, for the purposes of these Guidelines, the following definitions apply:

<b>Institutions</b>	means credit institutions as defined in Article 4(1)(1) of Regulation (EU) No 575/2013, financial holding companies as defined in Article 4(20) of Regulation (EU) No 575/2013, mixed financial holding companies as defined in Article 4(21) of Regulation (EU) No 575/2013, and investment firms as defined in Article 4(1)(1) of Directive 2014/65/EU.
<b>CRD-institutions</b>	means credit institutions or investment firms as defined in Article 4(1)(1) and (2), respectively, of Regulation (EU) 575/2013.
<b>Significant CRD-institutions</b>	means CRD-institutions referred to in Article 131 of Directive 2013/36/EU (global systemically important institutions (G-SIIs'), and other systemically important institutions (O-SIIs'), and, as appropriate, other CRD-institutions or, for the purposes of Article 91 of Directive 2013/36/EU, financial holding companies and mixed financial holding companies, determined by the competent authority or national law, based on an assessment of the institutions' size and, internal organisation, and the nature, scope and complexity of their activities.
<b>Listed CRD-institution</b>	means CRD-institutions whose financial instruments are admitted to trading on a regulated market as referred to in the list to be published by ESMA in accordance with Article 56 of Directive 2014/65/EU, in one or more Member States. <sup>14</sup>
<b>Staff</b>	means all employees of an institution and its

<sup>14</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

subsidiaries within its scope of consolidation, including subsidiaries not subject to Directive 2013/36/EU, and all members of their management bodies in their management function and in their supervisory function.

<b>Group</b>	means a parent undertaking and all of its subsidiary undertakings, as defined in Article 2(9) and (10) of Directive 2013/34/EU <sup>15</sup> .
<b>Suitability</b>	means the degree to which an individual is deemed to have good reputation and to have, individually and collectively with other individuals, adequate knowledge, skills and experience to perform her/his/their duties. Suitability also covers the honesty, integrity and independence of mind of each individual and his or her ability to commit sufficient time to perform her or his duties.
<b>Member</b>	means a proposed or appointed member of the management body.
<b>Chief executive officer (CEO)</b>	means the person who is responsible for managing and steering the overall business activities of an institution.
<b>Key function holders</b>	<p>means persons who have significant influence over the direction of the institution, but who are neither members of the management body and are not the CEO. They include the heads of internal control functions and the CFO, where they are not members of the management body, and, where identified on a risk-based approach by CRD-institutions, other key function holders.</p> <p>Other key function holders might include heads of significant business lines, European Economic Area/European Free Trade Association branches, third country subsidiaries and other internal functions.</p>
<b>Heads of internal control functions</b>	means the persons at the highest hierarchical level in charge of effectively managing the day-to-day operation of the independent risk management, compliance and internal audit functions.
<b>Chief financial officer (CFO)</b>	means the person who is overall responsible for managing all of the following activities: financial resources management, financial planning and financial

<sup>15</sup> Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p.19).

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**Prudential consolidation**

means the application of the prudential rules set out in Directive 2013/36/EU and Regulation (EU) No 575/2013 on a consolidated or sub-consolidated basis, in accordance with Part 1, Title 2, Chapter 2 of Regulation (EU) No 575/2013. The prudential consolidation includes all subsidiaries that are institutions or financial institutions, as defined in Article 4(3) and (26) of Regulation (EU) No 575/2013, respectively, and may also include ancillary services undertakings, as defined in Article 2(18) of that Regulation, established in and outside the EU.

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**Consolidating CRD-institution**

means a CRD-institution that is required to abide by the prudential requirements on the basis of the consolidated situation in accordance with Part One, Title II, Chapter 2 of Regulation (EU) No 575/2013.

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**Diversity**

means the situation whereby the characteristics of the members of the management body, including their age, gender, geographical provenance and educational and professional background, are different to an extent that allows a variety of views within the management body.

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**Geographical provenance**

means the region where a person has gained a cultural, educational or professional background.

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**Induction**

means any initiative or programme to prepare a person for a specific new position as a member of the management body.

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**Training**

means any initiative or programme to improve the skills, knowledge or competence of the members of the management body, on an ongoing or ad-hoc basis.

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**Shareholder**

means a person who owns shares in an institution or, depending on the legal form of an institution, other owners or members of the institution.

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**Directorship**

means a position as a member of the management body of an institution or another legal entity. Where the management body, depending on the legal form of the entity, is composed by a single person, this position is also counted as a directorship.

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**Non-executive directorship**

means a directorship in which a person is responsible for overseeing and monitoring management decision-making without executive duties within an entity.

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**Executive directorship**

means a directorship in which a person is responsible for effectively directing the business of an entity.

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## 3. Implementation

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### Date of application

16. These Guidelines apply from 30 June 2018.

### Transitional provisions

17. Institutions should apply the Guidelines concerning the initial suitability assessment of members of the management body and key function holders with regard to persons appointed before the date of application of the Guidelines, and at the latest during the re-assessment referred to under paragraph 155. Institutions should apply the Guidelines concerning the initial induction and training of the members of the management body within the same timeframes set out for the re-assessment.

18. Competent authorities should not implement Title VIII concerning the initial suitability assessment of newly appointed members of the management body and key function holders with regard to persons appointed before the date of application of these Guidelines.

### Repeal

19. The EBA Guidelines on the assessment of the suitability of members of the management body and key function holders (EBA GL 2012/06) are repealed with effect from 30 June 2018.

## 4. Guidelines

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### Title I - Application of the proportionality principle

20. The proportionality principle aims to match governance arrangements consistently with the individual risk profile and business model of the institution and takes into account the individual position for which an assessment is made so that the objectives of the regulatory requirements are effectively achieved.
21. Institutions should take into account their size, internal organisation and the nature, scale, and complexity of their activities when developing and implementing policies and processes set out in these Guidelines. Significant institutions should have more sophisticated policies and processes, while in particular small and less complex institutions may implement simpler policies and processes. Those policies and processes should, however, ensure compliance with the criteria specified in these Guidelines to assess the suitability of members of the management body and key function holders and the requirements to take diversity into account when recruiting members to the management body and to provide sufficient resources for their induction and training.
22. All members of the management body and key function holders should, in any event, be of good repute and have honesty and integrity, and all members of the management body should have independence of mind regardless of the institution's size, internal organisation and the nature, scope and complexity of its activities and the duties and responsibilities of the specific position, including memberships held in committees of the management body.
23. For the purpose of applying the principle of proportionality and in order to ensure the appropriate implementation of the governance requirements of Directive 2013/36/EU and Directive 2014/65/EU which the Guidelines further specify, the following criteria should be taken into account by institutions and competent authorities:
  - a. the size of the institution in terms of the balance sheet total, the client assets held or managed, and/or the volume of transactions processed by the institution or its subsidiaries within the scope of prudential consolidation;
  - b. the legal form of the institution, including whether or not the institution is part of a group and, if so, the proportionality assessment for the group;
  - c. whether the institution is listed or not;
  - d. the type of authorised activities and services performed by the institution (see also Annex 1 of Directive 2013/36/EU and Annex 1 of Directive 2014/65/EU);

- e. the geographical presence of the institution and the size of the operations in each jurisdiction;
- f. the underlying business model and strategy, the nature and complexity of the business activities, and the institution's organisational structure;
- g. the risk strategy, risk appetite and actual risk profile of the institution, also taking into account the result of the annual capital adequacy assessment;
- h. the authorisation for CRD-institutions to use internal models for the measurement of capital requirements;
- i. the type of clients<sup>16</sup>; and
- j. the nature and complexity of the products, contracts or instruments offered by the institution.

## Title II – Scope of suitability assessments by institutions

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

24. Institutions should ensure, in fulfilling the obligation set out in Article 91(1) of Directive 2013/36/EU, that the members of the management body are individually suitable at all times and should assess or re-assess their suitability, in particular:
- a. when applying for authorisation to take up the business;
  - b. when material changes to the composition of the management body occur, including:
    - i. when appointing new members of the management body, including as a result of a direct or indirect acquisition or increase of a qualifying holding in an institution<sup>17</sup>. This assessment should be limited to newly appointed members;

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<sup>16</sup> Directive 2014/65/EU defines a client in Article 4(1)(9), a professional client in Article 4(1)(10) and a retail client in Article 4(1)(11). Recital 103 of Directive 2014/65/EU also specifies that an eligible counterparty should be considered to be acting as a client, as described in Article 30 of that Directive.

<sup>17</sup> Please also refer to the (draft) RTS under Article 7(4) of Directive 2014/65/EU and draft ITS under Article 7(5) of Directive 2014/65/EU on the procedures for granting and refusing requests for authorisation of investment firms available on the ESMA's website. See also (draft) ITS on the procedures and forms in respect of acquisitions and increases of qualifying holdings in credit institutions and investment firms respectively, available on the EBA and ESMA websites: <https://www.eba.europa.eu/regulation-and-policy/other-topics/its-on-the-procedures-and-forms-in-respect-of-acquisitions-and-increases-of-qualifying-holdings> and [https://www.esma.europa.eu/sites/default/files/library/2015/11/2015-613\\_final\\_report\\_and\\_assessment\\_rts\\_its.pdf](https://www.esma.europa.eu/sites/default/files/library/2015/11/2015-613_final_report_and_assessment_rts_its.pdf)

- ii. when re-appointing members of the management body, if the requirements of the position have changed or if the member is appointed to a different position within the management body. This assessment should be limited to the members whose position has changed and to the analysis of the relevant aspects, taking into account any additional requirements for the position;
  - c. on an ongoing basis in accordance with paragraphs 28 and 29.
- 25. The initial and ongoing assessment of the individual suitability of the members of the management body is the responsibility of institutions, without prejudice to the assessment carried out by competent authorities for supervisory purposes.
- 26. Institutions should assess, in particular, whether or not the members:
  - a. are of sufficiently good repute;
  - b. possess sufficient knowledge, skills and experience to perform their duties;
  - c. are able to act with honesty, integrity and independence of mind to effectively assess and challenge the decisions of the management body in its management function and other relevant management decisions where necessary and to effectively oversee and monitor management decision-making;
  - d. are able to commit sufficient time to perform their functions in the institution and, where the institution is significant, whether or not the limitation of directorships under Article 91(3) of Directive 2013/36/EU is being complied with.
- 27. Where an assessment is made for a specific position, the assessment of sufficient knowledge, skills, experience and time commitment should take into account the role of the specific position concerned. The level and nature of the sufficient knowledge, skills and experience required from a member of the management body in its management function may differ from that required from a member of the management body in its supervisory function, in particular if these functions are assigned to different bodies.
- 28. Institutions should monitor on an ongoing basis the suitability of the members of the management body to identify, in the light of any relevant new fact, situations where a re-assessment of their suitability should be performed. In particular, a re-assessment should be performed in the following cases:
  - a. when there are concerns regarding the individual or collective suitability of the members of the management body;
  - b. in the event of a material impact on the reputation of a member of the management body, or the institution, including cases where members do not comply with the institution's conflict of interest policy;

- c. as part of the review of the internal governance arrangements by the management body;
  - d. in any event that can otherwise materially affect the suitability of the member of the management body.
29. Institutions should also re-assess the sufficient time commitment of a member of the management body if that member takes on an additional directorship or starts to perform new relevant activities, including political ones.
30. Institutions should base their suitability assessments on the notions defined in Title III, taking into account the diversity of the management body as specified in Title V, and should implement a suitability policy and processes as set out, respectively, in Titles VI and VII.

## 2. The institutions' assessment of the collective suitability of the management body

31. Institutions should ensure, in fulfilling the obligation set out in Article 91(7) of Directive 2013/36/EU that at all times the management body collectively possesses adequate knowledge, skills and experience to be able to understand the institutions' activities, including the main risks.
32. Institutions should assess or re-assess the collective suitability of the management body, in particular:
- a. when applying for authorisation to take up the business;
  - b. when material changes to the composition of the management body occur, including:
    - i. when appointing new members of the management body, including as a result of a direct or indirect acquisition or increase of a qualifying holding in an institution<sup>18</sup>;
    - ii. when re-appointing members of the management body, if the requirements of the position have changed or if the members are appointed to a different position within the management body;
    - iii. when appointed or reappointed members cease to be members of the management body.
  - c. on an ongoing-basis, in accordance with paragraph 33.

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<sup>18</sup> See footnote 17.

33. Institutions should re-assess the collective suitability of the members of the management body, in particular, in the following cases:
  - a. when there is a material change to the institution's business model, risk appetite or strategy or structure at individual or group level.;
  - b. as part of the review of the internal governance arrangements by the management body;
  - c. in any event that can otherwise materially affect the collective suitability of the management body.
34. Where re-assessments of the collective suitability are performed, institutions should focus their assessment on the relevant changes in the institution's business activities, strategies and risk profile and in the distribution of duties within the management body and their effect on the required collective knowledge, skills and experience of the management body.
35. Institutions should base their suitability assessments on the notions defined in Title III and should implement a suitability policy and processes as set out in Titles VI and VII.
36. The assessment of the initial and ongoing collective suitability of the management body is the responsibility of institutions. Where the assessment is also carried out by competent authorities for supervisory purposes, the responsibility to assess and ensure the collective suitability of the management body continues to remain with the institutions.

### 3. The CRD-institutions' assessment of the suitability of key function holders

37. While all institutions should ensure that their staff are able to perform their functions adequately, CRD-institutions should specifically ensure that key function holders are of sufficient good repute, have honesty and integrity, and possess sufficient knowledge, skills and experience for their positions at all times and assess the aforementioned requirements, in particular:
  - a. when applying for an authorisation;
  - b. when appointing new key function holders, including as a result of a direct or indirect acquisition or increase of a qualifying holding in an institution;
  - c. where necessary, in accordance with paragraph 38.
38. CRD-institutions should monitor on an ongoing basis the reputation, honesty, integrity, knowledge, skills and experience of key function holders to identify, in the light of any relevant new fact, situations where a re-assessment should be performed. In particular a re-assessment should be made in the following cases:

- a. where there are concerns regarding their suitability;
  - b. in the event of a material impact on the reputation of the individual;
  - c. as part of the review of the internal governance arrangements by the management body;
  - d. in any event that can otherwise materially affect the suitability of the individual.
39. The assessment of the individual's reputation, honesty, integrity, knowledge, skills and experience of key function holders should be based on the same criteria as those applied to the assessment of such suitability requirements of the members of the management body. When assessing knowledge, skills and experience, the role and duties of the specific position should be considered.
40. Assessing the initial and ongoing suitability of key function holders is the responsibility of the institutions. Where the assessment for some key function holders is also carried out by competent authorities for supervisory purposes, the responsibility to assess and ensure the suitability of those key function holders continues to remain with the institutions.

## Title III – Notions of suitability listed in Article 91(12) of Directive 2013/36/EU

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

41. Institutions should assess whether or not a member of the management body is able to commit sufficient time to perform his or her functions and responsibilities including understanding the business of the institution, its main risks and the implications of the business and the risk strategy. Where the person holds a mandate in a significant institution, this should include an assessment to ensure that the limitation of the maximum number of directorships under Article 91(3) of Directive 2013/36/EU or Article 9(2) of Directive 2014/65/EU, as applicable, is being complied with.
42. Members should also be able to fulfil their duties in periods of particularly increased activity, such as an restructuring, a relocation of the institution, an acquisition, a merger, a takeover or a crisis situation, or as a result of some major difficulty with one or more of its operations, taking into account that in such periods a higher level of time commitment than in normal periods may be required.
43. In the assessment of sufficient time commitment of a member, institutions should take at least the following into account:

- a. the number of directorships in financial and non-financial companies held by that member at the same time, taking into account possible synergies when they are held within the same group, including when acting on behalf of a legal person or as an alternate of a member of the management body;
  - b. the size, nature, scope and complexity of the activities of the entity where the member holds a directorship and, in particular, whether or not the entity is a non-EU entity;
  - c. the member's geographical presence and the travel time required for the role;
  - d. the number of meetings scheduled for the management body;
  - e. the directorships in organisations which do not pursue predominantly commercial objectives held by that member at the same time;
  - f. any necessary meetings to be held, in particular, with competent authorities or other internal or external stakeholders outside the management body's formal meeting schedule;
  - g. the nature of specific position and the responsibilities of the member, including specific roles such as CEO, chairperson, or chair or member of a committee, whether the member holds an executive or non-executive position, and the need of that member to attend meetings in the companies listed in point (a) and in the institution;
  - h. other external professional or political activities, and any other functions and relevant activities, both within and outside the financial sector and both within and outside the EU;
  - i. the necessary induction and training;
  - j. any other relevant duties of the member that institutions consider to be necessary to take into account when carrying out the assessment of sufficient time commitment of a member; and
  - k. available relevant benchmarking on time commitment, including the benchmarking provided by the EBA<sup>19</sup>.
44. Institutions should record in writing the roles, duties and required capabilities of the various positions within the management body and the expected time commitment required for each position, also taking into account the need to devote sufficient time for induction and

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<sup>19</sup> Figures for the year 2015 are included as an Annex to the impact assessment of these Guidelines.

training. For this purpose, smaller and less complex institutions may differentiate the expected time commitment only between executive and non-executive directorships.

45. A member of the management body should be made aware of the expected time commitment required to spend on his or her duties. Institutions may require the member to confirm that he or she can devote that amount of time to the role.
46. Institutions should monitor that the members of the management body commit sufficient time to perform their functions. Preparation for meetings, attendance and the active involvement of members in management body meetings are all indicators of time commitment.
47. An institution should also consider the impact of any long-term absences of members of the management body, in its assessment of the sufficient time commitment of other individual members of the management body.
48. Institutions should keep records of all external professional and political positions held by the members of the management body. Such records should be updated whenever a member notifies the institution of a change and when such changes come otherwise to the attention of the institution. Where changes to such positions occur, that may reduce the ability of a member of the management body to commit sufficient time to perform his or her function, the institution should reassess the member's ability to respect the required time commitment for his or her position.

## 5. Calculation of the number of directorships

49. In addition to the requirement to commit sufficient time to perform their functions, members of the management body that hold a directorship within a significant institution must comply with the limitation of directorships set out in Article 91(3) of Directive 2013/36/EU.
50. For the purposes of Article 91(3) of Directive 2013/36/EU, where a directorship involves at the same time executive and non-executive responsibilities, the directorship should count as an executive directorship.
51. Where multiple directorships count as a single directorship, as described in Article 91(4) of Directive 2013/36/EU and as set out in paragraphs 52 to 57, that single directorship should count as a single executive directorship when it includes at least one executive directorship; otherwise it should count as a single non-executive directorship.
52. In accordance with Article 91(4)(a) of Directive 2013/36/EU, all directorships held within the same group count as a single directorship.

53. In accordance with Article 4(b)(ii) of Article 91(4)(b)(ii) of Directive 2013/36/EU, all directorships held within undertakings in which the institution holds a qualifying holding, but which are not subsidiaries included within the same group, count as a single directorship. That single directorship in qualifying holdings counts as a separate single directorship, i.e. the directorship held within the same institution and the single directorship in its qualifying holdings together count as two directorships.
54. When multiple institutions within the same group hold qualifying holdings, the directorships in all qualifying holdings should be counted, taking into account the consolidated situation (based on the accounting scope of consolidation) of the institution, as one separate single directorship. That single directorship in qualifying holdings counts as a separate single directorship, i.e. the single directorship counted for the directorships held within entities that belong to the group and the single directorship counted for the directorships held in all qualifying holdings of the same group count together as two directorships.
55. Where a member of the management body holds directorships in different groups or undertakings, all directorships held within the same institutional protection scheme, as referred to in Article 91(4)(b)(i) of Directive 2013/36/EU, count as a single directorship. Where the application of the rule set out in Article 91(4)(b)(i) of Directive 2013/36/EU, regarding the counting of directorships within the same institutional protection scheme, leads to a higher count of single directorships than the application of the rule set out in Article 91(4)(a) regarding the counting of single directorships within groups, the resulting lower number of single directorships should apply (e.g. where directorships are held within two groups, in both cases within undertakings that are members and at the same time within undertakings that are not member of the same institutional protection scheme, only two single directorships should be counted).
56. Directorships held in entities which do not pursue predominantly commercial objectives must not be counted when calculating the number of directorships under Article 91(3) of that Directive. However, such activities should be taken into account when assessing the time commitment of the concerned member.
57. Entities which do not pursue predominantly commercial objectives include among others:
- a. charities;
  - b. other not-for-profit organisations; and
  - c. companies that are set up for the sole purpose of managing the private economic interests of members of the management body or their family members, provided that they do not require day-to-day management by the member of the management body.

## 6. Adequate knowledge, skills and experience

58. Members of the management body should have an up-to-date understanding of the business of the institution and its risks, at a level commensurate with their responsibilities. This includes an appropriate understanding of those areas for which an individual member is not directly responsible but is collectively accountable together with the other members of the management body.
59. Members of the management body should have a clear understanding of the institution's governance arrangements, their respective role and responsibilities and, where applicable, the group structure and any possible conflicts of interest that may arise therefrom. Members of the management body should be able to contribute to the implementation of an appropriate culture, corporate values and behaviour within the management body and the institution<sup>20</sup>.
60. In this respect, the assessment of adequate knowledge, skills and experience should consider:
- a. the role and duties of the position and the required capabilities;
  - b. the knowledge and skills attained through education, training and practice;
  - c. the practical and professional experience gained in previous positions; and
  - d. the knowledge and skills acquired and demonstrated by the professional conduct of the member of the management body.
61. To properly assess the skills of the members of the management body, institutions should consider using the non-exhaustive list of relevant skills set out in Annex II to these Guidelines, taking into account the role and duties of the position occupied by the member of the management body.
62. 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.
63. The assessment should not be limited to the educational degree of the member or proof of a certain period of service in an institution. A more thorough analysis of the member's practical experience should be conducted, as the knowledge and skills gained from previous

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<sup>20</sup> See also the EBA's Guidelines on Internal Governance: <https://www.eba.europa.eu/regulation-and-policy/internal-governance>

occupations depends on the nature, scale and complexity of the business as well as the function that the member performed within it.

64. When assessing the knowledge, skills and experience of a member of the management body, consideration should be given to theoretical and practical experience relating to:

- a. banking and financial markets;
- b. legal requirements and regulatory framework ;
- c. strategic planning, the understanding of an institution's business strategy or business plan and accomplishment thereof;
- d. risk management (identifying, assessing, monitoring, controlling and mitigating the main types of risk of an institution);
- e. accounting and auditing;
- f. the assessment of the effectiveness of an institution's arrangements, ensuring effective governance, oversight and controls; and
- g. the interpretation of an institution's financial information, the identification of key issues based on this information, and appropriate controls and measures.

65. Members of the management body in its management function should have gained sufficient practical and professional experience from a managerial position over a sufficiently long period. Short term positions may be considered as part of the assessment, but such positions alone should not be sufficient to assume that a member has sufficient experience. When assessing the practical and professional experience gained from previous positions, particular consideration should be given to:

- a. the nature of the management position held and its hierarchical level;
- b. the length of service;
- 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 technical knowledge gained through the position;
- f. the number of subordinates.

66. Members of the management body in its supervisory function should be able to provide constructive challenge to the decisions and effective oversight of the management body in

its management function. Adequate knowledge, skills and experience for fulfilling the supervisory function effectively may have been gained from relevant academic or administrative positions or through the management, supervision or control of financial institutions or other firms.

## 7. Collective suitability criteria

67. The management body should collectively be able to understand the institution's activities, including the main risks. Unless otherwise indicated in this section, these criteria should be applied separately to the management body in its management function and the management body in its supervisory function.
68. The members of the management body should collectively be able to take appropriate decisions considering the business model, risk appetite, strategy and markets in which the institution operates.
69. Members of the management body in its supervisory function should collectively be able to effectively challenge and monitor decisions made by the management body in its management function.
70. All areas of knowledge required for the institution's business activities should be covered by the management body collectively with sufficient expertise among members of the management body. There should be a sufficient number of members with knowledge in each area to allow a discussion of decisions to be made. The members of the management body should collectively have the skills to present their views and to influence the decision-making process within the management body.
71. The composition of the management body should reflect the knowledge, skills and experience necessary to fulfil its responsibilities. This includes that the management body collectively has an appropriate understanding of those areas for which the members are collectively accountable, and the skills to effectively manage and oversee the institution, including the following aspects:
  - a. the business of the institution and main risks related to it;
  - b. each of the material activities of the institution;
  - c. relevant areas of sectoral/financial competence, including financial and capital markets, solvency and models;
  - d. financial accounting and reporting;
  - e. risk management, compliance and internal audit;
  - f. information technology and security;

- g. local, regional and global markets, where applicable;
- h. the legal and regulatory environment;
- i. managerial skills and experience;
- j. the ability to plan strategically;
- k. the management of (inter)national groups and risks related to group structures, where applicable.

72. While the management body in its management function should collectively have a high level of managerial skills, the management body in its supervisory function should collectively have sufficient management skills to organise its tasks effectively and to be able to understand and challenge the management practices applied and decisions taken by the management body in its management function.

## 8. Reputation, honesty, and integrity

73. A member of the management body should be deemed to be of good repute and of honesty and integrity if there are no objective and demonstrable grounds to suggest otherwise in particular taking into account the relevant available information on the factors or situations listed in paragraphs 74 to 78. The assessment of reputation, honesty and integrity should also consider the impact of the cumulative effects of minor incidents on a member's reputation.

74. Without prejudice to any fundamental rights, any relevant criminal or administrative records should be taken into account for the assessment of good repute, honesty and integrity, considering the type of conviction or indictment, the role of the individual involved, the penalty received, the phase of the judicial process reached and any rehabilitation measures that have taken effect. The surrounding circumstances, including mitigating factors, the seriousness of any relevant offence or administrative or supervisory action, the time elapsed since the offence, the member's conduct since the offence or action, and the relevance of the offence or action to the member's role should be considered. Any relevant criminal or administrative records should be taken into account considering periods of limitation in force in the national law.

75. Without prejudice to the presumption of innocence applicable to criminal proceedings, and other fundamental rights, the following factors should at least be considered in the assessment of reputation, honesty and integrity:

- a. convictions or ongoing prosecutions for a criminal offence, in particular:
  - i. offences under the laws governing banking, financial, securities, insurance activities, or concerning securities markets or financial or payment

instruments, including laws on money laundering, corruption, market manipulation, or insider dealing and usury;

- ii. offences of dishonesty, fraud or financial crime;
  - iii. tax offences; and
  - iv. other offences under legislation relating to companies, bankruptcy, insolvency, or consumer protection;
- b. other relevant current or past measures taken by any regulatory or professional body for non-compliance with any relevant provisions governing banking, financial, securities, or insurance activities.

76. On-going investigations should be taken into account when resulting from judicial or administrative procedures or other analogous regulatory investigations without prejudice to fundamental individual rights<sup>21</sup>.

77. The following situations relating to the past and present business performance and financial soundness of a member of the management body should be considered, with regard to their potential impact on the member's reputation, integrity and honesty:

- a. being a defaulting debtor (e.g. having negative records at a reliable credit bureau if available);
- b. financial and business performance of entities owned or directed by the member or in which the member had or has significant share or influence with special consideration to any bankruptcy and winding-up proceedings and whether or not and how the member has contributed to the situation that led to the proceedings;
- c. declaration of personal bankruptcy; and
- d. without prejudice to the presumption of innocence, civil lawsuits, administrative or criminal proceedings, large investments or exposures and loans taken out, in so far as they can have a significant impact on the financial soundness of the member or entities owned or directed by him or her, or in which the member has a significant share.

78. A member of the management body should uphold high standards of integrity and honesty. At least the following factors should also be considered in the assessment of reputation, honesty and integrity:

- a. any evidence that the person has not been transparent, open, and cooperative in his or her dealings with competent authorities;

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<sup>21</sup> In line with the European Convention on Human Rights and Charter of Fundamental Rights of the European Union: [http://ec.europa.eu/justice/fundamental-rights/charter/index\\_en.htm](http://ec.europa.eu/justice/fundamental-rights/charter/index_en.htm)

- b. refusal, revocation, withdrawal or expulsion of any registration, authorisation, membership, or licence to carry out a trade, business, or profession;
- c. the reasons for any dismissal from employment or from any position of trust, fiduciary relationship, or similar situation, or for having been asked to resign from employment in such a position;
- d. disqualification by any relevant competent authority from acting as a member of the management body, including persons who effectively direct the business of an entity; and
- e. any other evidence that suggests that the person acts in a manner that is not in line with high standards of conduct.

## 9. Independence of mind and independent members

### 9.1 Interaction between independence of mind and the principle of being independent

79. When assessing the independence of members, institutions should differentiate between the notion of 'independence of mind', applicable to all members of an institution's management body and the principle of 'being independent', required for certain members of a CRD-institution's management body in its supervisory function. The criteria for the assessment of 'independence of mind' are provided in section 9.2 and for the assessment of 'being independent' in section 9.3
80. Acting with 'independence of mind' is a pattern of behaviour, shown in particular during discussions and decision-making within the management body, and is required for each member of the management body regardless of whether or not the member is considered as 'being independent' in accordance with section 9.3. All members of the management body should engage actively in their duties and should be able to make their own sound, objective and independent decisions and judgments when performing their functions and responsibilities.
81. 'Being independent' means that a member of the management body in its supervisory function does not have any present or recent past relationships or links of any nature with the CRD-institution or its management that could influence the member's objective and balanced judgement and reduce member's ability to take decisions independently. The fact that a member is considered as 'being independent' does not mean that the member of the management body should automatically be deemed to be 'independent of mind' as the member might lack the required behavioural skills.

## 9.2 Independence of mind

82. When assessing the independence of mind as referred in paragraph 80, institutions should assess whether or not all members of the management body have:

- a. the necessary behavioural skills, including:
  - i. courage, conviction and strength to effectively assess and challenge the proposed decisions of other members of the management body;
  - ii. being able to ask questions to the members of the management body in its management function; and
  - iii. being able to resist 'group-think'.
- b. conflicts of interest to an extent that would impede their ability to perform their duties independently and objectively.

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

84. When assessing the existence of conflicts of interest referred to in paragraph 82 (b), institutions should identify actual or potential conflicts of interest in accordance with the institution's conflicts of interest policy<sup>22</sup> and assess their materiality. At least the following situations that could create actual or potential conflicts of interests should be considered:

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

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<sup>22</sup> Please refer to the EBA's Guidelines on Internal Governance regarding the conflict of interest policy for staff.

- e. personal or professional relationships with relevant external stakeholders, (e.g. being associated with material suppliers, consultancies or other service providers);
  - f. membership in a body or ownership of a body or entity with conflicting interests;
  - g. political influence or political relationships.
85. All actual and potential conflicts of interest at management body level should be adequately communicated, discussed, documented, decided on and duly managed by the management body (i.e. the necessary mitigating measures should be taken). A member of the management body should abstain from voting on any matter where that member has a conflict of interest<sup>23</sup>.
86. Institutions should inform competent authorities if an institution has identified a conflict of interest that may impact the independence of mind of a member of the management body, including the mitigating measures taken.
87. Being a shareholder, owner or member of an institution, having private accounts, loans or using other services of the institution or any entity within the scope of consolidation should not be considered by itself to affect the independence of mind of a member of the management body.

### 9.3 Independent members of a CRD-institution's management body in its supervisory function

88. Having independent members, as referred to in paragraph 81, and non-independent members in the management body in its supervisory function is considered good practice for all CRD-institutions.
89. When determining the sufficient number of independent members, the principle of proportionality should be taken into account. Members representing employees in the management body should not be taken into account when determining the sufficient number of independent members in the management body in its supervisory function. Without prejudice to any additional requirements imposed by national law the following should apply:
- a. the following CRD-institutions should have a management body in its supervisory function that includes a sufficient number of independent members:
    - i. significant CRD-institutions;
    - ii. listed CRD-institutions.

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<sup>23</sup> Please refer to the EBA's Guidelines on Internal Governance regarding the conflict of interest policy for staff.

- b. CRD-institutions that are neither significant nor listed should, as a general principle, have at least one independent member within the management body in its supervisory function. However, competent authorities may not require any independent directors within:
  - i. CRD-institutions that are wholly owned by a CRD-institution, in particular when the subsidiary is located in the same Member State as the parent CRD-institution;
  - ii. non-significant CRD-institutions that are investment firms.

90. Within the overall responsibility of the management body, the independent members should play a key role in enhancing the effectiveness of checks and balances within the CRD-institutions by improving oversight of management decision-making and ensuring that:

- a. the interests of all stakeholders, including minority shareholders, are appropriately taken into account in the discussions and decision making of the management body. Independent members could also help to mitigate or offset undue dominance by individual members of the management body representing a particular group or category of stakeholders;
- b. no individual or small group of members dominates decision-making; and
- c. conflicts of interest between the institution, its business units, other entities within the accounting scope of consolidation and external stakeholders, including clients are appropriately managed.

91. Without prejudice to paragraph 92, in the following situations it is presumed that a member of a CRD-institution's management body in its supervisory function is regarded as not 'being independent':

- a. the member has or has had a mandate as a member of the management body in its management function within an institution within the scope of prudential consolidation, unless he or she has not occupied such a position for the previous 5 years;
- b. the member is a controlling shareholder of the CRD-institution, being determined by reference to the cases mentioned in Article 22(1) of Directive 2013/34/EU, or represents the interest of a controlling shareholder, including where the owner is a Member State or other public body;
- c. the member has a material financial or business relationship with the CRD-institution,
- d. the member is an employee of, or is otherwise associated with a controlling shareholder of the CRD-institution;

- e. the member is employed by any entity within the scope of consolidation, except when both of the following conditions are met:
    - i. the member does not belong to the institutions highest hierarchical level, which is directly accountable to the management body;
    - ii. the member has been elected to the supervisory function in the context of a system of employees' representation and national law provides for adequate protection against abusive dismissal and other forms of unfair treatment;
  - f. the member has previously been employed in a position at the highest hierarchical level in the CRD-institution or another entity within its scope of prudential consolidation, being directly accountable only to the management body, and there has not been a period of at least 3 years, between ceasing such employment and serving on the management body;
  - g. the member has been, within a period of 3 years, a principal of a material professional adviser, an external auditor or a material consultant to the CRD-institution or another entity within the scope of prudential consolidation, or otherwise an employee materially associated with the service provided;
  - h. the member is or has been, within the last year, a material supplier or material customer of the CRD-institution or another entity within the scope of prudential consolidation or had another material business relationship, or is a senior officer of or is otherwise associated directly or indirectly with a material supplier, customer or commercial entity that has a material business relationship;
  - i. the member receives in addition to remuneration for his or her role and remuneration for employment in line with point (c) significant fees or other benefits from the CRD-institution or another entity within its scope of prudential consolidation;
  - j. the member served as member of the management body within the entity for 12 consecutive years or longer;
  - k. the member is a close family member of a member of the management body in the management function of the CRD-institution or another entity in the scope of prudential consolidation or a person in a situation referred to under points (a) to (h).
92. The mere fact of meeting one or more situations under paragraph 91 is not automatically qualifying a member as not being independent. Where a member falls under one or more of the situations set out in paragraph 91, the CRD-institution may demonstrate to the competent authority that the member should nevertheless be considered as 'being independent'. To this end CRD-institutions should be able to justify to the competent

authority the reasoning why the members' ability to exercise objective and balanced judgement and to take decisions independently are not affected by the situation.

93. For the purpose of paragraph 92 CRD-institutions should consider that being a shareholder of a CRD-institution, having private accounts or loans or using other services, other than in the cases explicitly listed within this section, should not lead to a situation where the member is considered to be non-independent if they stay within an appropriate *de minimis* threshold. Such relationships should be taken into account within the management of conflicts of interest in accordance with the EBA Guidelines on Internal Governance.

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

### 10. Setting objectives of induction and training

94. Institutions should provide for the induction of members of the management body to facilitate their clear understanding of the institution's structure, business model, risk profile and governance arrangements, and the role of the member(s) within them, and to provide for relevant general and as appropriate individually- tailored training programmes. Training should also promote their awareness regarding the benefits of diversity in the management body and institution. Institutions should allocate sufficient resources for induction and training for members of the management body individually and collectively.
95. All newly appointed members of the management body should receive key information 1 month after taking up their position at the latest, and the induction should be completed within 6 months.
96. Where appointed members of the management body are subject to fulfilling a particular aspect of the knowledge and skill requirements, the training and induction for that member should aim to fill the identified gap within an appropriate timeframe, where possible before the position is effectively taken up or otherwise as soon as possible after the position is effectively taken up. In any case, a member should fulfil all knowledge and skill requirements as set out in section 6 not later than 1 year after taking up the position. Where appropriate, the institution should set a timeframe within which the necessary measures should be completed and inform the competent authority accordingly. Members of the management body should maintain and deepen the knowledge and skills needed to fulfil their responsibilities.

### 11. Induction and training policy

97. Institutions should have in place policies and procedures for the induction and training of members of the management body. The policy should be adopted by the management body.
98. The human and financial resources provided for induction and training should be sufficient to achieve the objectives of induction and training and to ensure that the member is suitable and meets the requirements for his or her role. When establishing the human and financial resources required to deliver effective policies and procedures for the induction and training of the members of the management body, the institution should take into account available relevant industry benchmarks, for example relating to available training budget and training days provided, including benchmarking results provided by the EBA.<sup>24</sup>
99. The policies and procedures for induction and training may be part of an overall suitability policy, and should at least set out:
- a. the induction and training objectives for the management body, separately for the management function and the supervisory function where applicable. This should also include where appropriate, the induction and training objectives for specific positions according to their specific responsibilities and involvement in committees.
  - b. the responsibilities for the development of a detailed training programme;
  - c. the financial resources and human resources made available by the institution for induction and training, taking into account the number of induction and training sessions, their cost and any related administrative tasks, in order to ensure that induction and training can be provided in line with the policy;
  - d. a clear process under which any member of the management body can request induction or training.
100. In the development of the policy, the management body or the nomination committee, when established, should consider input from the human resources function and the function responsible for the budgeting and organisation of training, as well as relevant internal control functions, where appropriate.
101. Institutions should have in place a process to identify the areas in which training is required, both for the management body collectively and for individual members of the management body. Relevant business areas and internal functions, including internal control functions, should be involved as appropriate in the development of the content of induction and training programmes.

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<sup>24</sup> The annex to the impact assessment of these Guidelines includes EBA benchmarking results (2015 data) for training resources and training days provided by institutions.

102. The policies and procedures as well as training plans should be kept up to date, taking into account governance changes, strategic changes, new products and other relevant changes, as well as changes in applicable legislation and market developments.
103. Institutions should have an evaluation process in place to review the execution and the quality of induction and training provided and to ensure compliance with the induction and training policies and procedures.

## Title V – Diversity within the management body

### 12. Diversity policy objectives

104. In accordance with Article 91(10) of Directive 2013/36/EU, all institutions should have and implement a policy promoting diversity on the management body, in order to promote a diverse pool of members. It should aim to engage a broad set of qualities and competences when recruiting members of the management body, to achieve a variety of views and experiences and to facilitate independent opinions and sound decision-making within the management body.
105. The diversity policy should at least refer to the following diversity aspects: educational and professional background, gender, age and, in particular for institutions that are active internationally, geographical provenance, unless the inclusion of the aspect of geographical provenance is unlawful under the laws of the Member State. The diversity policy for significant institutions should include a quantitative target for the representation of the underrepresented gender in the management body. Significant institutions should quantify the targeted participation of the underrepresented gender and specify an appropriate timeframe within which the target should be met and how it will be met. The target should be defined for the management body collectively, but may be broken down into the management and supervisory functions where a sufficiently large management body exists. In all other institutions, in particular with a management body of fewer than 5 members, the target may be expressed in a qualitative way.
106. When setting diversity objectives, institutions should consider diversity benchmarking results published by competent authorities, the EBA or other relevant international bodies or organisations<sup>25</sup>.

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<sup>25</sup> See also the EBA's report on diversity benchmarking: <https://www.eba.europa.eu/documents/10180/1360107/EBA-Op-2016-10+%28Report+on+the+benchmarking+of+diversity+practices%29.pdf>

107. The diversity policy may include employee representation within the management body in order to add a day-to-day practical knowledge and experience of the internal workings of the institution.
108. Significant institutions should also document, as part of the annual review of the composition of the management body, their compliance with the objectives and targets set. In the event that any diversity objectives or targets have not been met, the significant institution should document the reasons why, the measures to be taken and the timeframe for measures to be taken, in order to ensure that the diversity objectives and targets will be met.
109. In order to facilitate an appropriately diverse pool of candidates for management body positions, institutions should implement a diversity policy for staff, including career planning aspects and measures to ensure equal treatment and opportunities for staff of different genders.

## Title VI – Suitability policy and governance arrangements

### 13. Suitability policy

110. According to Article 88(1) of Directive 2013/36/EU, an institution's management body defines, oversees and is accountable for the implementation of the governance arrangements that ensure effective and prudent management of the institution. In addition, according to Article 9(3) of Directive 2014/65/EU, the management body of an investment firm as defined in Directive 2014/65/EU (MiFID firm) defines, oversees and is accountable for the implementation of governance arrangements in a manner that promotes the integrity of the market and the interest of clients. This includes that the institution's suitability policy should be aligned with the institution's overall corporate governance framework, corporate culture and risk appetite and that the processes under the policy are fully operating as intended. This also includes that the institution's management body should adopt – without prejudice to any required shareholders' approval – and maintain a policy for the assessment of the suitability of members of the management body.
111. The suitability policy should include or refer to the diversity policy to ensure that diversity is taken into account when recruiting new members.
112. Any changes to the suitability policy should also be approved by the management body, without prejudice to any required shareholders' approval. Documentation regarding the adoption of the policy and any amendments thereof should be maintained (e.g. in the minutes of relevant meetings).
113. The policy should be clear, well documented and transparent to all staff within the institution. When developing the policy, the management body may request and take into

account input from other internal committees, in particular the nomination committee where established and other internal functions, such as the legal, human resources or control functions.

114. Internal control functions<sup>26</sup> should provide effective input to the development of the suitability policy in accordance with their roles. Notably, the compliance function should analyse how the suitability policy affects the institution's compliance with legislation, regulations, internal policies and procedures, and should report all identified compliance risks and issues of non-compliance to the management body.

115. The policy should include principles on the selection, monitoring and succession planning of its members and for re-appointing existing members and should set out at least the following:

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

116. CRD-institutions should also include within their suitability policy the processes for the selection and appointment of key function holders. The suitability policy might set out on a risk-based approach those positions that could be considered by CRD-institutions as key function holders in addition to the heads of internal control functions and the CFO, where they are not part of the management body.

117. The management body in its supervisory function and, where established the nomination committee, should monitor the effectiveness of the institution's suitability policy and review its design and implementation. The management body should amend the policy, where appropriate, taking into account the recommendations made by the nomination committee where established and the internal audit function.

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<sup>26</sup> See also the EBA's Guidelines on Internal Governance: <https://www.eba.europa.eu/regulation-and-policy/internal-governance>

## 14. Suitability policy in a group context

118. In accordance with Article 109 (2) and (3) of Directive 2013/36/EU, the consolidating CRD-institution should ensure that a group-wide policy for the assessment of suitability of all members of the management body and key function holders is implemented and complied with in all subsidiaries within the scope of prudential consolidation, including those not subject to Directive 2013/36/EU.
119. The policy should be adjusted to the specific situation of the CRD-institutions that are part of the group and subsidiaries within the scope of prudential consolidation that are not themselves subject to Directive 2013/36/EU. Competent bodies or functions within the consolidating CRD-institution and its subsidiaries should interact and exchange information for the assessment of suitability as appropriate.
120. The consolidating CRD-institution should ensure that the suitability assessment complies with all specific requirements in any relevant jurisdiction. Regarding institutions and entities within a group located in more than one Member State, the consolidating CRD-institution should ensure that the group-wide policy takes into account differences between national company laws and other regulatory requirements.
121. The consolidating CRD-institution should ensure that subsidiaries established in third countries that are included in the scope of prudential consolidation have consistently implemented the group policy in a way that complies with the requirements of Articles 74, 88 and 91 of Directive 2013/36/EU, as long as this is not unlawful under the laws of the third country.
122. The suitability requirements of Directive 2013/36/EU and these Guidelines apply to CRD-institutions independent of the fact that they may be subsidiaries of a parent institution in a third country. Where an EU subsidiary of a parent institution in a third country is a consolidating CRD-institution, the scope of prudential consolidation does not include the level of the parent institution located in a third country and other direct subsidiaries of that parent institution. The consolidating CRD-institution should ensure that the group-wide policy of the parent institution in a third country is taken into consideration within its own policy insofar as this is not contrary to the requirements set out under relevant EU or national law, including these Guidelines.
123. The management body of subsidiaries that are subject to Directive 2013/36/EU should adopt and implement a suitability policy at individual level which is consistent with the policies established at the consolidated or sub-consolidated level, in a manner that complies with all specific requirements under national law.

## 15. Nomination committee and its tasks<sup>27</sup>

124. Significant institutions must have a nomination committee that fulfils the responsibilities and has the resources set out under Article 88(2) of Directive 2013/36/EU.
125. Members of the nomination committee should have adequate collective knowledge, expertise and experience relating to the business of the institution, to be able to assess the appropriate composition of the management body, including recommending candidates to fill management body vacancies.
126. Where a nomination committee is not established, the management body in its supervisory function should have the responsibilities set out in the first subparagraph of point (a) and points (b) to (d) of Article 88(2) of Directive 2013/36/EU, and the appropriate resources to this end. Where a nomination committee is not established, the assessment referred to under points (b) and (c) of Article 88(2) of that Directive should be performed at least every 2 years.
127. The nomination committee, where established, and the management body in its supervisory function, as appropriate, should have access to all necessary information to perform their duties and be able to involve the relevant internal control functions and other competent internal functions, where necessary.
128. In accordance with the last subparagraph of Article 88(2) of Directive 2013/36/EU, where, under national law, the management body does not have competence in the process of selection and appointment of any of its members, this section is not applicable.

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

129. Without prejudice to national company law, the management body should have an adequate number of members and an appropriate composition and should be appointed for an appropriate period. Nominations for re-appointment should take place only after considering the assessment result regarding the performance of the member that has been observed during the last term.
130. All members of the management body should be suitable. Without prejudice to members being elected by and representing employees, the management body should identify and select qualified and experienced members and ensure appropriate succession planning for the management body that is consistent with all legal requirements regarding composition, appointment or succession of the management body.

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<sup>27</sup> Regarding the composition and tasks of committees, see also the EBA's on Guidelines on Internal Governance: <https://www.eba.europa.eu/regulation-and-policy/internal-governance>

131. Without prejudice to the shareholder's rights to appoint members, when recruiting members of the management body, the management body in its supervisory function or, where established, the nomination committee, should actively contribute to the selection of candidates for vacant management body positions in cooperation with human resources and should:

- a. prepare a description of the roles of and capabilities for a particular appointment;
- b. evaluate the adequate balance of knowledge, skills and experience of the management body;
- c. assess the time commitment expected; and
- d. consider the objectives of the diversity policy.

132. The recruitment decision should, where possible, take into account a shortlist containing a preselection of suitable candidates which takes into account the diversity objectives set out in the institution's diversity policy and the requirements in Title V of these Guidelines. The decision should take into account the fact that a more diverse management body fosters constructive challenge and discussion based on different points of view. Institutions should not however recruit members of the management body with the sole purpose of increasing diversity to the detriment of the functioning and suitability of the management body collectively, or at the expense of the suitability of individual members of the management body.

133. The member of the management body should be aware of the culture, values, behaviours and strategy associated with that institution and its management body, where possible, before taking up the position.

134. Without prejudice to the shareholders' rights to appoint and replace all members of the management body simultaneously, when establishing a succession plan for its members, the management body should ensure the continuity of decision making and prevent, where possible, too many members having to be replaced simultaneously. Succession planning should set out the institution's plans, policies and processes for dealing with sudden or unexpected absences or departures of members of the management body, including any relevant interim arrangements. Succession planning should also take into account the objectives and targets defined in the institution's diversity policy.

## Title VII – Assessment of suitability by institutions

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

135. Unless otherwise specified in the Guidelines, the management body in its supervisory function or, where established, the nomination committee should ensure that the individual and collective suitability assessments of the members of the management body are carried out before they are appointed. They may liaise with other committees (e.g. risk and audit committee) and internal functions (e.g. human resources, legal or control functions). The management body in its supervisory function should be responsible for determining the final suitability assessments.
136. By way of derogation of paragraph 135, the individual and collective suitability assessments may be performed after the appointment of the member in any of the following cases for which the institution has provided a duly justification:
- a. shareholders, owners or members of the institution nominate and appoint members of the management body at the shareholder's or equivalent meeting that have not been proposed by the institution or by the management body, e.g. slate system;
  - b. a complete suitability assessment prior to the appointment of a member would disrupt the sound functioning of the management body, including as a result of the following situations:
    - i. where the need to replace members arises suddenly or unexpectedly, e.g. death of a member; and
    - ii. where a member is removed because he or she is not any longer suitable.
137. The suitability assessments should take into account all matters relevant to and available for the assessments. Institutions should consider the risks, including the reputational risk, arising in the event that any weaknesses are identified affecting the individual or collective suitability of the members of the management body.
138. 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 appropriate information on the assessment results to shareholders before the meeting. Where appropriate, the assessment should comprise various alternative compositions of the management body that can be introduced to the shareholders.
139. Where, in the duly justified cases referred to in paragraph 136, members are appointed by shareholders before an assessment of suitability is made, the appointment should be subject to the positive assessment of their suitability. In these cases, institutions should assess the suitability of the members and the composition of the management body as soon as practicable and at the latest within 1 month of the appointment of the members. If the subsequent assessment by the institution resulted in a member being considered not suitable for his or her position, the member and the competent authority should be

informed without delay. Institutions should also inform shareholders about the assessment made and the need to appoint different members.

140. Institutions should ensure that shareholders have full access to relevant and practical information about the obligation that the members of the management body and the management body collectively must at all times be suitable. The information provided to shareholders regarding the suitability of the management body and its members should enable shareholders to take informed decisions and to address any shortcomings in the composition of the management body or its individual members.
141. Where some members are appointed by the management body, such assessments should be performed before they effectively perform their function. In the duly justified cases referred to in paragraph 136, the assessment of suitability may be performed after the appointment of the member. This should be done as soon as practicable but at the latest within one month from the date of appointment.
142. Institutions should take into account the results of the assessment of the suitability of the individual member of the management body when assessing the collective suitability of the management body and vice-versa. Weaknesses identified within the overall composition of the management body or its committees should not necessarily lead to the conclusion that a particular member is individually not suitable.
143. Institutions should document the results of its assessment of suitability, and in particular any weaknesses identified between the necessary and the actual individual and collective suitability of members of the management body, and measures to be taken to overcome these shortcomings.
144. Institutions should transmit to competent authorities the outcome of the suitability assessments for new members of the management body, including the institution's assessment of the collective composition of the management body in line with the specified procedures referred to in section 23. This should include the documentation and information listed in Annex III<sup>28</sup>.
145. Institutions should, at the request of the competent authorities, provide additional information necessary for the individual or collective suitability assessment of the members of the management body. In the case of a re-appointment this information may be limited to relevant changes.

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<sup>28</sup> Please also refer to the draft RTS under Article 7(4) of Directive 2014/65/EU and draft ITS under Article 7(5) of Directive 2014/65/EU on the information to be provided at authorisation: [http://ec.europa.eu/finance/securities/docs/isd/mifid/rts/160714-rts-authorisation\\_en.pdf](http://ec.europa.eu/finance/securities/docs/isd/mifid/rts/160714-rts-authorisation_en.pdf) and [https://www.esma.europa.eu/sites/default/files/library/2015-1858 - final\\_report - draft\\_implementing\\_technical\\_standards\\_under\\_mifid\\_ii.pdf](https://www.esma.europa.eu/sites/default/files/library/2015-1858 - final_report - draft_implementing_technical_standards_under_mifid_ii.pdf). See also the Consultation Paper on draft RTS on authorisation published by the EBA.

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

146. Institutions should require members of the management body to demonstrate their suitability by providing at least the documentation that is required by competent authorities for the assessment of suitability, in accordance with Title VIII and Annex III of these Guidelines.
147. As part of the assessment of the suitability of an individual member of the management body, institutions should:
- a. gather information on the member's suitability through various channels and instruments (e.g. diplomas and certificates, recommendation letters, curricula vitae, interviews, questionnaires);
  - b. gather information on the reputation, integrity and honesty and independence of mind of the assessed individual;
  - c. require the assessed individual to verify that the information provided is accurate and to provide proof of information, where necessary;
  - d. require the assessed individual to declare any actual and potential conflicts of interest;
  - e. validate, to the extent possible, the correctness of the information provided by the assessed individual;
  - f. evaluate within the management body in its supervisory function or, where established, the nomination committee, the assessment results; and
  - g. where necessary, adopt corrective measures to ensure the individual suitability of the members of the management body in accordance with section 22.
148. Where there is a matter which causes concerns about the suitability of a member of the management body, an assessment of how this concern affects that person's suitability should be undertaken.
149. Institutions should document a description of the position for which an assessment was performed, including the role of that position within the institution, and should specify the results of the suitability assessment in relation to the following criteria:
- a. sufficient time commitment;

- b. compliance of members of the management body that hold a directorship in an significant institution with the limitation of directorships under Article 91(3) of Directive 2013/36/EU;
- c. sufficient knowledge, skills and experience;
- d. reputation, honesty and integrity; and
- e. independence of mind.

## 19. Assessment of the collective suitability of the management body

150. When assessing the collective suitability of the management body, institutions should assess the composition of the management body in its management and supervisory functions separately. The assessment of collective suitability should provide a comparison between the actual composition of the management body and the management body's actual collective knowledge, skills and experience, and the required collective suitability pursuant to Article 91(7) of Directive 2013/36/EU.

151. Institutions should perform an assessment of the collective suitability of the management body using either :

- a. the suitability matrix template included in Annex I. Institutions may adapt this template taking into account the criteria described in Title I; or
- b. their own appropriate methodology in line with the criteria set out in these Guidelines.

152. When assessing the suitability of an individual member of the management body, institutions should, within the same time period, also assess the collective suitability of the management body in accordance with section 7 as well as whether or not the overall composition of the specialised committees of the management body in its supervisory function is adequate<sup>29</sup>. In particular, it should be assessed what knowledge, skills and experience the individual brings to the collective suitability of the management body.

## 20. On-going monitoring and re-assessment of the individual and collective suitability of the members of the management body

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<sup>29</sup> Regarding the composition of committees please refer also to the EBA Guidelines on Internal Governance

153. The on-going monitoring of the individual or collective suitability of the members of the management body should focus on whether the individual member or the members collectively remain suitable, taking into account the individual or collective performance and the relevant situation or event which caused a re-assessment and the impact it has on the actual or required suitability.
154. When re-assessing the individual or collective performance of the members of the management body, the members of the management body in its supervisory function or, where established, the nomination committee, should consider in particular:
- a. the efficiency of the management body's working processes, including the efficiency of information flows and reporting lines to the management body taking into account the input from internal control functions and any follow-up or recommendations made by those functions;
  - b. the effective and prudent management of the institution, including whether or not the management body acted in the best interest of the institution;
  - c. the ability of the management body to focus on strategically important matters;
  - d. the adequacy of the number of meetings held, the degree of attendance, the appropriateness of time committed and the intensity of directors' involvement during the meetings;
  - e. any changes to the composition of the management body and any weaknesses with regard to individual and collective suitability, taking into account the institution's business model and risk strategy and changes thereof;
  - f. any performance objectives set for the institution and the management body;
  - g. the independence of mind of members of the management body, including the requirement that decision making is not dominated by any one individual or small group of individuals and the compliance of members of the management body with the conflict of interest policy;
  - h. the degree to which the composition of the management body has met the objectives set in the institution's diversity policy in line with Title V; and
  - i. any events that may have a material impact on the individual or collective suitability of the members of the management body, including changes to the institution's business model, strategies and organisation.
155. Significant institutions should perform a periodic suitability re-assessment at least annually. Non-significant institutions should perform a suitability re-assessment at least every 2 years. Institutions should document the results of the periodic re-assessment. Where a re-assessment is triggered by a specific event, institutions may focus the re-

assessment on the situation or event that has triggered the re-assessment; i.e. where certain aspects have not changed, these can be omitted from the assessment.

156. The result of the re-assessment, the reason for the re-assessment and any recommendation with regard to identified weaknesses should be documented and submitted to the management body.
157. The management body in its supervisory function or, where established, the nomination committee should report the result of the assessment of collective suitability to the management body even if no changes to its composition or other measures are recommended. Recommendations may include, but are not limited to training, change of processes, measures to mitigate conflicts of interest, the appointment of additional members with a specific competence and the replacement of members of the management body.
158. The management body in its management function should take notice of the report and decide on the recommendations made by the management body in its supervisory function or, where established, the nomination committee, and where recommendations are not adopted, document the underlying reasons.
159. Institutions should inform the competent authority where re-assessments due to material changes occurred. Significant institutions should inform the competent authority at least annually of any re-assessments of collective suitability made.
160. Institutions should document the re-assessments, including their outcome and any measures taken as a result of the re-assessment. Institutions should submit the documentation supporting the re-assessment at the request of the competent authority.
161. In the event that the management body concludes that a member of the management body is not suitable individually, or where the management body is not suitable collectively the institution should immediately inform the competent authority without delay, including about the measures proposed or taken by the institution to remedy the situation.

## 21. Suitability assessment of key function holders by CRD-institutions

162. The responsible function within a CRD-institution should carry out the suitability assessment of key function holders before their appointment and should report the assessment results to the appointing function and the management body. Significant CRD-institutions, referred to in paragraph 171, should inform competent authorities of the assessment results regarding heads of internal control functions and the CFO, where they are not part of the management body.

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

164. Where an assessment by a competent authority is also required, CRD-institutions should take the necessary measures (e.g. by applying a probation period or a suspensive condition in the employment contract or by appointing acting heads) when appointing a key function holder to enable the institution to remove the key function holder from the position if she or he is assessed as not being suitable by the competent authority for that position.

## 22. Institutions' corrective measures

165. If an institution's assessment or re-assessment concludes that a person is not suitable to be appointed as a member of the management body that person should not be appointed or, if the member has already been appointed, the institution should replace that member. With the exception of criteria relevant to the assessment of reputation, honesty and integrity, if an institution's assessment or re-assessment identifies easily remediable shortcomings in the members knowledge, skills, experience, the institution should take appropriate corrective measures to overcome those shortcomings in a timely manner.

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

167. When an institution takes corrective measures it should consider the particular situation and shortcomings of an individual member or the collective composition of the management body. In the case of the authorisation of an institution to take up its business such measures should be implemented before the authorisation is granted.<sup>30</sup>

168. Appropriate corrective measures may include, but are not limited to: adjusting responsibilities between members of the management body; replacing certain members; recruiting additional members; possible measures to mitigate conflicts of interest; training single members; or training for the management body collectively to ensure the individual and collective suitability of the management body.

169. In any case, competent authorities should be informed without delay of any material shortcomings identified concerning any of the members of the management body and the

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<sup>30</sup> See footnote 28

management body's collective composition. Significant institutions should also inform competent authorities about any shortcomings identified regarding heads of internal control functions and the CFO, where they are not part of the management body. The information should include the measures taken or envisaged to remedy those shortcomings and the timeline for their implementation.

## Title VIII – Suitability assessment by competent authorities

### 23. Competent authorities' assessment procedures

170. Competent authorities should specify the supervisory procedures applicable to the suitability assessment of members of the management body of institutions, as well as the heads of internal control functions and the CFO, where they are not part of the management body, in the case of significant CRD-institutions. When specifying the supervisory procedures, competent authorities should consider that a suitability assessment performed after the member has taken up his or her position could lead to the need to remove a non-suitable member from the management body or to a situation where the management body collectively has ceased to be suitable. Competent authorities should ensure that a description of those assessment procedures is publicly available.
171. The suitability assessments of heads of internal control functions and the CFO, where they are not part of the management body, for significant CRD-institutions, should be performed by competent authorities for:
- a. significant consolidating CRD-institutions;
  - b. significant CRD-institutions that are part of a group, where the consolidating CRD-institution is not a significant institution;
  - c. significant CRD-institutions that are not part of a group.
172. The supervisory procedures should ensure that newly appointed members of the management body, the management body as a collective body and, for significant CRD-institutions referred to in paragraph 171, newly appointed heads of internal control functions and the CFO, where they are not part of the management body, are assessed by the competent authorities. The supervisory procedures should also ensure that re-appointed members of the management body are re-assessed by the competent authority in accordance with paragraphs 24 b) ii) and 32 b) ii) where a re-assessment is necessary.
173. Competent authorities should ensure that their supervisory procedures allow them to address cases of non-compliance in a timely manner.
174. As part of the above supervisory procedures, institutions should be required to inform competent authorities without delay of any vacant positions within the management body.

Institutions should also be required to notify competent authorities of the intended appointment, in cases where the competent authority assesses the suitability before the appointment, or the appointment, in cases where the competent authorities assesses the suitability after the appointment, of a member of the management body. Such notifications should, in cases where the competent authority assesses the suitability before the appointment, be made not later than 2 weeks after the institution decided to propose the member for appointment or, in cases where the competent authorities assesses the suitability after the appointment, 2 weeks after the appointment and include the complete documentation and information in Annex III.

175. In the duly justified cases referred to in paragraph 136, institutions should be required to provide the complete documentation and information in Annex III, together with the notification to the competent authority within 1 month of the member being appointed.
176. Significant CRD-institutions, for which an assessment of heads of internal control functions and the CFO, where they are not part of the management body, is required in line with paragraphs 171 and 172, should notify competent authorities of the appointment of these functions without delay and at the latest within 2 weeks of their appointment. Significant CRD-institutions should be required to provide the complete documentation and information listed in Annex III, as applicable, together with the notification.
177. Competent authorities may set out the supervisory procedures applicable to the assessment of suitability of heads of internal control functions and the CFO, where they are not part of the management body, in other institutions not referred to in paragraph 171 and, where identified on a risk-based approach, other key function holders in institutions. As part of those procedures, competent authorities may also request those institutions to inform them about the results of the assessment carried out and to submit the relevant documentation to them.
178. Competent authorities should set out a maximum period for their assessment of suitability which should not exceed 4 months from the date when the notifications referred to in paragraphs 174 to 176 are provided by the institution. Where a competent authority establishes that additional documentation and information are needed to complete the assessment, that period may be suspended from the time when the competent authority requests additional documentation and information necessary to complete the assessment, until the receipt of that documentation and information. Necessary documentation and information should include documents or hearings that have to be requested or conducted in the course of the administrative procedures in cases where a negative decision is intended.
179. In accordance with Article 15 of Directive 2013/36/EU, where the assessment of suitability is performed in the context of an authorisation to take up the business, the maximum period must not exceed 6 months after receipt of the application or, where the

application is incomplete, 6 months after receipt of the complete information required for the decision<sup>31</sup>.

180. Competent authorities should perform their assessment on the basis of the documentation and information provided by the institution and assessed members, and assess them against the notions defined in Title III, as applicable.
181. The assessment of the individual and collective suitability of the members of the management body should be performed on an on-going basis by competent authorities, as part of their ongoing supervisory activity. Competent authorities should ensure that necessary re-assessments under sections 1 and 2 are conducted by institutions. If a re-assessment of suitability by a competent authority is prompted by a re-assessment by an institution, that competent authority should in particular take into account the circumstances that prompted the re-assessment by the institution. In particular, competent authorities should re-assess the individual or collective suitability of the members of the management body whenever significant new facts or evidence are unveiled during the course of ongoing supervision.
182. For significant institutions, competent authorities should use interviews where appropriate for the purpose of suitability assessments. Interviews may also be performed for other institutions on a risk-based approach, taking into account the criteria set out in Title I as well as the individual circumstances of the institution, the assessed individual, and the position for which an assessment is made.
183. Where appropriate, the interview process may also serve to re-assess the suitability of a member of the management body or key function holder when there are any new facts or circumstances that may raise concerns about the suitability of the individual.
184. Competent authorities may attend or conduct meetings with the institution, including with some or all members of its management body or key function holders, or participate as an observer in meetings of the management body in order to assess the effective functioning of the management body. The frequency of such meetings should be set using a risk-based approach.
185. A breach of a prudential or other regulatory requirement by an institution can, in some circumstances, support a finding by the competent authority that an individual is no longer suitable. For instance, in the event that the competent authority establishes, following due process that an individual failed to take such steps as a person in his or her position could reasonably be expected to take in order to prevent, remedy or stop the breach.

## 24. Decision of the competent authority

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<sup>31</sup> See footnote 28

186. Competent authorities should take a decision based on the assessment of individual and collective suitability of members of the management body and the assessment of heads of internal control functions and the CFO, where they are not members of the management body, within the maximum period referred to in paragraph 178 or, if the period has been suspended, within a maximum period of 6 months after the starting of that period.
187. In the cases referred to in paragraph 179, in accordance with the second subparagraph of Article 15 of Directive 2013/36/EU, a decision to grant or refuse authorisation must, in any event, be taken within 12 months of the receipt of the application.
188. Where an institution fails to provide sufficient information regarding the suitability of an assessed individual to the competent authority, the latter should either inform the institution that the member cannot be a member of the management body or a key function holder because it has not been sufficiently proven that the person is suitable or decide negatively.
189. Where the outcome of the assessment of suitability by the competent authority concludes that it is not sufficiently proven that the assessed person is suitable, the competent authority should object to or not approve the appointment of that person, unless the identified shortcomings are remediable and can be overcome by other measures taken by the institution.
190. Competent authorities should inform institutions of at least a negative decision taken as soon as possible. Where provided by national law or defined by the competent authority as part of their supervisory processes, a positive decision may be deemed to be taken by silence, when the maximum period for the assessment, as referred in paragraph 178, is completed and the competent authority has not taken a negative decision.
191. The competent authority, considering the measures already taken by the institution, should take appropriate measures to address the identified shortcomings and set a timeline for the implementation of these measures, including:
- a. requiring the institution to organise specific training for the members of the management body individually or collectively;
  - b. requiring the institution to change the division of tasks amongst the members of the management body;
  - c. requiring the institution to refuse the proposed member or to replace certain members;
  - d. requiring the institution to change the composition of the management body to ensure the individual and collective suitability of the management body;

- e. removing the member from the management body, where the competent authority has the legal power to do so or any other equivalent measure;
  - f. where appropriate, imposing administrative penalties or other administrative measures (e.g. setting out specific obligations, recommendations or conditions), including ultimately withdrawing the institution's authorisation.
192. The measures referred to in (a) and (c) should also be applicable in the context of the suitability assessments of the heads of internal control functions and the CFO, where they are not part of the management body, of significant institutions.

## 25. Cooperation between competent authorities

193. Competent authorities should provide each other, while respecting the applicable data protection legislation, with any information they hold about a member of the management body or key function holder for the performance of a suitability assessment. The information should also include a justification for the decision taken regarding that person's suitability. For this purpose, unless national law permits it without requiring consent, the requesting competent authority should seek from members of the management body or key function holders consent:
- a. to request from any competent authority information relating to them which is needed for the suitability assessment;
  - b. to process and use the provided information for the suitability assessment, if such consent is required by applicable data protection legislation.
194. Competent authorities may take into consideration the results of the assessment of suitability conducted by other competent authorities about members of the management body or key function holders and request the necessary information from other competent authorities in order to do so. Competent authorities receiving such requests should, where possible, provide relevant available information on the suitability of individuals as soon as possible to enable the requesting competent authority to comply with the time for assessment laid down in paragraph 178. The information provided should comprise the result of the assessment of suitability, any identified shortcomings, measures taken to ensure the suitability, the responsibilities of the position for which the person was assessed and basic information on the size, nature, scale and complexity of the relevant institution.
195. Competent authorities should take into account the information provided in the EBA and ESMA databases on administrative penalties in line with Article 69 of Directive 2013/36/EU and Article 71 of Directive 2014/65/EU as a part of their assessment of suitability, by identifying any penalties in the last 5 years against institutions where the assessed person was a member of their management body or a key function holder and

considering the severity of the underlying cause and the responsibility of the assessed person.

196. Where relevant, competent authorities may also request information from other competent authorities about the assessed individual in cases where the person has not been assessed by another competent authority, but where the other competent authority may be in a position to provide additional information, e.g. on refused registrations or criminal records. Competent authorities receiving such requests should provide relevant available information on the suitability of persons. Where the information originates in another Member State, it shall be disclosed only with the express agreement of the authorities which have provided the information and solely for the purposes for which those authorities gave their agreement.
197. Where a competent authority reaches a decision about the suitability of a person that differs from any previous assessment conducted by another competent authority, the competent authority performing the more recent assessment should inform the other competent authorities of the result of its assessment.
198. When requesting information, the competent authority making the request should provide the name of the individual being assessed together with his or her date of birth or the name of the institution and position for which the individual has already been assessed, to ensure that data for the correct person is provided.

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

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Annex 1 to the Guidelines is provided as a separate Excel file.

## Annex II – Skills

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This is the non-exhaustive list of relevant skills, referred to in paragraph 61, that institutions should consider using when performing their suitability assessments:

- a. **Authenticity:** is consistent in word and deed and behaves in accordance with own stated values and beliefs. Openly communicates his or her intentions, ideas and feelings, encourages an environment of openness and honesty, and correctly informs the supervisor about the actual situation, at the same time acknowledging risks and problems.
- b. **Language:** is able to communicate orally in a structured and conventional way and write in the national language or the working language of the institution's location.
- c. **Decisiveness:** takes timely and well-informed decisions by acting promptly or by committing to a particular course of action, for example by expressing his or her views and not procrastinating.
- d. **Communication:** is capable of conveying a message in an understandable and acceptable manner, and in an appropriate form. Focuses on providing and obtaining clarity and transparency and encourages active feedback.
- e. **Judgement:** is capable of weighing up data and different courses of action and coming to a logical conclusion. Examines, recognises and understands the essential elements and issues. Has the breadth of vision to look beyond his or her own area of responsibility, especially when dealing with problems that may jeopardise the continuity of the undertaking.
- f. **Customer and quality-oriented:** focuses on providing quality and, wherever possible, finding ways of improving this. Specifically, this means withholding consent from the development and marketing of products and services and to capital expenditure, e.g. on products, office buildings or holdings, in circumstances where he or she is unable to gauge the risks properly owing to a lack of understanding of the architecture, principles or basic assumptions. Identifies and studies the wishes and needs of customers, ensures that customers run no unnecessary risks and arranges for the provision of correct, complete and balanced information to customers.
- g. **Leadership:** provides direction and guidance to a group, develops and maintains teamwork, motivates and encourages the available human resources and ensures that members of staff have the professional competence to achieve a particular goal. Is receptive to criticism and provides scope for critical debate.

- h. **Loyalty:** identifies with the undertaking and has a sense of involvement. Shows that he or she can devote sufficient time to the job and can discharge his or her duties properly, defends the interests of the undertaking and operates objectively and critically. Recognises and anticipates potential conflicts of personal and business interest.
- i. **External awareness:** monitors developments, power bases and attitudes within the undertaking. Is well-informed on relevant financial, economic, social and other developments at national and international level that may affect the undertaking and also on the interests of stakeholders and is able to put this information to effective use.
- j. **Negotiating:** identifies and reveals common interests in a manner designed to build consensus, while pursuing the negotiation objectives.
- k. **Persuasive:** is capable of influencing the views of others by exercising persuasive powers and using natural authority and tact. Is a strong personality and capable of standing firm.
- l. **Teamwork:** is aware of the group interest and makes a contribution to the common result; able to function as part of a team.
- m. **Strategic acumen:** is capable of developing a realistic vision of future developments and translating this into long-term objectives, for example by applying scenario analysis. In doing so, takes proper account of risks that the undertaking is exposed to and takes appropriate measures to control them.
- n. **Stress resistance:** is resilient and able to perform consistently even when under great pressure and in times of uncertainty.
- o. **Sense of responsibility:** understands internal and external interests, evaluates them carefully and renders account for them. Has the capacity to learn and realises that his or her actions affect the interests of stakeholders.
- p. **Chairing meetings:** is capable of chairing meetings efficiently and effectively and creating an open atmosphere that encourages everyone to participate on an equal footing; is aware of other people's duties and responsibilities.

# Annex III – Documentation requirements for initial appointments

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

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

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

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

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

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

## 2. Suitability assessment by institution

2.1 The following details should be provided:

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

## 3. Knowledge, skills and experience

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

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

#### 4. **Reputation, honesty, integrity**

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

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

4.3 Information concerning the following :

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

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

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

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

- a. description of any financial (e.g. loans, shareholdings) and non-financial interests or relationships (e.g. close relations such as a spouse, registered partner, cohabitant, child, parent or other relation with whom the person shares living accommodations) between the individual and his/her close relatives (or any company that the individual is closely connected with) and the institution, its parent or subsidiaries, or any person holding a qualifying holding in such an institution, including any members of those institutions or key function holders;
- b. whether or not the individual conducts any business or has any commercial relationship (or has had over the past 2 years) with any of the above listed institutions or persons or is involved in any legal proceedings with those institutions or persons;
- c. whether or not the individual and his/her close relatives have any competing interests with the institution, its parent or subsidiaries;
- d. whether or not the individual is being proposed on behalf of any one significant shareholder;
- e. any financial obligations to the institution, its parent or its subsidiaries (excluding performing mortgages negotiated at arm's length); and
- f. any positions of political influence (nationally or locally) held over the past 2 years.

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

## **6. Time commitment**

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

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

- b. a list of the predominantly commercial mandates that the individual holds including whether or not the privileged counting rules<sup>32</sup> in Article 91(4) of CRDIV apply;
- c. where the privileged counting rules apply an explanation of any synergies that exist between the companies;
- d. a list of those mandates which are pursuing predominantly non-commercial activities or are set up for the sole purposes of managing the economic interests of the individual;
- e. the size of the companies or organisations where those mandates are held including for example, total assets, whether or not the company is listed, and number of employees;
- f. a list of any additional responsibilities associated with those mandates (such as the chair of a committee);
- g. estimated time in days per year dedicated to each mandate; and
- h. number of meetings per year dedicated to each mandate.

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

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

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

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

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<sup>32</sup> This is where the individual avails of the possibility that several mandates that are part of the same group, or within undertakings where the institution holds a qualifying holding or in institutions that are part of the same institutional protection schemes.

## 5. Accompanying documents

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

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

#### A. Problem identification

Weaknesses in corporate governance, including inadequate oversight by and challenge from the supervisory function of the management body in a number of credit institutions and investment firms, have contributed to excessive and imprudent risk-taking in the financial sector which has led in turn to the failure of individual institutions and systemic problems.

The global financial crisis that broke out in 2008 has provided evidence of the adverse consequences of deficiencies in financial institutions’ management and internal controls, amongst other conditions. The scale and cost of that crisis indicate the systemic effects that insufficient risk management and failures of individual institutions can have on the integrity of the broader financial market and ultimately on the stability of the financial system.

Against this background, it has become obvious that the role and responsibilities of management bodies in both supervisory and management functions should be strengthened in order to ensure sound and prudent management of credit institutions and investment firms and to protect the integrity of the market and the interest of consumers. Institutions’ governance also relies on key functions. Hence both, members of the management body and key function holders must be suitable for their position to ensure the sound governance of institutions.

The EBA has collected a significant amount of data from National Competent Authorities (NCAs) regarding internal governance and the composition of management bodies of credit institutions and investment firms in the EU. That data (referring to the situation in early 2015) covers information about the number of directorships and time commitment of individual members of the management body, training and training-resources, and the diversity of the institutions’ management body. An analysis of the data regarding time commitment and training is provided in the Annex to the impact assessment. Regarding the data on diversity the EBA has published a separate report<sup>33</sup>. The main findings are that the representation of the underrepresented gender

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<sup>33</sup> The diversity benchmarking report can be accessed: <https://www.eba.europa.eu/documents/10180/1360107/EBA-Op-2016-10+%28Report+on+the+benchmarking+of+diversity+practices%29.pdf>

differs significantly between Member States and that it is in general at a too low level. In a smaller number of institutions there is a significant concentration of members of similar age, which also limits the diversity of the management body. The diversity regarding educational and professional background is more developed; this is closely linked to the need to have different qualifications to ensure that the management body is collectively suitable.

### **Review of the current EBA Guidelines on the assessment of the suitability of members of the management body and key function holders**

The EBA's peer review regarding the assessment of suitability of members of banks' management bodies and key function holders<sup>34</sup> has identified a large variety of supervisory practices and outcomes, even under the current EBA Guidelines on suitability assessment. Further, since the outbreak of the global financial crisis in 2008, the European financial regulatory and supervisory landscape has developed significantly. In combination, those factors entail the the revision and updating the EBA's current Guidelines on the assessment of suitability.

#### **B. Policy objectives**

These Guidelines are expected to contribute to the development of single rule book and a level playing field for the EU banking and investment firm sectors and convergence of supervisory practices and outcomes<sup>35</sup>. As joint initiative of EBA and ESMA, these Guidelines are also expected to strengthen cross-sectoral consistency and reduce potential risk originating from regulatory arbitrage within the EU financial system.

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

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

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<sup>34</sup> EBA peer review on GL on suitability assessment (2015), available under <http://www.eba.europa.eu/documents/10180/950548/EBA+Peer+Review+Report+on+suitability.pdf>

<sup>35</sup> EBA Annual Report 2014, available under <http://www.eba.europa.eu/documents/10180/1112872/EBA+2014+Annual+Report.pdf>; EBA Work Programme 2016 (revised), available under <http://www.eba.europa.eu/documents/10180/1232192/EBA+2016+Work+Programme+%28revised%29.pdf>

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

### C. Baseline scenario

For credit institutions, the current EU legislative framework for the assessment of the suitability of members of the management body and key function holders of financial institutions is based mainly on Directive 2013/36/EU and the EBA's Guidelines on procedures and methodologies of the Supervisory Review and Evaluation Process (SREP), its Guidelines on Internal Governance and its current Guidelines on the assessment of the suitability of members of the management body and key function holders.

The recent EBA peer review regarding the current EBA Guidelines on suitability assessments in credit institutions identified a wide variety of supervisory practices and outcomes across EU MS / EEA-EFTA countries, including different interpretations of fundamental concepts such as suitability, time commitment, assessment criteria, independence and conflict of interests.

In addition, inconsistencies could also exist between the regulatory frameworks and supervisory practices for credit institutions and investment firms, entailing the risk of regulatory arbitrage in the European financial system.

Approximately half of the competent authorities (BE, BG, CZ, IE, HR, CY, LV, LT, LU, HU, MT, NL, RO, SK, LI) use the *ex ante* approach to assess the suitability of all members of the management body and key function holders. An *ex post* assessment is applied by nine competent authorities (DK, DE, EE, EL, FR, IT, AT, IS, NO); the remainder use a combination of both approaches (CZ, ES, PL, PT, SI, FI, SE, UK). Several competent authorities do not formally assess the key function holder (BG, DE, HR, IT, LT, PT, SI, SE).

For investment firms, the regime established under Directive 2004/39/EC and the relevant implementing Directive 2006/73/EC is simpler than the one set out in Directive 2014/65/EU. This framework requires that : i) the persons who effectively direct the business of an investment firm should be of good repute and sufficiently experienced to ensure the sound and prudent management of the investment firm (Article 9(1)); and (ii) the management of investment firms is undertaken by at least two persons<sup>36</sup> (Article 9(4))<sup>37</sup>. These persons are qualified as "senior management" under Article 2(9) of the Implementing Directive and their responsibility is set out in Article 9 of that Directive.

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<sup>36</sup> Member States may grant authorisation to investment firms that are natural persons or to investment firms that are legal persons managed by a single natural person in accordance with their constitutive rules and national laws. Member States shall nevertheless require that alternative arrangements should be in place to ensure the sound and prudent management of such investment firms (Article 9(4) second paragraph of Directive 2004/39/EC).

<sup>37</sup> These persons are qualified as "senior management" under Article 2(9) Directive 2006/73/EC and their responsibility is ruled by Article 9 of that Directive.

The new Directive 2014/65/EU will enter into application on 3 January 2018 and will align the requirements for the assessment of the suitability of the members of the management body with those applicable for credit institutions and investment firms subject to Directive 2013/36/EU (Article 9(1) of Directive 2014/65/EU that recalls Article 88 and 91 of Directive 2013/36/EU).

Therefore (and since there are no ESMA Guidelines on these aspects), the baseline scenario for investment firms should be to continue to rely on the national regimes provided for the implementation of European standards<sup>38</sup> for the assessment of the suitability of members of the management body.

According to Directive 2014/65/EU, this assessment should cover at least the assessment of the (two) persons who effectively direct the business at the moment of authorisation (Article 9(6)), and should ensure that the members of the management body are at all times of good repute and possess sufficient knowledge, skills and experience to perform their duties, including committing sufficient time to perform their functions.

#### D. Options considered

In the development process of these Guidelines, the following sets of policy options have been considered.

##### Option 1: Scope of Guidelines:

- A) Providing Guidelines on the notions of suitability and the related governance and supervisory processes
- B) Providing joint Guidelines only on the notions of suitability, diversity and training resources, leaving to the EBA and ESMA separately the decision on whether or not and how to develop Guidelines on the remaining topics of the related governance and supervisory processes.

Option A appears to be more efficient for the addressees as all Guidelines would be accessible in one single document. This option could also contribute to promoting a harmonised approach and a more general understanding of the overall framework for the assessment of suitability. The costs for implementing of a joint set of Guidelines compared to separate sets of Guidelines are the same.

Option B would be closest to the joint mandate received by the EBA and ESMA to develop joint Guidelines on the notions of suitability. Both authorities would in any case maintain the power to issue Guidelines on the related governance, organisational requirements and supervisory

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<sup>38</sup> In April 1999, FESCO published European standards on “Fitness and propriety to provide investment services” (99-FESCO-A). The three Committees (CEBS, CESR and CEIOPS) published 3L3 guidelines for the prudential assessment of acquisitions and increases in holdings in the financial sector required by Directive 2007/44/EC (CEBS/2008/14; CESR/08-543b; CEIOPS-3L3-19/08). The latter in particular aimed to provide, *inter alia*, guidelines to supervisors when assessing the fitness and propriety of persons to be appointed to direct the business.

processes and can adopt separate or a common set of Guidelines regarding this issue. It is worth noting that if a common set of Guidelines is not adopted, this option could lead to a non-harmonised implementation across the banking and securities sectors of the same topics relevant to the assessment of the notions of suitability set out in the joint mandate.

Option A has been retained.

Option 2: Scope of persons to be assessed:

- A) Limiting the assessment to members of the management body
- B) Requiring the assessment of members of the management body and key function holders for all CRD and MiFID institutions and competent authorities
- C) Requiring the assessment of members of the management body and key function holders for all institutions directly subject to Directive 2013/36/EU and competent authorities
- D) Requiring for institutions the assessment of members of the management body and for CRD-institutions the assessment of key function holders, but limiting the scope of assessments to be made by competent authorities to the assessment of members of the management body and for significant institutions the assessment of heads of internal control functions and the CFO, where they are not a member of the management body.
- E) Requiring for institutions the assessment of members of the management body and for CRD-institutions the assessment of key function holders, but limiting the scope of assessments to be made by competent authorities to the assessment of members of the management body and for significant institutions requiring the assessment of the key function holders at the individual level and, where applicable and, in the case of prudential consolidation, at the level of the consolidating institution.

Option A would restrict the assessment to what is explicitly required under EU legislation. The previous EBA Guidelines already required a wider scope for assessments by institutions. While the costs would be kept to the minimum necessary, the measure would not ensure that institutions have robust governance arrangements in place.

Option B leads to minor additional costs for credit institutions, as the assessment of key function holders in credit institutions was already required under previous Guidelines. In most credit institutions the heads of internal control functions should already have been treated as key function holders, and only where this was not the case do minor additional costs emerge for the application of a formalised process. However, it can be assumed that credit institutions already have processes in place to ensure that they employ suitable staff for these functions.

Option B may lead to additional costs for investment firms that do not already assess the suitability of key function holders. However, it can be assumed that most investment firms already assess in some form the experience, reputation, and available time commitment of key

function holders. Therefore, the additional costs would be limited to changing the process and the documentation of the results. These costs may be proportionately greater for smaller and less complex investment firms, such as those not already directly subject to the requirements in Directive 2013/36/EU. The assessment is necessary to ensure robust governance arrangements.

With regard to competent authorities, additional costs would be created for those that do not yet assess the suitability of key function holders. Given the number of institutions and positions to be assessed, this cost would be material, but the supervision of governance arrangements for all institutions would be improved.

Option C has the same impact on credit institutions and competent authorities. However, for small and less complex investment firms, limiting the formal assessment processes as applicable only to those investment firms already directly subject to Directive 2013/36/EU may permit an approach which is more proportionate.

Option D has the same impact for credit institutions and for investment firms as Option C, but the cost impact for competent authorities would be low as the number of institutions where the heads of control functions and the CFO need to be assessed are limited to significant institutions. This would ensure that institutions that could have an impact on the financial stability of the banking system are under closer supervision. Competent authorities can still extend the review to other institutions.

Option E has the same impact for credit institutions and for investment firms as Options C and D, but the cost impact for competent authorities would be lower than Option D, as the number of institutions where the heads of control functions and the CFO need to be assessed is limited to significant institutions at the highest level of consolidation, significant CRD-institutions that are part of a group, but not subject to prudential consolidation by a significant consolidating CRD-institution, and at the individual level, if the significant-CRD institution is not part of a group.

Option E has been retained.

### Option 3: Time period for assessments

- A) Retaining the time periods set within the previous set of Guidelines
- B) Shortening the time periods set for institutions and competent authorities

Option A is not recommended as the results of the EBA's peer review of the existing EBA Guidelines show. There is a risk that in a situation where an individual member of the management body and/or its overall composition is not suitable, this could last too long.

Option B would reduce this risk identified under Option A. A time period for the assessment by institutions, if the assessment is only done after the appointment, of one month was deemed as sufficient. It is not expected that the costs of the assessment will increase by shortening the periods. As the responsibility for the assessment lies mainly with the institutions, the time

available to competent authorities to finalise the assessment of suitability was set at 4 months, allowing sufficient time to analyse the documents provided, perform interviews and hearings as appropriate, cooperate with other competent authorities and to reach an informed decision, including imposing conditions or other measures as appropriate. Where the competent authority requests additional information that is needed to finalise the assessment, e.g. where the information provided was not sufficiently clear, it should be possible to suspend the assessment period. However, to ensure that assessments are finalised in a fixed time frame even if the period has been suspended, decisions have to be taken at the latest within 6 months of the start of the period.

Option B was retained.

Option 4: Time commitment, number of directorships and, other suitability criteria

- A) Setting out fixed thresholds or formulas for the time commitment expected
- B) Setting out principles on time commitment and its assessment
- C) Defining the counting of directorships for significant institutions within a group based on the prudential scope of application
- D) Defining the counting of directorships for significant institutions within a group based on the accounting scope of consolidation
- E) Requiring fixed criteria for the suitability assessment regarding experience, knowledge and skills
- F) Providing criteria for the assessment of experience, knowledge and skills that are principles-based and require a case-by-case assessment

Option A would lead to a high level of harmonisation and reduce the assessment cost for institutions and competent authorities. However, fixed criteria would not allow for a proportionate application and would not take into account the specific situation of members of the management body.

Option B would set general principles-based Guidelines on time commitment, allowing a proportionate application, although reference would be made to observed benchmarks to ensure a harmonised application a reference would be made to observed benchmarks. Under this approach, the cost of the assessment would be reduced, as the principles of how time commitment should be assessed would be clarified without creating the burden of an inflexible framework as proposed under Option A.

Option C would lead to the most restrictive counting of the number of directorships that can be held by a member of the management body of a significant institution, as the prudential scope of consolidation is narrower than the accounting scope.

Option D acknowledges that, within the accounting scope of consolidation synergy effects exist between different directorships held by one person, taking into account that an institution would in any case need to have information on all its subsidiaries, including on the risks they pose, and to take appropriate measures to manage these subsidiaries because they affect the financial results of the group.

It should also be considered that the limitation of the multiple directorships could have some negative impacts for smaller and less complex firms which may encounter difficulties as a result of a reduction in the pool of available potential candidates for a particular position, and the possible increase in the cost of attracting and compensating members of the management body.

Option E would set out fixed criteria that could lead to a ‘tick the box’ approach that would be cost efficient, but would not take into account the specificities of positions and persons to be assessed.

Option F provides for a higher level of flexibility, but increases the costs for institutions and competent authorities as a case- by-case assessment is more time consuming. However, the benefits of Option F are that under such a framework it is more likely that a diverse board composition can be achieved and that it provides more flexibility to institutions to fill specialised positions, e.g. in situations where a specific and uncommon business model is pursued.

Option B, D and F have been retained.

#### Option 5: Collective suitability

- A) Providing a mandatory assessment tool
- B) Providing an assessment tool that may be adopted and used voluntarily
- C) Leaving assessment tools to the discretion of institutions and competent authorities

Institutions and competent authorities is required to assess the collective knowledge, skills and experience of the management body, which needs to cover all business activities of the institution. To ensure a harmonised approach to documenting the assessment, a structured method is needed that compares the knowledge, skills and experience needed and the knowledge, skills and experience existing within the management body in its management function and in its supervisory function. The composition of the management body should also ensure that an appropriate discussion of topics can take place.

Option A would provide a mandatory standardised assessment tool, which would lead to the highest level of harmonisation and would also lead to lower costs for competent authorities.. This option may also lead to a reduction in costs for institutions, as they would not need to develop their own methodology. However, as institutions’ business models differ, a fully standardised tool would probably end up being very high-level, to account for all possible scenarios, or would not be flexible enough. For this reason, Option A would not be effective.

Option B would lead to a high level of harmonisation by setting out a standardised approach that can be adapted taking into account the needs of the institution. This would limit the costs for both institutions and competent authorities, as most institutions would most likely use very similar methods based on the approach in the Guidelines. However, some institutions may make many adjustments, which would effectively lead to the use of different methods for the assessment of collective suitability (as proposed under Option C).

Option C would allow the most flexible approach taking into account the needs of the institution and the competent authority. However, developing individual methods within each institution would create additional costs for both institutions and competent authorities.

Options B and C combined should ensure that for most institutions a similar method is used, leading to standardised and harmonised assessment processes, whilst where appropriate, institutions could use a specially adapted methodology. These two options in combination would reduce the cost for the assessment by competent authorities to the extent possible.

Options B and C have been retained. Option 6: Independence of mind and independent members of the management body

- A) Setting out Guidelines only on independence of mind of members of the management body applicable to all institutions
- B) Setting out Guidelines on independent members of the management body applicable to all institutions in a proportionate way and distinguishing it from independence of mind
- C) Setting out Guidelines on independent members of the management body (applicable to CRD-institutions) in a proportionate way and distinguishing it from independence of mind (applicable to all institutions)

Option A reflects the CRD as institutions and competent authorities are required to assess the independence of mind of members of the management body, but the Guidelines would not provide sufficient guidance on the distinction between independence of mind and independence of members. Both concepts are linked. Setting out Guidelines on only independence of mind would not lead to sufficient harmonisation. Option A is therefore not recommended.

Option B contains Option A. Independence of members supports the notion of independence of mind of members of the management body and the collective suitability of the management body. In addition, having independent members of the management body is a good governance practice. The Guidelines follows the principle of proportionality by requiring a higher number of independent members within significant and listed institutions, compared to other institutions and subsidiaries and in subsidiaries that are fully owned by another group entity. Competent authorities may allow that (i) wholly owned subsidiaries and (ii) non-significant investment firms do not need to have independent members. Wholly owned subsidiaries do not have minority shareholders. Investment firms are very often small in size and some may have a legal form that is not fully compatible with the concept of independent members of the management body. Such a

proportionate approach reduces the costs for implementing the Guidelines. Setting out the definition of an independent member increases the clarity of this governance principle and establishing Guidelines on internal governance and organisational arrangements is a part of the mandates of the EBA and ESMA. The requirement to have some independent members of the management body should not restrict the ability of an institution to select suitable candidates in terms of knowledge, experience, skills and reputation. However, this option may result in some additional costs for credit institutions and investment firms that are not already required to have a certain proportion of independent members of the management body (e.g. as a result of the applicable national regime). These costs may be proportionately higher for some for smaller and less complex investment firms, such as those not already directly subject to the requirements in Directive 2013/36/EU.

Option C is the same as Option B; however, limiting the application of formal assessment processes to those investment firms already directly subject to Directive 2013/36/EU may permit an approach which is more proportionate.

Option C has been retained.

#### Option 7: Institutions' policies and governance

- A) Setting out requirements for policies and processes covering suitability, diversity and training based on principles
- B) Setting out requirements for policies and processes covering suitability, diversity and training based on hard quantitative criteria

Option A would provide Guidelines that achieve a harmonised and proportionate approach while allowing a high level of flexibility for institutions. It would be possible, taking into account differences in the nature, scale and complexity of the institution to tailor the policies and processes accordingly. The costs of assessments under a principles-based policy may be higher than with a set of fixed criteria to be fulfilled. However, a principles-based policy is less likely to limit the number of potential candidates for positions and also requires the institution and where relevant its shareholders to retain responsibility for ensuring that it has a functioning and suitable management body.

While hard quantitative criteria under Option B would lead to the highest level of harmonisation, this would not be as effective as such fixed criteria would not be able to take into account specific situations. Furthermore, fixed criteria could lead to a preference for selecting members with the specified knowledge, skills and experience, potentially leading to lower levels of diversity and/or limiting the number of available and suitable candidates. This could increase the risk of a suboptimal composition of the management body.

Options A has been retained.

#### Option 8: Competent authorities' assessment procedures

- A) Implementing an *ex-ante* assessment for competent authorities to assess member of the management body of all institutions and KFH of significant institutions before they perform their function in all cases
- B) Implementing an *ex-ante* assessment for competent authorities to assess member of the management body before they perform their function with *ex post* allowed under duly justified cases. For KFH, *ex post* assessment is allowed.
- C) Implementing an *ex-post* assessment to assess member of the management body and KFH
- D) Neutral approach; allowing both approaches for the assessment of members of the management body and requiring an *ex-post* assessment by competent authorities for key function holders, but limited to the highest level of consolidation, significant CRD-institutions that are part of a group, but not subject to prudential consolidation by a significant consolidating CRD-institution, and the individual level, if the significant CRD-institution is not part of a group.

Option A aims to ensure that all members of the management body and key function holders are suitable before they perform their function and would ensure a high level of harmonisation. A prior assessment reduces the risks that members of the management body and key function holders that have been assessed by institutions as being suitable, might need to be removed after they perform their function<sup>39</sup>. *Ex-ante* assessment by competent authorities could lead to higher costs for institutions due to the longer recruitments process for institutions. In addition competent authorities that perform *ex-post* assessments would need to change their procedures and changes to national laws might be needed. In addition, Member States where the number of institutions is high claim that such an approach would be costly and burdensome. If the assessment processes take longer than expected it would reduce the attractiveness of the positions, leaving key positions unfilled and, at the same time, it would hinder changes of control situations where management members are often replaced. However it is reasonable to state that an *ex-ante* assessment would provide more certainty to the institution and also avoid reputational risk for the competent authorities.

Option B is the same as Option A, but would be applied only to members of the management body; for KFH *ex post* assessment would be allowed. Therefore, the burden and costs for competent authorities changing their approach would be reduced. However, this requires that institutions take measures that allow for the subsequent removal of non-suitable KFH. In addition *ex post* assessment would be allowed in the specific and duly justified cases mentioned in the Guidelines, reducing the burden and cost for both competent authorities and institutions.

Option C shortens the time between the start of the recruitment process and the appointment of a member of the management body or a key function holder. Under an *ex post* assessment the

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<sup>39</sup> Such replacements may still be necessary as a result of ongoing supervision, if new developments occur happen or new information is received that leads to the conclusion that a member is no longer considered suitable.

risk that an institution does not comply with the suitability requirements is higher than with an *ex-ante* assessment. An *ex-post* assessment by competent authorities may require *ex-post* removal and replacement of members of the management body.

Option D stays neutral and allow *ex-ante* or/and *ex-post* assessment for the members of the management body. This would not achieve the supervisory convergence objective. A harmonised assessment across the European Union would facilitate the assessment of suitability set out in the CRD and make the assessment processes more effective, contributing to robust governance arrangements in institutions. For key function holders an *ex-post* assessment by competent authorities is foreseen as to ensure that institutions can swiftly fill vacant positions. However, institutions need to take measures that allow the removal of such key function holders, if they are assessed as being non-suitable. The assessment has been limited to significant institutions as set out in the Guidelines. This approach limits the number of assessments needed by competent authorities and reduces the costs for the implementation of the Guidelines in particular in Member States with a large number of significant institutions in banking groups. As the consolidating institution must ensure that robust governance arrangements exist on a consolidated basis, it is under a risk based approach acceptable that competent authorities do not perform an assessment on an individual level for significant subsidiaries.

Net benefits of Option B are expected to be higher than with Options C and D. The costs that both CAs and institutions would bear should largely be exceeded by expected benefits. Given the baseline scenario, half of the CAs are already using *ex-ante* assessment, so it is reasonable to assume that the overall cost of implementing *ex-ante* assessment across the EU would relate mainly to CAs that currently use solely *ex-post* processes, and only minimally to CAs that also use *ex-ante* approaches.

Approximately half of the competent authorities (BE, BG, IE, HR, CY, LV, LT, LU, HU, MT, NL, RO, SK, LI) use the *ex ante* approach to assess the suitability of all members of the management body and/or key function holders. An *ex post* assessment is applied by nine competent authorities (DK, DE, EE, EL, FR, IT, AT, IS, NO), while the remainder use a combination of both approaches (CZ, ES, PL, PT, SI, FI, SE, UK). Several competent authorities do not formally assess key function holders (BG, DE, HR, IT, LT, PT, SI, SE).

Option D leads to less costs for competent authorities compared to Option B. In Member States in which the CAs are using only *ex-post* assessment, the implementation of new processes and policies would under Option B trigger one off costs for supervisors (e.g. implementation of new IT systems, legislative changes, changing of the internal processes). The need to hire new staff is also likely to occur in larger banking market to deal with periods where a concentration of approval requests is received. However, taking into account that the assessment of KFH *ex post* is allowed the number of additional staff would be limited. According to the baseline scenario these Member States represent approximately only 23% of the total.

For CAs that apply a combination of both approaches in which *ex-ante* assessments are already part of the current frameworks, it is reasonable to argue that implementation costs under Option

B for supervisors would be minor compared with competent authorities that are exclusively under the scope of *ex-post* assessment processes.

Competent authorities use only <i>ex ante</i> assessment	Competent authorities use only <i>ex post</i> assessment	Competent authorities use <i>ex ante</i> and <i>ex post</i> assessment
Belgium (BE), Bulgaria (BG), Ireland (IE), Croatia (HR), Cyprus (CY), Latvia (LV), Lithuania (LT), Luxembourg (LU), Hungary (HU), Malta (MT), Netherlands (NL), Romania (RO), Slovakia (SK), Liechtenstein (LI)	Denmark (DK), Germany (DE), Estonia (EE), Greece (EL), France (FR), Italy (IT), Austria (AT), Iceland (IS), Norway (NO)	Czech Republic (CZ), Spain (ES), Poland (PL), Portugal (PT), Slovenia (SI), Finland (FI), Sweden (SE), United Kingdom (UK)

The implementation costs for institutions under Option B would be related to the possible increasing of compliance costs due to the setting of new procedures and to the additional notification/reporting standards required.

Option D has been retained though this option does not achieve the harmonisation and supervisory convergence needed and differences in assessment procedures are continuing to exist. Directive 2013/36/EU does not include clear enough provisions that allow establishing a more harmonised approach regarding the assessment of suitability by competent authorities. The tools available to the EBA cannot be relied upon alone to achieve a higher level of harmonisation. EBA Guidelines addressed to competent authorities and institutions cannot change the different national legislative implementations of Directive 2013/36/EU. Option 7: Exchange of information between competent authorities

- A) Providing Guidelines regarding the assessment of suitability by competent authorities, including the requirement to exchange and use information provided
- B) Providing Guidelines regarding the assessment of suitability by competent authorities, excluding a mandatory exchange and use of information

Competent authorities must assess the suitability of members of the management body in every case. The assessment processes must also take into account the relevant national company laws and is influenced by the number of institutions under supervision. Therefore, a completely standardised process to be followed by all competent authorities would not be appropriate. For significant institutions, a more harmonised process should be established within the single supervisory mechanism to ensure a cost efficient assessment. However, Guidelines should aim to

harmonise the processes followed by competent authorities in order to ensure that the quality of the assessment is comparable.

Option A would ensure a fully autonomous assessment by the competent authority with the possibility for the competent authority to exchange information with other competent authorities or take into account other similar assessments already made by other competent authorities.

Option B would not contribute to further harmonisation in this area.

Option A has been retained.

#### Option 9: Measures in case of non-suitability

- A) Measures should allow mitigating action to be taken in a short time and to be adapted to the situation.
- B) In the case of an assessment of non- suitability, members of the management body should always be replaced immediately, or if the situation requires it, and in the long run, the authorisation of an institution has to be withdrawn.

Option A would create no additional costs; all members of the management body individually and collectively must be suitable at all times. Where a competent authority has assessed that a member of the management body has only minor shortcomings that are compensated for by the overall composition of the management body, the appointment should be possible, as it would potentially take longer to find and appoint an alternative member than to provide training or take other measures to ensure that all members of the management body are suitable. However, it should be ensured that all mitigating actions are taken in a short time. This may be accompanied by other supervisory measures where appropriate. In particular, regarding employee representatives on the management body, this approach ensures the freedom of staff to select the members considered to be best suited to represent staff interests. For competent authorities, a low level of additional costs would arise as in such situations closer supervisory monitoring or other supervisory measures would be necessary.

Option B would ensure that the requirements set out in Directive 2013/36/EU would be complied with at all times, but might lead to situations where an institution does not have the number of members required or is not collectively suitable. The time needed to select and appoint members would be longer and the process potentially more costly than taking mitigating action in relation to one member. For competent authorities, Option B may be less costly than Option A, as it may require fewer supervisory resource or less activity.

Option A has been retained.

## E. Cost-benefit analysis

Overall, the Guidelines, compared with the baseline scenario, would create low additional recurring costs for competent authorities in the banking sector, mainly driven by the additional assessment of heads of internal control functions in significant institutions which can be performed *ex post* and in the Member States in which the CAs use only *ex-post* assessment, the implementation of new processes and policies will trigger one off costs for supervisors (e.g. implementation of new IT systems, legislative changes, changes to the internal processes). Some competent authorities may need to recruit a few additional staff members. For credit institutions additional ongoing costs are created by the Guidelines in order to comply with the *ex-ante* assessment by competent authorities (driven mainly by adapting their recruitment process and providing information of shareholders). The additional minor increase of costs for the assessment of heads of control functions and chief financial officer, where they are not part of the management body, where in the past they would also have been considered as key function holders as more, would be compensated through the adoption of a more proportionate risk based approach to identify and assess other key function holders.

Furthermore, the suitability assessments of the key function holders for significant institutions should be performed by competent authorities at the individual level and, where applicable, in the case of a group, at the level of the parent company consolidating. . The reduction of the scope of assessments should reduce the costs. The costs for competent authorities in the securities sector will vary depending on the number of the investment firms that will apply these Guidelines and whose management body members they will have to assess, and for significant institutions the heads of internal control functions and CFOs they will have to assess. The number of investment firms that are significant institutions is much lower than in relation to credit institutions.

For investment firms, the implementation of these Guidelines could have cost implications in terms of amendments to existing policies and procedures. Many of the incremental costs will be driven by the changes to the existing assessment process required by the entry into application of Directive 2014/65/EU. These costs will be represented mostly by the necessary setting-up of policies and the procedures, by documenting the suitability assessment once performed and by the other compliance and opportunity costs deriving from the Guidelines. Costs incurred as a result of the application of these Guidelines will relate mainly to an increase in costs for the assessment of key function holders by those investment firms that are CRD-institutions (i.e. directly subject to the requirements in Directive 2013/36/EU). As noted in various studies on the impacts of legislative reforms for (financial) firms, the one-off implementation costs normally exceed ongoing costs. This is a natural effect of the expenses related to the adaptation of IT infrastructures, processes and trainings, while the recurring costs are absorbed into business as usual.<sup>40</sup> The impacts of the regulatory costs that firms will bear to comply with the new requirements may vary depending on the nature, scale and complexity of the investment firm

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<sup>40</sup> Europe Economics, Final report on “ Study on the cost of compliance with selected FSAP measures ”, 2009, in [http://ec.europa.eu/finance/general-policy/actionplan/index\\_en.htm](http://ec.europa.eu/finance/general-policy/actionplan/index_en.htm) page XI.

concerned. Therefore the proportionality principle should be properly taken into account when implementing new policies and processes, and when designing new organisational arrangements.<sup>41</sup>

The implementation of new processes and policies will trigger one off costs for institutions and competent authorities.

On the benefit side, a more harmonised assessment the Guidelines will facilitate a more harmonised assessment of suitability set out in the relevant legislation and will make the assessment process more effective, contributing to robust governance arrangements in institutions.

Increased communication between competent authorities will also ensure a more consistent assessment of suitability based on a broadened set of information. Moreover, the consideration of assessments made by other authorities will improve the overall efficiency of the process.

#### F. Preferred option

The scope of the assessments made by competent authorities should be harmonised. A minimum set of key function holders to be assessed should therefore be identified. The assessment of the key function holders is consistent with Solvency II. The CFO has a key role within institutions and should be assessed at least in significant institutions, where he or she is not a member of the management body.

The Guidelines should not be limited to the 'notions' of suitability, but also provide guidance on the suitability assessment and the suitability policies of institutions. Guidelines should be set out for credit institutions and investment firms, taking into account the principle of proportionality, to ensure a harmonised approach across sectors and a level playing field. A common and broader set of Guidelines is considered to be more user friendly than multiple sets of Guidelines that separate guidance on the notions of suitability and guidance on the governance processes.

## 5.2. Feedback on the public consultation and on the opinion of the Banking Stakeholder Group (BSG) and the Securities and Markets Stakeholders Group (SMSG)

The EBA and ESMA publicly consulted on the draft proposal contained in this paper.

The consultation lasted for 3 months and ended on 28 January 2017. 44 responses were received, of which 39 were published on the EBA website. The responses include comments of the EBA's

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<sup>41</sup> EBA Banking Stakeholder Group, Proportionality in Bank Regulation, 2014: <https://www.eba.europa.eu/documents/10180/807776/European+Banking+Authority+Banking+Stakeholder+Group-+Position+paper+on+proportionality.pdf>

Banking Stakeholders Group (BSG) and ESMA's Securities and Markets Stakeholders Group (SMSG).

This paper presents a summary of the key points and other comments arising from the consultation, the analysis and discussion triggered by these comments and the actions taken to address them if deemed necessary.

In many cases several industry bodies made similar comments, or the same body repeated its comments in the response to different questions. In such cases, the comments, and the EBA analysis are included in the section of this paper where the EBA considers them most appropriate.

Changes to the draft Guidelines have been incorporated as a result of the responses received during the public consultation.

### **Summary of key issues and the EBA's and ESMA's response**

Respondents overall agree with the objectives of the Guidelines that credit institutions and investment firms need to be led by suitable members, and re-affirm their commitment to robust governance arrangements. However, respondents disagree with some aspects of the Guidelines. Key issues raised are the incompatibility with all governance structures, timing of the assessment (ex-ante), criteria on independence and scope of application.

Some respondents are of the view that the Guidelines are incompatible with some business and governance models and national company laws. In particular the one-tier structure would not be sufficiently taken into account and respondents therefore suggest that some provisions of the Guidelines cannot be applied, e.g. regarding the individual skills or responsibilities of members of the management body or the allocation of tasks between different management bodies. A few respondents highlight the particularities of public banks and cooperative banks, which should be better reflected and suggest that the Guidelines should provide for some waivers regarding governance provisions in cases where the waivers within Article 10 of Regulation (EU) No 575/2013 would be applied.

The large majority of respondents would prefer that the Guidelines stay neutral regarding the timing of the assessments and retain the possibility of ex-post assessment. Respondents point to operational difficulties, including longer recruitment periods, incompatibility with business needs for have swift replacements in some cases, the change of existing and functioning competencies and responsibilities, administrative costs and legal impediments.

Respondents criticise the criteria on independent directors and also on independence of mind, as they are too demanding or difficult to assess. In particular the requirements related to independent directors are deemed inappropriate because as they together with the requirements on the composition of committees, enshrined within the Guidelines on internal governance, they would lead to the need for a significant additional number of independent members within the management body. This would increase costs and would endanger the proper functioning of the management body.

Some respondents are concerned that the Guidelines would also apply to subsidiaries that are themselves not subject to Directive 2013/36/EU and suggest that the Guidelines in such cases should apply only on a consolidated basis. The Guidelines should apply in particular in a group context and ensure the collective suitability to which the individual member's suitability contributes.

Many respondents find the Guidelines too prescriptive. They feel that they include many detailed criteria and requirements, which they deem inappropriate because it leaves little room for institutions' autonomy and flexibility and might lead to unintended consequences, e.g. the limitation of the pool of suitable candidates. Respondents also stress the principle of proportionality and suggest that the Guidelines should provide lighter requirements for small, non-significant institutions and subsidiaries and should take into account the situation of central bodies and affiliated institutions.

Some respondents argue that there is no legal mandate to require the assessment of key function holders. If the assessment of key function holders' suitability is retained, the Guidelines should provide for a lighter assessment, e.g. limiting the suitability assessment to initial assessments and/or to the consolidated level.

Respondents demand that the European bodies cooperate with each other and ensure consistent Guidelines and refer in particular to the Single Supervisory Mechanism's (SSM) guide on fit and proper assessments regarding this matter.

The EBA and ESMA have taken into account all responses to the public consultation as well as those of the BSG and SMSG. The Guidelines have been revised to reflect all possible governance structures. It is not the intention to require institutions to change their governance structure, or the assignment of responsibilities as set out in national law. The Guidelines clarify the meaning of "management body" provided within Directive 2013/36/EU. The management body only includes not only the body appointed under national law, but also the persons directing the business (e.g. the CEO or executive committee).

While the ex-ante assessment might create some operational challenges, it can be observed that such processes work very well in several Member States.

It is good practice and required by the Guidelines that all management bodies of institutions have independent members. The requirements are in line with the governance principles issued by the Basel Committee on Banking Supervision. However, the criteria have been revised to be conform with the Commission's recommendation, e.g. regarding the status of employee representatives. While most of them may be independent, institutions should have additional independent members. All members must be independent of mind in accordance with Article 91 of Directive 2013/36/EU.

Article 109 of Directive 2013/36/EU determines how the governance requirements should be applied in a group context. Institutions that are subject to that Directive have to apply the requirements on an individual basis. Regarding subsidiaries that are not subject to Directive 2013/36/EU, including MiFID firms not subject to Directive 2013/36/EU, the requirements are

applied in a group context on consolidated or sub-consolidated basis. The principle of proportionality should ensure an appropriate application of the requirements at all levels. Institutions are expected to adopt and implement group policies. Governance arrangements existing within the group can be relied on, while the management body of an institution always has overall responsibility for that institution and its governance arrangements.

The principle of proportionality, a principle that applies to all EU legislations, applies to the Guidelines. This means that the Guidelines are to be applied taking into account the size of the institution and the nature, scale and complexity of its activities.

While the Guidelines contain criteria for the assessment of suitability, they are not considered to be too prescriptive, as they set out criteria that have to be taken into account only when assessing the suitability of a candidate for a specific position and the knowledge, skills and experience required for that position.

In accordance with Article 16 of the European Supervisory Authorities' (ESAs) founding regulation, the EBA and ESMA have power to issue Guidelines in the area of their competence. The area of governance, including the supervision of institutions governance arrangements, is clearly included in this area (e.g. Articles 74 and 88 of Directive 2013/36/EU and Articles 9 and 16 of Directive 2014/65/EU). It is not necessary for the ESAs to have those concepts explicitly mentioned in the Directives and they are not restricted to issuing Guidelines based on an explicit mandate received by the EU co-legislators. The concepts of key function holders and independent directors are clearly linked to institutions governance arrangements and therefore the EBA and ESMA have the powers to issue Guidelines on those topics. Competent authorities will implement these Guidelines in a comply or explain approach. The SSM is also a competent authority and conducts the suitability assessments based on national law.

The feedback table contains a more detailed analysis of the comments made.



## Summary of responses to the consultation and the EBA's and ESMA's analysis

Comments	Summary of responses received	Analysis	Amendments to the proposals
<b>General comments</b>			
Prescriptiveness	Some respondents considered that the Guidelines provide too many detailed criteria, which will be detrimental to the necessary degree of flexibility for institutions in the field of corporate governance and make it difficult to find suitable candidates for board positions. For example, defining and assessing the time commitment and using a complex matrix for the collective knowledge are too burdensome. In addition, they leave little room for institutions' autonomy in their decision-making process, for which they are solely responsible; they create more rather than less legal uncertainty in the application; and they may lead to arbitrariness when competent authorities make suitability decisions, with the risk that the principle of proportionality will be overlooked.	<p>The mandate of the EBA is to ensure that the requirements set in the CRD are applied in a consistent way across the EU, and to ensure harmonisation. To ensure a level playing field a certain degree of detail is needed to set out how the specific principles should be applied.</p> <p>To this end, the Guidelines define and provide criteria that should be taken into account in the assessment to find suitable candidates. The proportionality principle applies.</p> <p>The assessment of time commitment and the collective knowledge are requirements laid out by Directive 2013/36/EU. The provided matrix is only suggested as a template for assessment. It is a tool that can be adapted according to the circumstances and its use is not mandatory.</p>	The Guidelines have been clarified regarding the application of the proportionality principle and the use of the matrix for the assessment of collective knowledge.
Documentation requirements	The Guidelines contain several documentation requirements that are not included in level 1 or level 2 legislation (paragraphs: 40, 44, 80, 132, 138, 139, 145, 146 and 149).	A sufficient documentation of assessments and outcome is needed to inform shareholders, members of the management body appointing new members and competent authorities. Without documentation the process would be neither robust nor auditable.	The Guidelines have been revised to accommodate some of the comments
Incompatibility with 1-tier structure	The differentiation between members of the management body in the management function and the supervisory function is not possible in one-tier structures, where all members have the same responsibilities.	Directive 2013/36/EU foresees the existence of a supervisory function within institutions management bodies. While all members may share the same responsibilities the function has to perform specific tasks. In a one-tier system there is a differentiation between	The text of the Guidelines has been revised to better accommodate all possible governance

Comments	Summary of responses received	Analysis	Amendments to the proposals
		<p>executive directors and non-executive directors. In addition, Member States company law usually provides for either a unitary and/or a dual board structure. Other governance structures are also applied in line with national corporate laws. The Guidelines apply to all structures. The Guidelines do not advocate any particular structure and are intended to embrace all existing governance structures.</p>	<p>systems by introducing some explanations within the scope and background section.</p>
<p>Group application</p>	<p>The Guidelines should better take into account the existing group structures and avoid the duplication of documentation within different entities. In addition subsidiaries and in particular fully owned subsidiaries should benefit from exemptions or at least lighter requirements. The application of the Guidelines on individual and consolidated levels should be clarified.</p> <p>The Guidelines should not cover subsidiaries not covered by Directive 2013/36/EU as this would be an overextension of the level 1 text insofar as these subsidiaries are covered by specific sectoral rules.</p>	<p>The requirements within Directive 2013/36/EU (Article 109 of this Directive) in this area apply to all institutions on individual, sub-consolidated and consolidated level. The parent undertaking is also obliged to ensure their application in third countries, unless this would be unlawful.</p> <p>All members of management bodies of all institutions have to be assessed.</p> <p>It is possible to share information and even personal information within a group context as long as this is in line with data protection laws.</p>	<p>No changes</p>
<p>Relationship with Guidelines on Internal governance</p>	<p>The relationship between the Guidelines should be clarified, in particular with regard to the credit institution's internal assessment of the members of the management bodies.</p>	<p>The Guidelines on the assessment of the suitability of members of the management body and key function holders define and provide criteria that should be taken into account in the assessment of board members by institutions and competent authorities while the Guidelines on internal governance deal with all the governance arrangement that should be implemented by institutions to have sound risk management. Both Guidelines should be read in conjunction with each other.</p>	<p>No change</p>
<p>Coordination</p>	<p>with Many respondents' considered that the Guidelines should</p>	<p>The Guidelines are addressed to competent authorities as</p>	<p>No change</p>



Comments	Summary of responses received	Analysis	Amendments to the proposals
European Central Bank	<p>be coordinated with the ECB guide on fit and proper assessments.</p> <p>They should also be closely linked to the ESMA consultation paper on “Guidelines on specific notions under MiFID II”.</p>	<p>defined in Article 4(1)(26) of Directive 2014/65/EU and in Article 4(1)(40) of Regulation (EU) 575/2013<sup>42</sup>, including the European Central Bank with regards to matters relating to the tasks conferred on it by Regulation (EU) No 1024/2013. Given this, competent authorities must notify the EBA and ESMA of whether or not they comply or intend to comply with these Guidelines, or otherwise with reasons for non-compliance.</p> <p>These Guidelines are a joint product with ESMA. The ECB is represented within EBA working groups. The EBA and ESMA are mandated to jointly issue Guidelines on the notions of suitability within Article 91(12) of Directive 2013/36/EU and Article 9(1) of Directive 2014/65/EU.</p>	
Legal mandate and value	<p>Some respondents view that the Guidelines go beyond the scope of the EBA’s mandate by adding new requirements not laid down by the CRD (assessment of KFH, independence criteria, new reporting requirements, new internal standards).</p> <p>The legal value of the Guidelines is uncertain as it depends on national implementation.</p> <p>Some respondents view that Guidelines are not the appropriate tool to harmonize what has not been harmonised by the level-1-texts. Besides, the draft Guidelines do not always take into account the member state competencies as regards company law.</p>	<p>The EBA and ESMA must issue specific Guidelines whenever explicitly required under European Union law. This is the case for Article 74(3) of Directive 2013/36/EU (CRD) and Article 9 of Directive 2014/65/EU, which mandates the EBA and ESMA to issue Guidelines on governance arrangements, processes and internal control mechanisms.</p> <p>In addition Article 16 of EBA Regulation (EU) No 1093/2010 lays down the general competence to issue Guidelines ensuring common, uniform and consistent application of Union within its scope of action law and effective supervisory practices within the ESFS. The same holds true for ESMA.</p> <p>According to the above the Guidelines do not go beyond</p>	No change

<sup>42</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p.1).

Comments	Summary of responses received	Analysis	Amendments to the proposals
		<p>the scope of their mandate.</p> <p>The assessment of KFH is one necessary measure to ensure robust governance arrangements required by Article 74 of Directive 2013/36/EU and by Articles 9 and 16 of Directive 2014/65/EU.</p>	
Cooperative models	The Guidelines should be adapted to, and contain specific provisions for the specific situation and business model of cooperatives.	Guidelines cannot be addressed to a specific business model or legal form. Such specificities, where appropriate, can be taken into account in accordance with the application of the proportionality principle as referred to in Title I of the Guidelines.	The Guidelines have been revised to clarify the application of the principle of proportionality
Added value and legitimacy	The rationale for these Guidelines is not sufficiently clear and explained. There is no analysis showing a need for a new package of detailed rules.	The document contains a specific part regarding the rationale and the objective of the Guidelines. This part has been revised to further explain the rational and objective of the Guidelines.	Background amended
Compatibility ESMA EIOPA	EBA One respondent recommends a joint work with EIOPA to ensure that the Guidelines are also addressed to insurance companies.	These Guidelines are a joint product with ESMA. A mandate is given to the EBA to issue Guidelines on the notions of suitability jointly with ESMA in line with Article 91(12) of Directive 2013/36/EU and Article 9(1) of Directive 2014/65/EU.	No change

### Responses to questions in Consultation Paper EBA/CP/2016/17

#### Title I – Scope of suitability assessments and proportionality

Question 1; Compatibility with	Several respondents mentioned that in many Member States (e.g. Austria, Denmark, Germany,	The Guidelines apply to all institutions, independent of their governance structures (unitary board, dual board or other	The text of the Guidelines has been
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Comments	Summary of responses received	Analysis	Amendments to the proposals
<p>national company law</p>	<p>the Netherlands and Poland) the dominant governance model is a two tier system that consists of an executive management body and a non-executive supervisory board. The difference between one-tier and two-tier boards needs to be reflected in the criteria and procedures used for the assessment of individual and collective suitability.</p> <p>In some cases there is a lack of alignment with national company laws or national codes of conduct: the Guidelines should clarify that national rules prevail (a case is made for independence of members of the management body).</p> <p>The Guidelines should not foresee any day-to-day management functions for the management body in its management function.</p> <p>The Guidelines should talk not about “bodies” but only about “functions”, such as the executive function, the management function and the supervisory function, irrespective of the corporate law system applicable as all systems have such functions. Furthermore, the term “management body” as provided for in Directive 2013/36/EU should be used without reference to a specific function.</p> <p>The Guidelines should also clarify the extent to which they apply to the statutory board of auditors.</p> <p>There are also systems where all decisions are taken collectively, without specific requirements</p>	<p>structures), without advocating or preferring any specific structure as set out specifically in the defined scope of application. The terms ‘management body in its management function’ and ‘management body in its supervisory function’ should be interpreted throughout the Guidelines in accordance with the applicable law within each Member State.</p> <p>In Member States where management bodies have a one-tier structure, a single board usually performs management and supervisory tasks. In some cases there is a body formed based on the applicable company law that does not include a management function. In such cases the management body delegates the executive function to an internal executive body (e.g. CEO, management team or executive committee). However, the management body defined in point (7) of Article 3(1) of Directive 2013/36/EU and in point (36) of Article 4(1) of Directive 2014/65/EU includes the persons who effectively direct the business of the institution. The internal executive body constitutes the management function of the management body. In a dual board structure the various functions are performed by separate bodies. In both structures the management body in its management function and the management body in its supervisory function each perform their own role in the management of the institution, with the assistance of committees when these are established.</p> <p>Considering all existing governance structures provided by national laws, competent authorities should ensure the effective and consistent application of the Guidelines in their jurisdictions in accordance with the rationale and objectives of the Guidelines themselves.</p> <p>The use of the terms “executive” and “non-executive” is consistent and in line with Directive 2013/36/EU and also with their use in</p>	<p>revised to accommodate all possible governance systems by introducing some explanations within the scope and the background section.</p>



Comments	Summary of responses received	Analysis	Amendments to the proposals
	<p>on the individuals. Therefore, all rules should be imposed on a collective basis, but not on an individual basis.</p> <p>Several respondents pointed out that there are cases where institutions have limited or no influence on the composition of the management body in its supervisory function and its committees, e.g. municipal trustees in savings banks, but also employee representatives that usually go through a special nomination process. Therefore there should be clear differentiation between the requirements for members of the management body in its management and in its supervisory function.</p> <p>“Management function” and “supervisory function” should be used instead of “executive” and “non-executive”.</p> <p>Furthermore, respondents suggest that the Guidelines should explicitly state that they do not intend to give guidance on the allocation of tasks.</p>	<p>other international standards.</p> <p>The Guidelines do not interfere with the general allocation of competences in accordance with national company law.</p>	
<p>Question 2 Background paragraph 4</p>	<p>One respondent suggests the Guidelines should quote recital 55 of CRD IV to make it even clearer that the Guidelines do not advocate any particular company law model.</p>	<p>Recital 55 of CRD IV is quoted in both the background and the scope of the Guidelines.</p>	<p>See answer to question 1</p>
<p>Question 2; Background paragraph 6</p>	<p>The application of the requirements to subsidiaries in third countries can lead to conflicts with national laws.</p>	<p>The Guidelines apply to all institutions and in line with Article 109 of Directive 2013/36/EU to all subsidiaries in the scope of prudential consolidation, including those in third countries, unless the application of the requirements is in conflict with national law.</p>	<p>No change</p>



<b>Comments</b>	<b>Summary of responses received</b>	<b>Analysis</b>	<b>Amendments to the proposals</b>
	<p>It is not acceptable that the Guidelines apply to branches that are not subject to the Directive.</p>	<p>The Guidelines are consistent with this approach.</p> <p>Paragraph 9 of the background section refers to branches of institutions located in third countries. Article 47(1) of Directive 2013/36/EU provides that “Member States shall not apply to branches of credit institutions having their head office in a third country, when commencing or continuing to carry out their business, provisions which result in more favorable treatment than that accorded to branches of credit institutions having their head office in the Union.</p>	



Comments	Summary of responses received	Analysis	Amendments to the proposals
<p>Question 2; Background paragraph 10</p>	<p>It should be confirmed that institutions that fall within the scope are (i) credit institutions and (ii) financial institutions at consolidated level.</p> <p>The application at consolidated level should not lead to the same level of requirements as the application on the individual level.</p> <p>Article 10 of Regulation (No) 575/2013/EU affiliations should also be considered and certain requirements should be waived for them.</p> <p>Several respondents suggest it should be clarified that the Guidelines only apply to appointments after their coming into force.</p>	<p>Article 109 of Directive 2013/36/EU clarifies the level of application. The Guidelines apply to all institutions and in line with Article 109 of Directive 2013/36/EU to all subsidiaries in the scope of prudential consolidation. A repetition in the Guidelines is not needed. Moreover, Article 4 (46 and 47) of Regulation (No) 575/2013/EU defines consolidated basis, which is the situation that results from applying the requirements to an institution as if that institution formed, together with one or more other entities, a single institution. It is therefore legally not possible to apply different requirements on the consolidated level from the requirements applicable to individual institutions.</p> <p>Article 7 of Regulation (No) 575/2013/EU and Article 21 of Directive 2013/36/EU provides that competent authorities may under certain conditions waive the application on an individual basis. The Guidelines cannot create additional waivers of regulatory requirements.</p> <p>Competent authorities and institutions should apply the Guidelines regarding the initial assessment of members of the management body and key function holders with regard to persons appointed after the date of application of the Guidelines.</p>	<p>The section on the date of application has been revised.</p>
<p>Question 2: Scope</p>	<p>Some respondents had concerns about non-MiFID investment firms not being addressed by the GL.</p> <p>Some respondents underlined that the draft Guidelines deal extensively with notions of</p>	<p>These Guidelines are addressed to credit institutions as defined in Article 4(1)(1) of Regulation (EU) 575/2013, mixed financial holding companies as defined in Article 4(21) of Regulation (EU) 575/2013, and investment firms as defined in Article 4(1)(1) of Directive</p>	<p>No change</p>



Comments	Summary of responses received	Analysis	Amendments to the proposals
	<p>adequate individual knowledge, skills and experience of members of the management body. However, strictly speaking MiFID II (Article 45 (9)) does not mandate ESMA to issue Guidelines on such notions. It provides a mandate only to issue guidance on notions of adequate collective knowledge, skills and experience.</p>	<p>2014/65/EU.</p> <p>These Guidelines specify the requirements regarding the suitability of members of the management body of credit institutions, investment firms, financial holding companies and mixed financial holding companies and, in particular, in accordance with Article 91(12) of Directive 2013/36/EU and the second subparagraph of Article 9(1) of Directive 2014/65/EU, the notions of adequate collective knowledge, skills and experience of the management body and its members of the management body.</p> <p>See also above regarding comments on the mandates of the ESA's.</p>	
<p>Background Section Par 7 and 8</p>	<p>Financial holding companies are mentioned in paragraph 8 but not as addressees in paragraph 7. Please align.</p>	<p>Financial holdings are addressees of the Guidelines and this is why they are in the scope and therefore competent authorities should ensure that they comply with the suitability requirements.</p>	<p>No change</p>
<p>Background Section Para 21</p>	<p>The reference to Article 122 is wrong and should be corrected to Article 121 CRD IV. Also, Article 121 refers to only Article 91 (1) CRD IV which is why it is not clear throughout the GL whether the requirements of Article 91 (3) and (4) CRD IV in particular also apply to (mixed) financial holding companies.</p> <p>Overall, the requirements for credit institutions on the one hand and (mixed) financial holding companies on the other hand should be better distinguished.</p>	<p>Suitability requirements apply to financial holding companies, credit institutions and investment firms.</p>	<p>The reference to the article has been changed</p>
<p>Question 2: Definition of key function holders and</p>	<p>Some functions should be explicitly excluded from being defined as key functions, such as head of human resources and head of legal.</p>	<p>Key function holders are defined in the Guidelines as the persons who have significant influence over the direction of the institution, but who are neither members of the management body nor the CEO. They include the heads of internal control functions and the</p>	<p>No change</p>



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heads of internal control functions	Key function holders are not defined in CRD IV and there are continuous uncertainties about this term.	<p>CFO, where they are not members of the management body, and where identified on a risk-based approach by CRD-institutions, other key function holders.</p> <p>Other key function holders might include heads of significant business lines, EEA branches, third country subsidiaries and other internal functions. The heads of human resources and legal are not specifically mentioned in the definition.</p>	
Question 2: Definitions	<p>“Competent authorities” should be defined in the GL.</p> <p>A definition of the executive and supervisory powers of the management body is missing.</p> <p>There are concerns about leaving the definition of significant institutions to the competent authorities. More guidance should be given or the requirement should be limited to G-SIs and O-SIs only.</p> <p>There are uncertainties about the definition of CEO and CFO. In particular with regard to the CFO, it is not clear how that function is to be understood interacting with tasks of senior managers. The respondent therefore suggests deleting the reference to the CFO.</p>	<p>Competent authorities are defined in the Guidelines by referring to Article 4(1)(26) of Directive 2014/65/EU and in Article 4(1)(40) of Regulation (EU) 575/2013 including the European Central Bank with regards to matters relating to the tasks conferred on it by Regulation (EU) No 1024/2013 under the Guidelines.</p> <p>Directive 2013/36/EU sets out in Article 3 the definition of management body and management body in its supervisory function.</p> <p>The definition of significant is consistent with other EBA products in the area of governance (Guidelines on sound remuneration policies). Competent authorities can also determine whether or not an institution is significant for its market.</p> <p>CEO and CFO are defined in the Guidelines and the definition of CFO has been clarified.</p>	No change
Question 2: Definition of geographical provenance	Several respondents suggest that more guidance should be given as the definition seems too broad.	Geographical provenance means the region where a person has gained a cultural, educational or professional background. The definition is intended to cover all types of situations (e.g. within or outside a Member State).	No change



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<p>Question 3; Key function holders</p>	<p>Several respondents commented that the requirement to assess Key function holders would go beyond the mandate provided to EBA under Article 91 (12) of Directive 2013/36/EU. Article 74 of this Directive does not empower the EBA to legislate. Hence the assessment of Key function holders should be removed from the Guidelines.</p> <p>Several respondents point out that the scope of the assessment of key function holders should not be the same as for members of the management body. It should therefore be limited to initial assessments and exclude re-assessments.</p> <p>There are concerns that requiring assessments of key function holders / heads of internal control function on the subsidiary level is too far-reaching as there are often such functions and respective policies in place at group level. Therefore, the requirement should be limited to the consolidated level.</p>	<p>The EBA founding Regulation empowers the EBA to issue Guidelines in the area of its competence. Article 74 (3) of Directive 2013/36/EU provides a mandate to EBA to issue Guidelines on the requirements within Article 74 (1) and (2) of this Directive. The assessment of key function holders is one necessary measure to ensure robust governance arrangements required by that Directive, as well as under Article 88(1). Directive 2014/65/EU shares the same approach under Article 9(1) (which recalls Article 88 of Directive 2013/36/EU) and under Article 16(2).</p> <p>CRD institutions should ensure that all key function holders within the group are suitable. The suitability assessments of the key function holders for significant institutions should be performed by competent authorities at least at the group level (consolidating institution).</p>	<p>See also comments above on the legal mandate</p> <p>Section 23 has been revised to clarify the scope of assessments of key function holders by competent authorities</p>
<p>Question 4; Proportionality</p>	<p>Respondents in general agree with the principle of proportionality, but comment that it is difficult to take into account qualitative criteria. The Guidelines should be more flexible.</p> <p>Some respondents claim that is unclear, in particular in relation to smaller investment firms and subsidiaries, how this proportionality principle should be applied in practice.</p> <p>Some respondents suggest the number of staff should be included in the list of criteria to be taken</p>	<p>Proportionality cannot be based on quantitative criteria alone, for example the nature and complexity of the institutions activities have also to be taken into account.</p> <p>Proportionality applies to all EU legislation. The section on the application of proportionality has been moved to Title I to clarify that the principle applies to all Guidelines. However, as explained in the Guidelines proportionality does not apply to good repute, honesty and integrity criteria.</p> <p>See also comments on the group application.</p>	<p>The section on proportionality has been moved to Title I otherwise no change</p>



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	<p>into account for a proportionate approach.</p> <p>Several respondents propose moving the section on proportionality to the beginning of the guideline to make it clear that it applies to the entire guideline.</p>	<p>The number of staff is not a criterion that it is important to be taken into consideration for the suitability of the members of the management body and key function holders; it has limited impact on the required management skills, but not on knowledge requirements.</p>	
<p>Question 5: Proportionality Background Para 33-36</p>	<p>With regard to the obligation of having suitability policies in place, some comments suggest limiting this obligation to significant CRD institutions while requiring consolidating institutions to have group-wide policies in place. Documentation requirements should be at group level.</p> <p>Some argue that further differentiation between credit institutions and investment firms is needed.</p> <p>One respondent points out that the definition of proportionality needs to be aligned with the EBA Guidelines on sound remuneration.</p>	<p>Certain tasks may be outsourced or dealt with by the parent institution. However, the responsibilities remain with the institution subject to the requirements. Subsidiaries may adopt policies available at the consolidated level taking into account specificities of their activities and the market where they operate.</p> <p>See comments above on question 4 and on the group application.</p> <p>The criteria to take into account for the application of the proportionality principle mentioned in the Guidelines are those relevant to the area of governance. That is why they are not completely aligned with those applicable for remuneration.</p>	<p>No change</p>
<p>Background Para 36</p>	<p>One respondent requests further clarification on how para 36 (j) (the nature and the complexity of the products, contracts or instruments offered by the institution) will be taken into account.</p>	<p>This is a criterion that is linked to the complexity of institution's activities. When the institutions set or distribute complex products, management body and key function holders should have the sufficient knowledge, skills and experience to understand and deal with those products.</p>	<p>No change</p>
<p>Title I Paragraphs and i); par 20</p>	<p>Several respondents suggested that the Guidelines should clarify that the appointment of new members does not trigger a re-assessment of existing members.</p>	<p>The comment has been accommodated. The Guidelines were further clarified regarding the required assessments and re-assessments.</p>	<p>Section 1 amended</p>
<p>Title I</p>	<p>"Lighter" re-assessments should be possible when</p>	<p>Institutions should re-assess the sufficient time commitment of a</p>	<p>The Guidelines have</p>



Comments	Summary of responses received	Analysis	Amendments to the proposals
Paragraph 21	renewing mandates, changes of functions or when additional directorships are taken into account. Within the re-assessment of time commitment only additional commercial directorships should be taken into account. Re-assessments of the taking of additional mandates by members of the management body should be limited to those the institution has been made aware of.	member of the management body if that member takes on an additional directorship or mandate, including political activities. The assessment of time commitment is not limited to the assessment of additional directorships. Members of the management body are obliged to inform the institution about new directorships.  See section on time commitment	amended to make clear that political activities also are considered within the time commitment
Title I Paragraphs 25, 26	It should be explained whether or not there is an intended difference in wording between paragraph 25 “re-assess the collective suitability of the management body” and paragraph 26 “collective suitability of the members of the management body”.	Both paragraphs are about trigger events for a re-assessment. Both phrases have the same meaning.	No changes
Title I Paragraphs 30	The purpose and scope of lit. c is not sufficiently clear (monitor suitability as part of a review of the overall governance arrangements).	In accordance with the requirements introduced by CRD IV, institutions should review their internal governance arrangements on a periodical basis. During this review, the suitability requirements for KFH should also be reviewed.	No change
Title II	Some respondents noted that the draft Guidelines are overly prescriptive and detailed, especially in regards to the criteria to be used for assessing the individual suitability of members of the Management Body. They underline that this might have the unintended consequence of restricting the pool of suitable candidates, at the expense of diversity within the management body, particularly for smaller institutions.	See comment on prescriptiveness and comment on the application of the proportionality principle.	
Section 5, paragraphs	The documentation of time commitment would be	The competent authority needs to assess the time commitment.	This section has been



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38, 42 and 44	<p>burdensome and of limited added value. It is only possible to assess the plausibility of information provided.</p> <p>All aspects should be considered when the institutions perform an assessment, but need not be recorded.</p>	<p>Written documentation is needed for this purpose and to allow the competent authorities to exercise their mission of supervision. It has been clarified that in the case of smaller and less complex institutions, the expected time commitment may be differentiated only between executive and non-executive directorships.</p>	clarified.
Paragraph 37	<p>This obligation should be directed to the members themselves and not to the institution as the latter have limited knowledge of the availability of in particular their supervisory board members. The assessment obligation should therefore be limited to the information available to the institutions.</p>	<p>The institution is required to assess whether a member of the management body is able to commit sufficient time to perform his or her functions and responsibilities, including understanding the business of the institution, its main risks and the implications of the business and the risk strategy.</p>	No change
Paragraph 38	<p>Many respondents replied that the requirement of time buffer is not specific enough. Further, it should not apply to non-commercial mandates.</p>	<p>The paragraph has been changed to take into account the comment on time buffer. The time commitment is independent of the Guidelines. Non-commercial mandates should also be considered by institutions when assessing the time commitment</p>	Paragraph 38 amended
Paragraph 39	<p>It is not clear what “relevant activities” and duties that need to be taken into account are. It is not clear if spare time activities should be taken into account and which meetings should be taken into account, it is not possible to determine the number of meetings requested by stakeholders. It is not possible to monitor the time used for the preparation of meetings.</p> <p>Honorary or private mandates should not be taken into account.</p>	<p>For the assessment of time commitment any other external professional or, political activities and any other functions and relevant activities are to be taken into account, both within and outside the financial sector.</p> <p>In addition any necessary meetings to be held, in particular, with competent authorities or other internal or external stakeholders outside the management body’s formal meeting schedule should be taken into account;</p> <p>The assessment of the time commitment for the preparation of meetings should be on a best effort basis.</p>	Section clarified



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Paragraph 39 (j)	Many comments point out that the use of benchmarks for the estimation of time commitment should be omitted, partly because of the difficult practicability and partly to avoid that benchmarks turn into requirements, especially by the ECB. The reference to the benchmarks is further considered unnecessary.	Benchmarks in this area show a huge range of practice, which gives some orientation about the expected time commitment.  The EBA does not share the concern that such benchmarks would turn into requirements.	No change
Paragraph 44	Several comments points out that it is problematic to keep records of political functions because of the constitutionally guaranteed right to protection from discrimination on political grounds and for data protection reasons.	The EBA does not share the concerns raised. Keeping records of functions performed by members of the management body is necessary for the purpose of prudential supervision by competent authorities.	The paragraph has been changed to accommodate this comment
Question 6 Paragraphs 45-53	<p>It should be made clear that “group” comprises not only the consolidating scope, but the accounting scope (IFRS).</p> <p>Some respondents comment that directorships counted together under the three indents of Article 91 (4) of CRD IV should not be counted together per indent, but all three indents would have to be counted separately.</p> <p>Furthermore, paragraph 49 currently foresees counting the directorship held in the institution and a directorship held in a qualifying holding separately. This contradicts how that provision was implemented by several Member States, stricter than the applicable level 1 text, and should therefore be deleted.</p> <p>It should be clarified that the list of organizations</p>	<p>The Guidelines specify that the accounting scope of consolidation should be used for the purpose of calculating the number of directorships. All memberships within a group count as one.</p> <p>Our reading of the requirements of Directive 2013/36/EU, in line with the answer provided by the European Commission within the Q&amp;A process, is indeed that the directorships in qualifying holdings count all together as one additional directorship.</p> <p>The list of organisations that are assumed not to pursuing predominantly commercial objectives is not exhaustive.</p> <p>The EBA considers that the definition of directorship is sufficiently clear. The size criterion has been introduced by adding a reference in paragraph 39. In addition the reference to family members of the member of the management body has been added.</p>	<p>Paragraph 53 has been clarified</p> <p>Paragraph 39 has been clarified to take into account the size criterion</p> <p>Paragraph 53 (c) has been clarified to take into account the family members of the member of the management body</p>

Comments	Summary of responses received	Analysis	Amendments to the proposals
	<p>that are assumed not to pursue predominantly commercial objectives is non-exhaustive.</p> <p>It is suggested that the notion of “directorship” should be better defined and that a size criterion for directorships that need to be counted based should be introduced on the reasoning that a directorship at a listed company will need more time than a directorship in a small company.</p> <p>It is suggested that in para 53 c) private economic interests of family members of the member should be included.</p>		
Question 7 general	<p>The difference between individual and collective suitability is not sufficiently clear.</p> <p>Synergies within a group context should be better taken into account.</p>	<p>In accordance with Article 91 of Directive 2013/36/EU, the individual and collective suitability have been dealt with separately to distinguish how to assess these two notions. Assessments have to be made for the institution where a directorship is held.</p>	No change
Question 7; reputation	<p>The Guidelines do not leave sufficient room to take into account national law and in particular the presumption of innocence.</p>	<p>The EBA and ESMA have a mandate to harmonise practices and ensure consistent application of EU law. The assessment of suitability is performed for prudential purposes and not within a criminal law procedure. The Guidelines only require taking such proceedings into account, but do not establish that such proceedings would automatically lead to a rejection of the member or candidate.</p>	No change
Question 7 Experience, knowledge, skills	<p>The experience requirements should be further clarified. There should be more differentiation between practical and theoretical knowledge.</p> <p>One comment suggests there is too much of a focus on financial skills and that the skills set out in</p>	<p>The experience, knowledge and skills requirements for both members of the supervisory board and member of the management board should take into account the individual circumstances and the application of the proportionality principle. Usually an assessment is made for a specific position.</p>	No change



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	<p>Annex II are too detailed.</p> <p>In unitary boards all members must in principle fulfil the same suitability requirements as all members have the same responsibilities.</p> <p>The fields of experience within paragraph 60 contradict the principle that members experience and knowledge should be diverse.</p> <p>Employee representatives are elected by staff and it cannot be expected that they have the same level of experience as other members of the management body.</p> <p>The assessment of experience should take into account not only hard factors, but also soft ones, such as board minutes of previous memberships, one-to-one interviews etc.</p>	<p>The criteria set out in the Guidelines are to be considered by institutions and competent authorities. The same holds true for the skills set out in Annex II.</p> <p>It should be stressed that the management body has an overall responsibility for the whole institution and all members must fulfil the suitability requirements. Members who do not have sufficient experience should undertake training.</p> <p>Paragraph 60 does not contradict the principle that members experience and knowledge should be diverse as those are example that should be considered by institutions according to each case.</p>	
<p>Question 7</p> <p>Independence</p>	<p>One respondent suggests that the GL should combine the concept of independence of mind and that of independent members.</p> <p>The independence of mind requirements should allow for group level governance.</p>	<p>The part on independence has been clarified to better explain the two concepts and their differences. All members of the management body must be independent of mind, meaning that they should engage actively in their duties and should be able to make their own sound, objective and independent decisions and judgments when performing their role and responsibilities. Independence of mind should be distinguished from the requirement of independence for members of the management body in its supervisory function.</p> <p>A sufficient number of members of the management body in its supervisory function should be independent and have no relationships with other members, stakeholders or customers that could impair their objective judgement.</p>	<p>The sections on Independence and independence of mind have been revised and clarified</p>



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		The independence of mind as developed in the Guidelines allow for group level governance.	
Paragraph 57	Several respondents requested clarification that the list of skills in Annex II is not binding.	Institutions must assess whether or not members of the management body have the necessary skills. However, the list of skills in Annex II is not binding.	Paragraph 57 clarified
Paragraph 58	Accounting should be included in the list.	Accounting and auditing have been added to the list.	Paragraph 58 amended
Paragraph 66	The item in the list in should be considered as examples; the activities to cover may be wider or narrower than described.	See comment on experience, knowledge and skills.	No change
Paragraph 69	The distinction between criminal law and administrative law is not harmonized and differs significantly between Member States. Including administrative records in the assessment of reputation goes too far and such records differ between jurisdictions.	The paragraph specifies that any relevant criminal or administrative records should be taken into account considering periods of limitation in force in the relevant national law.	Paragraph 69 clarified
Paragraph 70 (b)	The concept of enforcement actions should be clarified as this concept does not exist in some MS.	The term enforcement has been replaced by “measures”	Paragraph 70 (b) amended
Paragraph 72	Regarding 72 (a) there are concerns about relying on un-official lists for the purpose of assessing reputation.	Paragraph 72 (a) has been clarified and provides the reliable credit bureau as an example.	Paragraph 72 amended
Paragraph 73	There are concerns the duty to cooperate with the competent authority might restrain the person’s right to organise his or her defence in an ongoing proceeding.	The EBA consider that this paragraph does not impede the right of defence of an individual in an ongoing proceeding as they are not at all related to each other.	No change



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Paragraph 73	<p>Points (a) to (c) should be deleted as the institution does not have this information.</p> <p>In point (b) the word “termination” should be deleted as terminations might very well be voluntary well-reflected business decisions.</p>	<p>Points (a) to (c) are information to be considered in the assessment so the institution should make reasonable effort to consider those factors.</p> <p>The comment related to point (b) on termination has been accommodated.</p>	Paragraph 73 amended
Section 10, par 77 and 80 and 81	<p>The definition and treatment of conflicts of interest should be regulated in national or EU law as the mandate given to the EBA by Directive 2013/36/EU is not deemed sufficient. The presumptions included in paragraph 77 are too broad and do not necessarily influence the directors independence. They are also too strict for small credit institutions and investment firms. Paragraph 80 would be sufficient on its own.</p>	<p>See comment on legal mandate.</p> <p>The section on independence of mind and independence have been clarified. The criteria have been aligned with the recommendation of the European Commission on independent directors within listed institutions.</p>	The sections on independence of mind and independence have been revised
Paragraph 77 (c)	<p>Some respondents suggest limiting this to a “cooling-off” period of several years (suggestions of 3 or 10 years were made).</p>	<p>To accommodate the comment a cooling off period of 5 years has been introduced</p>	Par 77 c amended
Paragraph 77 (d)	<p>The concept of “relationship with other members of the management body” should be clarified.</p>	<p>Personal or professional relationships with other staff of the institution or entities included within the scope of prudential consolidation including the members of the management body (e.g. close family relationships) should be taken into consideration to assess conflict of interests.</p>	The sections on independence of mind and independence have been revised and clarified
Paragraph 77 (e)	<p>Another respondent states that the Guidelines are too far reaching in assuming that a mere loan may cause a conflict of interest.</p>	<p>Any economic interests including a loan granted by the institution to a member of the management body should be considered as it may create a conflict of interest. However, competent authorities may set appropriate de minimis thresholds. It should be remembered that the management body may comprise also non-</p>	No change



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Paragraph 77 (f)	Many respondents point out that the definition of political conflicts of interest is considered to be too far-reaching. Local politicians who are board members e.g. of saving banks do not automatically have conflicts of interest.	independent members.  The EBA is aware of those specific situations and in this case a local politician who is appointed as a member of the management body by law cannot be considered as independent. Nonetheless he or she can be a non-independent member of the management body. The Guidelines have been clarified.	The section on independence of mind and independence have been revised
Paragraph 78	Respondents suggest extending the wording from “shares” to “shares and other eligible own funds instruments”.	The term “economic interest” is sufficient to cover other eligible own funds instruments.	The section on independence of mind and independence have been revised
Paragraphs 77, 79-81	It is not clear whether the situations listed in paragraph 77 (conflicts of interest) leads to mitigation actions or whether they preclude the appointment of a member.	In line with the criteria listed, the institution should identify potential or actual conflicts of interest, assess their materiality and decide on mitigating measures. Members of the management body could be considered not fulfilling the requirement to be independent of mind if they have conflicts of interest that cannot be adequately managed or mitigated.	The section on independence of mind and independence have been revised
Question 8 Title III, Section 11	Several respondents consider that the processes required regarding the training of members of the management body are burdensome, lead to additional costs and are not necessary in all cases.  References to training policies and procedures, including their approval by the management body, should be deleted, limiting the requirements to the fundamental ones.  Small institutions (e.g. saving banks) should be able to outsource the obligations under this title in order to minimise costs.	This section is in line with the requirement under Article 91 introduced by Directive 2013/36/EU for which an impact assessment and cost/benefit has been provided. Even if members are supported by expert or specialists, they should understand what those specialist or experts provide them with.  The indication and training policy like all policies should be adopted by the management body.  Institutions can outsource training and parts of induction.	No change



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Paragraphs 83, 84	<p>For several respondents, the period of 1 month to receive induction is too short. Some respondents suggest providing periods of different duration depending on the executive/nonexecutive position. Others suggest an extension of these periods in the case of complex organisations, increasing them to 3 months for the induction and to 1 month for the key information.</p> <p>Some respondents disagree with the reference to the 6 months period imposed on an individual member of the management body for completing all the requirements, deeming that it could even be deleted. Two respondents suggest extending it to a one-year period.</p>	<p>The comment on paragraph 83 has been partly accommodated. All newly appointed members of the management body should receive key information 1 month after at the latest taking up their position and the induction should be completed within one year.</p>	Paragraph 83 amended
Paragraph 84	<p>For some respondents, the reference “before the position is effectively taken up” should be deleted as it is not possible to identify the gap before the appointment of the member.</p>	<p>As the suitability assessment of the member of the management body should be performed before the position is effectively taken up or otherwise as soon as possible after taking up the position; the requisite training should also be identified.</p>	No change
Paragraph 85	<p>Institutions belonging to a group should be allowed to rely on training and induction policies of their parent company.</p>	See comment on group application	No change
Paragraph 86	<p>For some respondents, references to benchmarks should be avoided. The benchmarking results provided by the EBA should be used as a optional - rather than mandatory – tool.</p>	<p>The benchmarking result provided by the EBA should be taken into account where relevant.</p>	No change
Paragraph 88	<p>One respondent deems that, in small- or medium-sized institutions, the active involvement of the</p>	<p>The involvement of the human resources function appears to be necessary for training and induction as they are in principle part of</p>	No change



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	<p>human resources function may result in an overlapping of the duties attributed to this function and to the nomination committee.</p>	<p>the tasks of this function. In this respect, the input of this function for the tasks of the nomination committee can be relevant. It should be remembered that the nomination committee is mandatory only for significant institution.</p>	
Paragraph 91	<p>Some respondent asked for clarification as it is not clear which criteria should be used to evaluate the 'effectiveness' of the 'induction and training policy'.</p>	<p>The wording 'effectiveness' has been replaced by "quality".</p>	Par 92 amended
Question 9 Title IV	<p>Some respondents suggest clarifying which requirements shall prevail if difficulties occur simultaneously in meeting the requirements on suitability and meeting the requirement on diversity (e.g., if a management board is composed of members who are all individually suitable but who, collectively, make the body non diverse).</p> <p>In addition, respondents argue that institutions should not recruit members of the management body with the sole purpose of increasing diversity if this would impair the functioning and suitability of the management body collectively or would lead to a lower suitability of individual members.</p> <p>Some respondents observe that this Section needs to be adjusted in order to be applicable to all corporate structures.</p>	<p>In accordance with article 91 (10) CRD IV, all institutions should have and implement a policy promoting diversity on the management body, in order to promote a diverse pool of members. It should aim to engage a broad set of qualities and competences when recruiting members of the management body, to achieve a variety of views and experiences and to facilitate independent opinions and sound decision-making within the management body.</p> <p>Diversity is an aspect that is particularly relevant for the composition of the management body and may affect its collective suitability , but not the individual suitability.</p> <p>See also comment on one tier/two tier structure.</p>	No change
Section 13	<p>Some respondents propose imposing the obligation to draw up Guidelines on diversity on</p>	<p>All institutions should have a policy on diversity. For significant institutions the diversity policy should include for a quantitative</p>	No changes

Comments	Summary of responses received	Analysis	Amendments to the proposals
	<p>systemically important institutions only.</p> <p>Some respondents do not support the use of targets for gender diversity and suggest including a reference to existing national laws or soft laws.</p>	<p>target for the representation of the underrepresented gender in the management body. The diversity policy can also be embedded in other existing policies.</p>	
Paragraph 93	<p>Some respondents would prefer the list of diversity criteria to be non-binding and merely indicative. Some respondents suggest that diversity in terms of age should be deleted from the Guidelines as it is already included in the knowledge and experience assessment.</p>	<p>The criteria provided are in line with the one provided under Directive 2013/36/EU. The principle of proportionality applies.</p>	No change
Paragraph 94	<p>One respondent suggests replacing the annual review, even for significant institutions, with a more in depth review on a less frequent basis (e.g. every 3 years)</p>	<p>The annual review of the composition of the management body, the compliance with the objectives and targets set for significant institutions is in line with Directive 2013/36/EU.</p>	No change
Paragraph 95	<p>Some respondents suggest avoiding any reference to benchmarks as their determination is subjective and difficult.</p>	<p>Institutions should consider benchmarking when setting their objectives. Given the situation observed during the benchmarking exercise, improvements of diversity practices are needed.</p>	No change
Question 10 Title V	<p>Several respondents observed that where Directive 2013/36/EU does not require establishing a nomination committee, the management body should not be required to take on these responsibilities.</p>	<p>When the setting up of a nomination committee is not mandatory, some of its task should be performed by the management body in its supervisory function to ensure a sound recruiting process and that members of the management body fulfill all requirements.</p>	No change
Section 14; Paragraph 98	<p>Regulation (EU) 575/2013/EU requires institutions to approve and publish an appointments policy. Requiring a suitability policy exceeds Directive 2013/36/EU. Many institutions have such policies in place; the Guidelines should acknowledge this</p>	<p>In order to implement the suitability requirements, an institution should have and implement a policy in line with the requirement set out in article 88 CRD IV. If many institutions have such a policy in place it can obviously be considered to be a common practice that</p>	No change



Comments	Summary of responses received	Analysis	Amendments to the proposals
	fact.	should be included in Guidelines.	
Paragraph 101	One respondent suggests clarifying (i) what the requirements for the policy to be “transparent” means and (ii) the body/authority with respect to which such transparency shall be assessed.	The policy should be clear, well documented and transparent to all staff within the institution.	Paragraph amended 101
Paragraph 102	The review of a suitability policy should not be attributed to the internal control functions.	The review of a suitability policy by internal control functions is in line with their role to ensure compliance with regulatory requirements.	No change
Paragraph 103 d	The subparagraph should be deleted as policies do not contain a ‘person in charge of liaising with competent authorities’.	The comment has been taken into account and the paragraph was changed as follows: “the communication channel towards the competent authorities;”	Paragraph 103 d amended
Section 15	Several respondents considered that with regard to the scope of application, this section relies on the definition of a group that applies for the purpose of prudential consolidation rather than the accounting scope and asked for clarification.  One respondent suggests referring to ‘institutions’ (instead of ‘consolidating CRD institutions’), to ensure that financial holding companies (and mixed financial holding companies) are included in the scope.	This section applies within the prudential scope of consolidation, including institutions, financial institutions (e.g. asset managers) and ancillary entities. The application to financial holding companies is clarified within the scope section.	The section has been clarified regarding the scope of consolidation
Section 16			
Paragraph 113	Where no nomination committee is established, Directive 2013/36/EU does not require the management body to have the same responsibilities. The respective Guidelines exceed	See comments above to Title V.	No change

Comments	Summary of responses received	Analysis	Amendments to the proposals
	the level 1 text and should be deleted.		
Section 17			
Paragraph 117	<p>Given that in some cases, the number of members in the governing bodies is legally fixed, some respondents recommend further clarifying that this number is always an adequate number of members in these cases.</p> <p>Some respondents suggest amending the Guidelines to take into account the fact that the identification and selection of members of the management body in its supervisory function is limited to positions which are not taken by employee representatives as required by law and chosen by vote.</p>	<p>The comment on adequate number has been accommodated.</p> <p>The comment regarding the employee representatives has been taken into account. The management body should identify and select qualified and experienced members without prejudice to members being elected by and representing employees.</p>	Paragraph 117 amended
Paragraph 118	<p>With regard to nominations for re-appointments, one member suggests that the performance of the member during the last term should not be taken into consideration for the assessment.</p>	<p>When re-appointing a member of the management body, the EBA considers that the performance during the last term should also be taken into account in the re-assessment.</p>	No change
Section 18 Independence of Directors	<p>Most of the respondents consider that the independence of directors should not be part of the Guidelines, as it is not required by Directive 2013/36/EU. Only ‘independence of mind’ should be included in the Guidelines.</p> <p>The objectives of having independent directors can be achieved by appropriate mitigating measures for conflicts of interest.</p> <p>According to some respondents, the Guidelines are</p>	<p>See comments on legal mandate.</p> <p>Having a sufficient number of independent members within the management body is part of robust governance arrangements. The requirements are in line with the guidelines of the Basel Committee of Banking Supervision.</p> <p>For independence of mind the institution and the member of the management body should identify potential or actual conflicts of interest, in line with the criteria in this paragraph and the institution’s conflicts of interest policy, assess their materiality and</p>	The section on independence has been revised and the link with independence of mind clarified



Comments	Summary of responses received	Analysis	Amendments to the proposals
	<p>too binding and too restrictive.</p> <p>Many respondents suggest limiting the scope of application of the independence requirement to significant (listed) institutions and that, within groups, it should not apply to non-listed entities or entities under exclusive control. One respondent suggests not applying the independence requirement to small investment firms with no complex internal organisation.</p>	<p>decide on mitigating measures.</p> <p>For ‘formal independence’ the objective criteria set forth in the Guidelines should be considered: a board member not meeting those criteria cannot be considered a (formally) independent member.</p> <p>The independence criteria have been reviewed. Within subsidiaries that are under exclusive control, competent authorities may allow that there are no independent members. This is to ensure that a proportionate approach is applied. Also wholly owned subsidiaries have their own customers, markets, statutory obligations, etc. Independent members foster independent opinions and challenge. The independent requirements have been limited to CRD institutions.</p>	
Paragraph 123	Some respondents deem it necessary that the representatives of municipal trustees, employees’ council or of public credit institutions (particularly savings banks and promotional banks) fulfil the independence criteria even if they are involved in politics.	Representatives of municipal trustees, councils or public credit institution do not fulfil the criteria of independence as they also represent interests. However, they can still be non-independent member of the management body.	The section on independence has been revised and the link with independence of mind clarified
Paragraph 124	Several respondents suggest including indications on the application of this requirement to representatives of employees to ensure that, in line with Annex II, paragraph 1(b) of the Commission Recommendation of 15 February 2005, an exception is allowed for independent members who have been elected to the (supervisory) board in the context of a system of	Within significant and listed CRD- institutions the management body in its supervisory function should include a sufficient number of independent members, notwithstanding the possibility of also including non-independent members. Other institutions should have at least one independent member. Competnet authorities may allow that a subsidiary that is fully owned by a institution in the same group or a non-significant investment firm has no independent members. Members representing employees should not be counted towards the required sufficient number of	The section on independence has been revised and the link with independence of mind clarified



Comments	Summary of responses received	Analysis	Amendments to the proposals
	workers' representation recognized by law.	independent members.	
Paragraph 124 (a)	Many respondents suggest clarifying "substantial shareholder". It might mean "holder of a qualifying holding" or "controlling shareholder".	The wording has been changed to "controlling shareholders"	Paragraph 124 amended
Paragraph 124 (b)	Some respondents suggest that the 3 years of cooling off period should be reduced to 2 years.	The EBA considers that a 3 years coolingoff period is reasonable and in line with the recommendation of the European Commission.	No change
Paragraph 124 (c)	Some respondents suggest that consultants are by definition independent and should not have to wait for 3 years before joining a board as independent directors.  One respondent suggests allow the board to explain why it may consider a member independent even if the 3-year period is not yet over.	As soon as the consultant has finished providing his or her services to the institution, a cooling off period of 3 years is reasonable to become an independent member.  All the criteria set out regarding the independence of directors form a refutable presumption.	The section on independence has been revised and the link with independence of mind clarified
Paragraph 124 (f)	Some respondents do not agree with always denying independence after 12 years. Other respondents propose that the 12 year period should be extended to 15 years.	A member that served as a member of the management body within an entity in the scope of prudential consolidation for 12 consecutive years or longer should not be considered independent, unless the institution can provide evidence to the contrary.	The section on independence has been revised
Question 11 Title VI	Some respondents deem that the several obligations for institutions to notify competent authorities lack any legal basis in level 1 legislation, and therefore would be a competence of national legislators and an issue outside the EBA mandate (e.g. paragraphs 133, 149-151).	To enable the competent authorities to perform their supervisory review, institutions need to inform or notify them that assessments have been made. See also comment on the legal mandate.  The Guidelines on Internal Governance clarify the role of the chair	No change

Comments	Summary of responses received	Analysis	Amendments to the proposals
	Some respondents claim that the role of the chair of the management body has not been fully recognised by the draft Guidelines.	of the management body. See also comments regarding the EBA’s legal mandate.	
Section 19			
Paragraphs 127 and 128	<p>Some respondents consider that the full set of required information for the assessment should not be presented to the shareholders before the appointment of the director, as this would affect directors’ privacy.</p> <p>In addition, when members of the management body are appointed by the general shareholders’ meeting before a suitability assessment is made, the assessment performed within the following 3 weeks should never lead to a review of the shareholders’ decision. Any shortcomings can be adjusted with training courses.</p> <p>The maximum of 3 weeks within which the suitability assessment shall be performed, in the event that it has not been done before the appointment, is deemed too short.</p>	<p>The Guidelines have been clarified and only the assessment results should be provided to the shareholders where the suitability assessment has been performed before the general shareholders’ meeting.</p> <p>Where members of the management body are not considered suitable during the 1 month period after the appointment, the institutions should be able to remove them, even if the shareholders have already made their decision. Shareholders need to make their decisions in compliance with existing laws. The Guidelines specify that some shortcoming may be addressed.</p> <p>The maximum period has been extended to 1 month in duly justified cases.</p>	The section has been clarified and revised.
Section 20; Paragraph 136	A few respondents consider that it is not clear how institutions should assess independence of mind, as much of the information to be assessed in line with section 20 is not available to the institution.	The assessment of independence of mind is required under Article 91 of Directive 2013/36/EU and Guidelines are provided on how to assess it. The assessment is based in particular on past behaviours that can be evaluated and on the existence of conflicts of interest.	No change
Section 21	In the assessment of the collective suitability of the management body in its supervisory function, some specific guidance should be provided on the	The composition of committees is set out in the EBA Guidelines on internal governance.	No change

Comments	Summary of responses received	Analysis	Amendments to the proposals
assessment of the different committees.			
Paragraph 141	The matrix in Annex I is considered to be too granular and therefore not suitable for smaller institutions. Therefore, for small institutions the suitability matrix should not be applicable at all.	The matrix in Annex I is a tool that may be used by institutions. When institutions decide to use it, institutions may adapt this matrix to their own institution, taking into account the criteria described in the proportionality section. Institutions may use other tools or procedures to assess the collective suitability.	Paragraph 141 amended
Paragraph 142	It is unclear which criteria should be adopted for assessing the 'added value' brought by the member. Therefore that part should be deleted.	The paragraph has been revised and clarified. It should be assessed what knowledge, skills and experience the individual brings to the collective suitability.	Paragraph 142 clarified
Section 22			
Paragraph 144 (d)	The degree of attendance, the appropriateness of time committed and the intensity of directors' involvement during the meetings should be deleted. Such aspects are difficult to assess and their assessment would be overly intrusive.	The assessment of time commitment is a requirement under Article 91 of Directive 2013/36/EU and all the criteria mentioned are necessary to assess the time commitment.	Paragraph 144 (d) amended
Paragraph 144 (h)	Some respondents suggested deleting this as redundant, as with (d)	The comment has been accommodated.	The sentence has been deleted
Paragraphs 145 to 149	<p>Providing information to competent authorities on an annual or more frequent basis is considered burdensome.</p> <p>Re-assessments should be submitted to the competent authority only in case of substantial changes and to the extent that the privacy of the members is protected. It should also be clarified that re-assessments do not require the same depth</p>	<p>An annual re-assessment for significant institutions is required under Directive 2013/36/EU. For less significant institutions the re-assessment was limited to situations where material changes occurred.</p> <p>The Guidelines specify that any events that may have a material impact on the individual or collective suitability of the members of the management body, including changes to the institution's business model, strategies and organisation should be considered</p>	Section clarified



Comments	Summary of responses received	Analysis	Amendments to the proposals
	as the initial assessment.	within the re-assessment.	
Paragraph 150	<p>Only important dysfunctions that will amount to crisis of management should be reported to the competent authority, in accordance with a proportionality principle.</p> <p>Possible social, legal and reputational consequences for banks should be pondered.</p>	When the management body concludes that a member of the management body is not suitable individually, or where the management body is not suitable collectively, it is to be considered an important event that the competent authorities should be made aware of. Failing to report would be considered a reputational risk.	No change
Paragraph 153	Some respondents do not agree on providing that the member can be replaced since this would breach one of the main competences of shareholders. Rather, reference could be made to the fact that appropriate measures to ensure compliance can be taken.	If an appointed member is not suitable, the person cannot be a member of the management body, unless the issues are easy to remedy. Where the member needs to be replaced, shareholders would need to appoint another member otherwise the institution would not meet the regulatory requirements.	No change
Paragraph. 155	Further guidance should be provided on corrective measures for collective suitability.	Guidance on correctives measures is provided under paragraph 157.	No change
Pararagraph 158	Only material shortcomings should be communicated to the competent authority.	The comment has been accommodated.	Paragraph 158 amended
Title VII			
Question 12 (merged with question 15)			
<i>Ex-ante</i> approach	Many respondents considered that an ex-ante approach is not compatible with existing regulations; it should be performed only when required under or allowed by national law. For instance, where shareholders appoint members,	The Guidelines were changed to allow for a neutral approach regarding the assessment of members of the management body. A higher level of harmonisation regarding this process would be desirable, but could not be achieved with the powers available to	Section amended



Comments	Summary of responses received	Analysis	Amendments to the proposals
	<p>or in the case of mergers and acquisitions, it is not possible to assess the management body prior to the appointment. Changing from <i>ex-post</i> to <i>ex-ante</i> processes would be burdensome and create additional costs.</p> <p>The argument for <i>ex-ante</i> – that it may be difficult for some competent authorities to replace/remove members – is not relevant since Directive 2013/36/EU clearly enables authorities to take appropriate measures when the requirements of the directive are not met (i.e. it should include having the power to remove/replace a member of the management body if he or she is not suitable).</p> <p>The main concerns linked to the adoption of an <i>ex ante</i> approach are the following:</p> <ul style="list-style-type: none"> <li>• there is no legal basis in CRD IV</li> <li>• protection of private data</li> <li>• it is not practical as institutions cannot wait for a long time to fill vacant positions.</li> <li>• at least in exceptional cases a quicker decision by the competent authority must be possible.</li> <li>• <i>ex-post</i> assessment processes allow a swifter recruitment process;</li> <li>• for listed companies, it would imply that, in order to comply with the legal notice periods of the shareholders meeting, a positive assessment of the candidate should be</li> </ul>	<p>the EBA.</p> <p>Independent of the timing of the assessment by the competent authority, the responsibility to have suitable members of the management body is always with the institution.</p> <p>The timing of re-assessments has been clarified; it does not involve an <i>ex-ante</i> approval of the competent authorities. The assessment of re-appointments should be possible in short time periods.</p> <p>Regarding the assessment of key function holders an <i>ex-post</i> procedure has been established, but institutions need to apply measures that allow for the removal of a key function holder if the competent authorities establishes that he or she is not suitable.</p>	

Comments	Summary of responses received	Analysis	Amendments to the proposals
	<p>obtained more than a month before the date of the general meeting of shareholders. Consequently, recruitment processes for new members of the management body will take well over 6 months.</p> <ul style="list-style-type: none"><li>• some issues of reputational risk might arise, both for the institution that has selected a director deemed unsuitable by the competent authorities and for the director itself;</li><li>• it might discourage the appointment of new members since institutions might prefer, in order to avoid long case handling periods, to appoint persons who have already been assessed as fit and proper by competent authorities;</li><li>• the competent authority assumes a risk which should primarily lie with with the institution;</li><li>• having to rely on the competent authority assessments in any way is detrimental to the responsibility of the institution to perform “fit and proper” assessment.</li><li>• assessment before the appointment makes the membership less attractive for potential applicants;</li></ul> <p>With regard to key function holders, the <i>ex-ante</i> assessment is by no means feasible, as the</p>		

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	<p>institution would have to wait 3-6 months for the competent authorities to assess a candidate for a position that should not be left vacant.</p> <p>Many respondents expressed their preference for the Guidelines to adopt a neutral approach with regard to the timing of the assessment (<i>ex-ante</i> vs <i>ex-post</i>). As a second best solution to the neutrality of the Guidelines, some respondents suggest requiring an ex ante assessment only for CEO, executive members and the Chairman of the board. This solution, if the slating voting system is applied, requires (i) that shareholders proposing the relevant candidate are able to submit all the documents required to the relevant institution and, consequently, to the competent authority; and (ii) that the authority takes its decision in the shortest possible time and has a discussion with the firm (the Chair of the nomination committee) before notifying a possible negative decision.</p> <p>Other respondents suggest that if the <i>ex-ante</i> approach is followed, assessment obligations should be limited to initial appointments only.</p>		
Ex post approach	If the GL in the end will adopt the ex-ante approach, it will be necessary to clarify the “duly justified reasons” for an ex-post assessment.	See comment above. The Guideline allows for a neutral approach.	The Guidelines have been clarified
Paragraph 166	<p>It should be clarified when the documentation required for the competent authorities’ assessment is complete.</p> <p>A limit should be set to the requests made by the</p>	<p>The documentation is deemed complete when all the documents and information listed in Annex III have been provided.</p> <p>Limiting the number of requests is difficult as missing or unclear information might be identified only during the more thorough</p>	The Guidelines have been clarified

Comments	Summary of responses received	Analysis	Amendments to the proposals	
	<p>competent authority to integrate the documentation.</p> <p>The Guidelines should clarify that the 3-4 months that the competent authority should be granted to perform its assessment does not imply that it cannot complete the assessment in a shorter time (i.e. before the expiration of the 3-4 months).</p>	<p>assessments of the documents provided. In addition interviews or administrative hearings might be required in some cases.</p> <p>The maximum assessment period has been set to 4 month with the possibility to suspend it for two months.</p>	No change	
Paragraph 174	<p>According to one respondent, the positive decision of the competent authority should always be notified to institutions; tacit consent should not apply.</p>	<p>It is specified in the Guidelines that a positive decision may be deemed to be taken by tacit approval, where the maximum period for the assessment is reached and the competent authority has not taken a negative decision. This is to avoid additional burden. However institutions need to be informed about suspensions.</p>	No change	
Question 13	<p>Costs of <i>ex-ante</i> assessments by competent authorities</p>	<p>One of the most common concerns raised relates to the appointment delays that would be caused by <i>ex-ante</i> assessments by the competent authorities. Respondents fear that assessments by competent authorities could take longer than 3 to 4 months.</p> <p><i>Ex-ante</i> assessments are seen as undermining existing competencies and responsibilities in the appointment procedures.</p> <p>Some respondents recall that <i>ex-ante</i> assessments are impossible when the shareholders appoint members of the management body without the prior consent of the management body and/or the nomination committee. Because of the longer process and uncertainty as regarding the</p>	<p>Comments on the cost have been taken into account within the impact assessment part.</p>	<p>The impact assessment has been updated</p>

Comments	Summary of responses received	Analysis	Amendments to the proposals
	<p>completion of the assessment by the competent authorities, institutions might need to postpone the annual general meeting, or to organize extra meetings, which is costly. It would also be impossible to know exactly when to notify to a general meeting that there will be an appointment proposed as the assessment period might be suspended.</p> <p>In order to anticipate rejections and/or to give a true choice to the shareholders, it is also expected that institutions would be forced to submit several candidates and that the institution and the competent authorities would have to assess different compositions of the management body. In addition of the resource-consumption issue, this also raises the risk of an intrusion by the supervisor into the institution’s governance.</p> <p>Finally, if the Guidelines retain the mandatory <i>ex-ante</i> assessments, some national legal frameworks would need to be changed.</p> <p>According to several respondents, costs would be mitigated if the time for the assessment by the competent authorities were shortened.</p>		
Question 14			
Costs of ex-post assessment by competent authorities	Respondents point out (i) the difficulties that may arise regarding the removal of members of the management body already appointed by the institution and (ii) the reputational damage for both institutions and supervisors associated with	Comments on the costs have been taken into account within the impact assessment part.	Impact assessment amended



Comments	Summary of responses received	Analysis	Amendments to the proposals
	any removal.		
Benefits of ex-post assessments by competent authorities	<p>According to the respondents, the benefits of an <i>ex post</i> assessment by competent authorities would be:</p> <ul style="list-style-type: none"> <li>- quicker processes and appointment procedures, more certainty for institutions in conducting their business (predictability) and the option to replace members as soon as possible, e.g. in case of unexpected vacancies;</li> <li>- less administrative burden for both institutions and supervisors;</li> <li>- ensuring compatibility with the preparation of the shareholders' meetings (<i>ex post</i> assessments would provide them with a real opportunity, and ensure their right, to appoint members);</li> <li>- An alignment with, and respect for, some national practices and legal frameworks that do not provide for mandatory <i>ex ante</i> assessments.</li> </ul> <p><i>Ex post</i> processes better take into account the situation of institutions qualifying under national laws as commercial partnerships or as public credit institutions, where some members of the management body acquire their positions automatically without having been formally appointed.</p>	Comments on the benefits have been taken into account within the impact assessment part.	Impact assessment amended

Comments	Summary of responses received	Analysis	Amendments to the proposals
Paragraph 169-171	<p>One respondent considers that in order to gather unbiased data used for suitability assessments, competent authorities should, in addition of the ways already identified in the Guidelines (interviews, attending to meetings), maintain frequent direct contacts with members of the management body and take into account the board or committees minutes where the individual under assessment was a member.</p>	<p>The assessment of the individual and collective suitability of the members of the management body should be performed on an on-going basis by competent authorities as part of their ongoing supervisory activities which include frequent direct contacts with the institutions and their management bodies.</p>	No change
Paragraph 171	<p>Some respondents comment that there is no reason for competent authorities to be involved in the business of the institutions, and that meetings would be distorted by the attendance of the competent authorities.</p> <p>Others recommend that the participation should be left to national or competent authorities' discretion. It should be clarified what the role of the competent authority would be in such meetings.</p>	<p>The attendance at board meetings is one of the supervisory tools. In any case the Guidelines foresee this only as a possibility. Competent authorities have no responsibility for the direct management of the institution on a going concern basis.</p>	No change
Paragraph 172	<p>One respondent thinks that the paragraph should be deleted because it exceeds the framework of the assessment of suitability</p>	<p>This paragraph specifies what could be a potential consequence of prudential or other regulatory breach by an institution on the suitability of the member.</p>	No change
Paragraph 177	<p>Respondents would like the Guidelines to specify that some measures are to be used only if other measures have not been complied with in the first place.</p>	<p>The measures are taken by the competent authorities on a case by case basis. The Guidelines do not specify a hierarchy.</p>	No change
Chapter 27	<p>The Guidelines should clarify that the cooperation</p>	<p>Exchange of information between competent authorities is subject</p>	No change



Comments	Summary of responses received	Analysis	Amendments to the proposals
(cooperation between Competent authorities)	<p>between competent authorities must take due account of the general principles of confidentiality and ‘need to know basis’.</p> <p>The Guidelines should make it possible that, when one person has already been assessed as suitable by a competent authority within a certain period of time, that person should not be subject to a new assessment by other competent authorities (or at least should be subject to a lighter assessment).</p>	<p>to confidentiality and data protection rules.</p> <p>The Guidelines specify that competent authorities should consider the results of the assessment of suitability conducted by other competent authorities about members of the management body or key function holders and that they should request the necessary information from other competent authorities in order to do so. However they still need to perform their own assessment for the specific position of the individual institution.</p>	
Annex I			
<p>Question 16 Optionality of Annex I</p>	<p>Many comments refer to the need to specify that the use of the matrix will remain optional. The development of a tool for assessing the collective knowledge is seen as the responsibility of the institution, based on its individual situation.</p> <p>According to some respondents the matrix is too detailed and burdensome (especially for smaller institutions) which might also reduce the assessment of collective suitability to a box-ticking exercise.</p>	<p>The use of the matrix is optional and this has been clarified both in the Guidelines and in the Annex I. The template provided as an example can be adapted to each case according to the size, nature and complexity of the institution’s activities but also according to individual circumstances within the management body. It may also not be used and institutions can use another method as soon as they comply with the requirement of collective knowledge.</p>	No change
Annex II			
<p>Question 17 General comments</p>	<p>Skills set out in Annex II should be non-binding recommendations. Also, it should not be expected that every member has the full set of skills; rather, the management body as a collective should display these skills. Some of the skills are not justifiable or are difficult to assess.</p>	<p>Annex II is not mandatory and the purpose is to illustrate a non-exhaustive list of criteria that can be taken into consideration by institutions and competent authorities for the mandatory assessment of skills. Members need to have the skills required for their position.</p> <p>For the assessment of skills, interview or dedicated questionnaires</p>	Annex II has been clarified

Comments	Summary of responses received	Analysis	Amendments to the proposals
	<p>The assessment of the skills displayed should take into account the particular role of members of the management body; for example, some skills are not fit for members of the management body in its supervisory function (e.g. customer and quality oriented, leadership, negotiation).</p>	<p>are often used.</p>	
Annex III			
Question 18	<p>The main comments are that the documentation requirements are overwhelming and should be reduced. Should all the requirements apply, the compliance burden would be disproportionate for small firms in particular.</p>	<p>Documentation is needed to assess the suitability of all members of the management body. Having suitable members is a requirement for all institutions. Competent authorities are to set out the processes for the assessment and submission of the harmonized set of information.</p>	<p>Minor adjustments have been made to further clarify Annex III</p>
Paragraph 1.2. (a)	<p>Some respondents find the requirement to submit the letter of appointment, contract, offer etc. to the competent authority excessive and others think that “if applicable” should be added to that provision, as there is not always a letter / contract / offer of employment for members of the management body. All the information is already submitted to the shareholders. Such documents include other private data which is protected.</p>	<p>The Guidelines already state that these documents should be provided “as applicable” meaning that another equivalent document confirming the appointment would also suffice.</p> <p>The protection of personal data is ensured by competent authorities. It is good practice for institutions to inform candidates and ask their consent regarding the submission of data to competent authorities.</p>	<p>No change</p>
Paragraph 1.3	<p>Some respondents consider it difficult to provide that information and one suggests that the list of reference persons should be provided only for first appointments.</p>	<p>For re-appointments the institution and the competent authority should already have the information, so no additional burden is created.</p>	<p>No change</p>
Paragraph 4.2	<p>The Guidelines should make it clear that such periods are relevant only where the appointee was</p>	<p>The limitation would be too far reaching, the role of the member will be taken into account in the assessment.</p>	<p>No change</p>

Comments	Summary of responses received	Analysis	Amendments to the proposals
	a member of the management body of that entity.		
Paragraph 5	<p>Several regulations (accounting, reporting, capital markets) already provide definitions of conflicts of interest and related parties. They also legislate their treatment. Such provisions should not be included in the Guidelines, as they are already covered in Article 88(1) of the CRD.</p> <p>In addition, only rarely does a conflict of interest disqualify a member, as most of them can be managed.</p>	<p>Conflicts of interest may impair the independence of mind of members of the management body. Therefore the assessment of the person's suitability requires the requested information for prudential purposes.</p> <p>In some cases conflicts of interest that cannot be managed or mitigated may disqualify a person from a position within the management body.</p>	No change
Paragraph 6	<p>Company law already sets out the fiduciary duties of a member towards the company, and the number of directorships is limited. The detailed Guidelines may lead to a wrong assessment of the time committed, as they are based on criteria that are too simple.</p>	<p>Article 91 of Directive 2013/36/EU requires the assessment of time commitment. The documentation requirements are deemed sufficient for an initial assessment.</p>	No change
Paragraph 6.1	<p>One respondent thinks that indications of time should be given only on an annual basis (monthly indications are not relevant). Another one thinks that the time estimate should be calculated in hours rather than days.</p>	<p>The time commitment in general is requested in annual or monthly qualifications, it is possible to e.g. indicate 0.5 month.</p> <p>It was added that institutions may also indicate partitions of an FTE (e.g. 1/12 FTE).</p>	Paragraph 6.1. amended
Paragraph 7	<p>For employee representatives one cannot expect the same level of experience. It should be specified that a different assessment will apply.</p>	<p>The position of the member will be taken into account in the assessment. Staff representatives should also be suitable and should receive training where needed to establish their suitability.</p>	No change
Question 19	<p>Respondents find it difficult overall to quantify the costs caused by the Guidelines, but often cite training and compliance / administrative costs</p>	<p>Comments have been taken into account in updating the impact assessment.</p>	Impact assessment updated

## Comments

## Summary of responses received

## Analysis

## Amendments to the proposals

(setting up of new procedures, reporting, and adoption of a suitability policy) as the most common costs expected to increase.

The need to hire new staff (e.g. in charge of collecting and assessing the information required for the suitability assessment), in order to comply with the new requirements, is seen as a likely additional cost. Two respondents estimate that at least one additional FTE would be required.

One respondent estimates the implementation cost of the Guidelines for a large company at several million euros for the first year, but also for every year thereafter, on an ongoing basis.

The level/scope of application of the Guidelines is also seen as a key factor to determine costs: application solely to the head company and the few identified entities that have a substantial impact on the risk profile of the group would be bearable, but if the Guidelines apply to all entities the costs would be massive and outweigh the benefits. Subsidiaries should be able to rely on group policies for suitability assessments.

If the Guidelines were to apply to all entities, the period of implementation should be sufficiently long, since the process would be difficult and lengthy.

According to respondents, costs would also decrease if:

- the Guidelines were to offer templates



Comments	Summary of responses received	Analysis	Amendments to the proposals
	<p>and survey-like forms that could be completed by individuals;</p> <ul style="list-style-type: none"><li>- forms and templates provided in the Guidelines were not mandatory but rather models that institutions could adapt to their situation;</li><li>- a clear framework common to the EBA, ESMA and the ECB were to be set up (no double standard).</li></ul> <p>Expensive implementation for institutions: the implementation of the Guidelines is deemed quite expensive for the institutions involved, thus jeopardising the enforcement of the Guidelines themselves and, consequently, the overall harmonisation of the fit and proper assessment of the members of the management body.</p>		

## Annex A — EBA benchmarking regarding the number of directorships, time commitment and training

### Background

1. Article 91(3) of Directive 2013/36/EU limits the number of directorships that a member of the management body of a significant institution may hold at the same time. Members of the management body can hold at the same time a combination of 1 executive directorship and 2 non-executive directorships, or 4 non-executive directorships. Competent authorities can approve 1 additional non-executive directorship.
2. It is not sufficient to comply with the limitation of directorships; at the same time, all members of the management body of an institution must commit sufficient time to their duties. Institutions need to provide sufficient human and financial resources for induction and training of members of the management body.
3. In order to inform the development of the Guidelines mandated under Article 91(12) of Directive 2013/36/EU, in 2015 the EBA collected data from a broad range of institutions on the numbers of directorships held and the time committed by the members of their management bodies. In addition, data on training resources was collected.
4. While benchmarks provide an orientation for the expected time commitment and training resources, they are not expected to replace a case-by-case assessment that takes into account the position of the member and the institution's size, its internal organisation, and the nature, scope and complexity of its activities. Where members' time commitment or the number of directorships deviates significantly from what can normally be expected, the intensity of the case-by-case assessment will be increased.
5. The information collected covers 27 EU Member States/EEA member countries, representing 682 institutions of various size categories, and includes credit institutions and investment firms. The analysed dataset includes information on the time commitment of more than 2 200 executive directors and more than 4 100 non-executive directors.

**Figure 1: Number of institutions in the sample per size (balance sheet total) of credit institution and number of investment firms**

Size (balance sheet total)	Number of institutions
Credit institutions under EUR 1 bn	206
Credit institutions EUR 1 to < 10 bn	160
Credit institutions EUR 10 to < 30 bn	77
Credit institutions EUR 30 bn and above	96
Investment firms	143
Total number of institutions	682
Total number of significant institutions	184

## Time commitment and number of directorships

6. Members of the management body need to commit sufficient time for their directorships, whether the directorship is executive or non-executive. However, the time commitment usually differs between these two functions and also depends on the role of the person concerned. For example, a CEO, chairperson or member of a committee will have a higher time commitment than other members of the same governance body. The time commitment of the supervisory function in particular also depends on the governance system (one-tier or two-tier).
7. When analysing the time commitment of members it is important to establish the time that is needed for a specific position, the number of positions held and time committed for other professional purposes. For the first two aspects, benchmarks are provided. The aspect of other time committed can be assessed only on a case-by-case basis, as the number of possible scenarios is too large.
8. The EBA calculated percentiles for the time committed by members of the management body, separately for the management function (executive directors) and supervisory function (non-executive directors) and for members holding different functions (Figure 2). For some members and institutions the data raises concerns over whether or not the members of the management body can actually commit sufficient time, given the number of mandates they hold.
9. The figures show that the position of CEO is associated with only a slightly higher time commitment than other executive directors. The time commitment within a two-tier system is slightly higher than in a one-tier system. Very small firms, where possible under the applicable company law, tend to opt for a one-tier structure. This explains the low figures in the lower percentiles.

**Figure 2: Time committed by members of the management body in its management function**

Function	Percentile				
	p10	p25	p50	p75	p90
<b>CEO (1-tier system)</b>	10	75	220	250	261
<b>Executive Director (1-tier)</b>	13	45	220	240	260
<b>CEO (2-tier system)</b>	184	220	225.5	250	265
<b>Executive Director (2-tier)</b>	150	218	226	245	260

10. As expected, the time committed by the chairperson of the supervisory function and by non-executive directors in a one-tier system exceeds the time commitment of these persons in a

two-tier system. In both systems the time commitment of the chairperson is significantly higher than for other members (Figure 3).

**Figure 3: Time committed by members of the management body in its supervisory function**

Function	Percentile				
	p10	p25	p50	p75	p90
<b>Chairperson (1-tier)</b>	6	14	29	62	178
<b>Non-Executive Director (1-tier)</b>	6	12	24	41	80
<b>Chairperson (2-tier system)</b>	7.5	14	25	54.5	140
<b>Non-Executive Director (2-tier)</b>	5	9	15	28	46

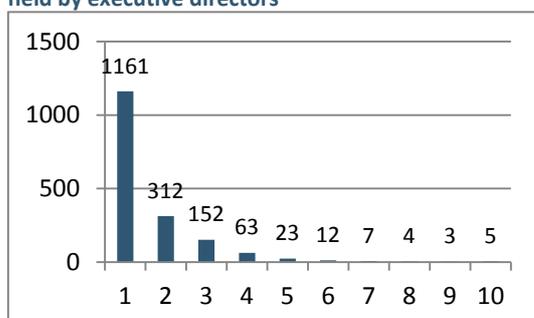
11.A good number of reporting institutions also provided additional information on the membership of non-executive directors within committees. However, this information was not available for all institutions. In general the time commitment of non-executive directors who are members of a committee exceeds the time commitment of other non-executive directors. The anomaly with regard to the highest percentile for the chairperson of a two-tier system is a random result of the smaller amount of data available (Figure 4).

**Figure 4: Time committed by members of the management body in its supervisory function who are/are not members of a committee**

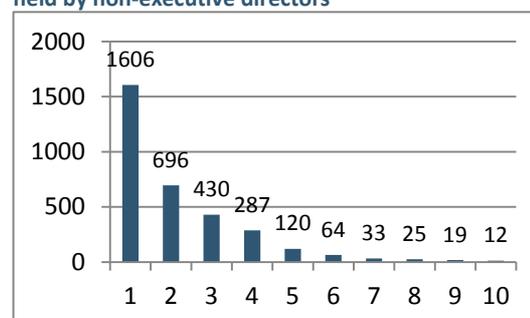
Function	Committee member	Percentile				
		p10	p25	p50	p75	p90
<b>Chairperson (1-tier)</b>	No	3	8	20	60	130
<b>Chairperson (1-tier)</b>	Yes	10	18	35	70	193
<b>Non-Executive Director (1-tier)</b>	No	2	5	12	30	70
<b>Non-Executive Director (1-tier)</b>	Yes	10	15	26	45	80
<b>Chairperson (2-tier system)</b>	No	5	10.5	22.5	48	160
<b>Chairperson (2-tier system)</b>	Yes	9	15	25	60	140
<b>Non-Executive Director (2-tier)</b>	No	4	7	12	23	40
<b>Non-Executive Director (2-tier)</b>	Yes	6	10	18	30	50

12. There is no strong correlation between the size of the institution and the number of days committed; in most cases the position of an executive director can be considered a full-time position. In general, positions in investment firms seem to require a lower time commitment.
13. In addition to the obligation to commit sufficient time, members of the management body of significant institutions are required to hold not more than a certain number of directorships as counted under Article 91(3) and (4) of Directive 2013/36/EU.
14. This limitation could have an impact on the number of directors that are potentially available to fill a position. When counted in accordance with Article 91(3) and (4) of CRD almost 30% of executive directors report holding more than one executive directorship, and more than 10% report holding more than two. More than 90% of non-executive members of management bodies reported having four or fewer non-executive directorships, and almost 95% responded holding not more than five. The maximum number of mandates applicable to members of the management body within significant institutions is met for relatively few members of the management body. Hence, one could conclude that the limitation of directorships has no material impact on the availability of members of the management body. However, one also needs to consider that some potential candidates will avoid or have already avoided becoming a member of a management body of a significant institution, and therefore that the effect of the limitation might not be fully reflected in the figures provided.
15. Not all members of the management body had mandates in significant institutions, but most provided information on the counting of directorships under Article 91 of Directive 2013/36/EU. Only 3.98% of executive directors and 5.88% of non-executive directors indicated that they hold a number of directorships that would exceed the limit that can be approved under Article 91 of Directive 2013/36/EU, if they held a directorship in a significant institution. Only single members of management bodies would hold more than 10 mandates as counted under this provision. The distribution of the number of directorships held is shown in Figures 5 and 6.

**Figure 5: Number of directorships under Article 91 held by executive directors**



**Figure 6: Number of directorships under Article 91 held by non-executive directors**



16. In terms of time commitment it is more relevant to look at the total number of directorships that are effectively held (Figures 7 and 8) and not at the number of directorships counted under Article 91(4) of Directive 2013/36/EU. Where a certain number of directorships is

exceeded (e.g. the 75th, 90th or 95th percentile, depending on the size of the institution), competent authorities should consider very carefully if there can be sufficient time committed for the directorship held within the institution.

17. The number of additional directorships held is not strongly related to the number of days committed, or to the size of the institution. Directors of investment firms in the highest percentiles hold a greater number of mandates than directors of credit institutions.

18. There is no great difference in numbers of directorships reported for the executive function and the non-executive function. However, where only mandates as a non-executive director can be observed, the average number of mandates is higher than for directors that hold both kinds of mandates. Directors of investment firms also hold more mandates in total than directors of credit institutions.

**Figure 7: Percentiles of total number of directorships held by members of the management body in its management function (executive directors) differentiated by governance system, size of credit institutions (CIs) and investment firms**

	Size (balance sheet total)	p10	p25	p50	p75	p90	p95	p99
1-tier	CI under EUR 1 bn	1	1	1	2	6	12	25
1-tier	CI EUR 1 to < 10 bn	1	1	2	3	5	7	16
1-tier	CI EUR 10 to < 30 bn	1	1	2	5	15	23	35
1-tier	CI above EUR 30 bn	1	2	3.5	6	9.5	13	31
1-tier	Investment firm	1	1	2	5	11	15	32
2-tier	CI under EUR 1 bn	1	1	1	2	4	5	11
2-tier	CI EUR 1 to < 10 bn	1	1	2	3	5	7	15
2-tier	CI EUR 10 to < 30 bn	1	2	4	6	8	10	13
2-tier	CI above EUR 30 bn	1	2	4	6	8	10	13
2-tier	Investment firm	1	1	2	4	11	13	23

**Figure 8: Percentiles of total number of directorships held by members of the management body in its supervisory function (non-executive directors) differentiated by governance system, size of credit institutions (CIs) and investment firms**

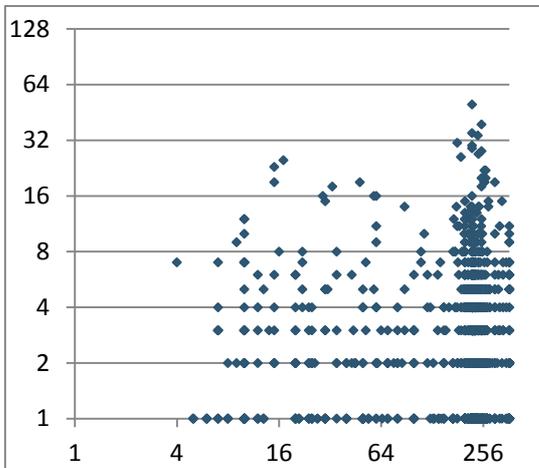
	Size (balance sheet total)	p10	p25	p50	p75	p90	p95	p99
1-tier	CI under EUR 1 bn	1	1	2	5	9	12	34
1-tier	CI EUR 1 to < 10 bn	1	1	3	5	10	14	26
1-tier	CI EUR 10 to < 30 bn	1	1	3	6	9	12	19
1-tier	CI above EUR 30 bn	1	2	4	6	10	14	19
1-tier	Investment firm	1	2	3	6	12	16	37
2-tier	CI under EUR 1 bn	1	1	2	4	8	11	20
2-tier	CI EUR 1 to < 10 bn	1	1	3	5	9	12	24
2-tier	CI EUR 10 to < 30 bn	1	1	2	5	8	11	16
2-tier	CI above EUR 30 bn	1	1	3	5	7	10	18

	Size (balance sheet total)	p10	p25	p50	p75	p90	p95	p99
2-tier	Investment firm	1	2	4	8	15	20	41

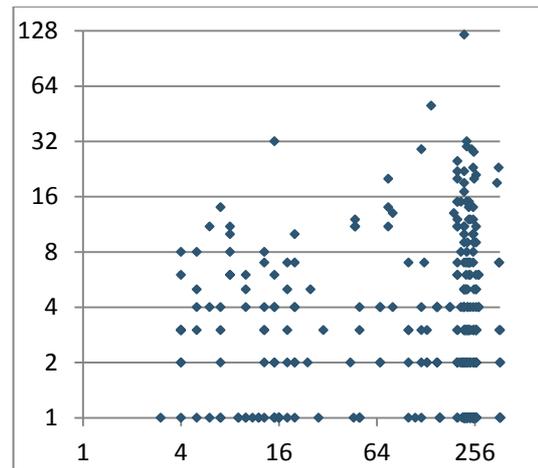
19. The following plots (Figures 9-12) illustrate the total number of directorships held (vertical axis) and the number of days committed for the directorship within the institution (horizontal axis), separately for executive and non-executive directors.

20. Despite the fact that many executive directors consider their position a full-time occupation, a good number of them hold many additional directorships. Even if some of them would be counted as one single directorship under Article 91(4) of Directive 2013/36/EU, sufficient time must be committed for each directorship.

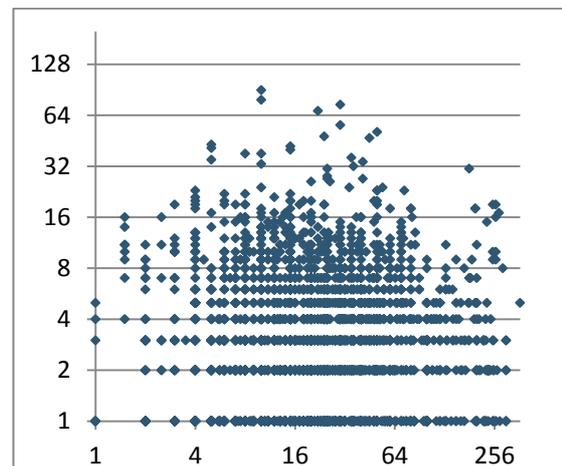
**Figure 9: Total number of directorships of executive directors in credit institutions and time committed for the reported directorship**



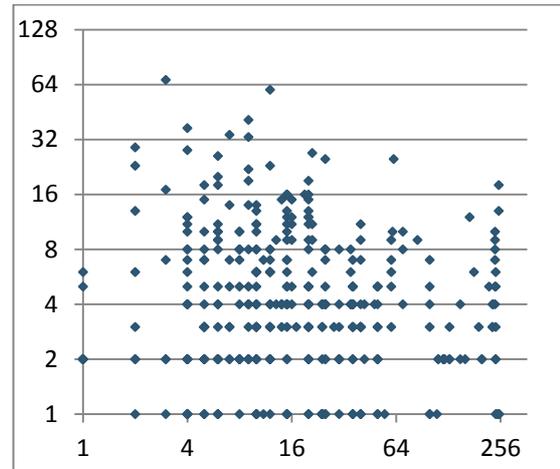
**Figure 10: Number of directorships of executive directors in investment firms and time committed for the reported directorship**



**Figure 11: Number of directorships of non-executive directors in credit institutions and time committed for the reported directorship**



**Figure 12: Number of directorships of non-executive directors in investment firms and time committed for the reported directorship**



## Training and training resources

21. Altogether 79% of the institutions have a framework to provide training to members of the management body. For many institutions there is also the possibility of using training facilities provided by their associations. The remaining 21% of institutions have no framework for training of members of the management body in place, but should introduce one as a requirement of Directive 2013/36/EU.
22. Only 18% of institutions that have responded to the questionnaire provide a training budget formally. The budgets are quite limited, with an average of around EUR 1 000 available per member. Some institutions provide a higher budget of around EUR 2 500 per member.
23. The number of days members of the management body participated in training depends on the size of the institution and whether the members belong to the supervisory or the executive function (Figure 13). Members of the management body of smaller institutions participate in more training than the members in large institutions and in investment firms.

**Figure 13: Number of training days provided to members of the management body**

Size of institution (balance sheet total)	Average number of days participated in training	
	Executive directors	Non-executive directors
CI under EUR 1 bn	12.0	4.5
CI EUR 1 to < 10 bn	8.4	4.1
CI EUR 10 to < 30 bn	3.7	2.6
CI above EUR 30 bn	2.4	2.6
Investment firms	2.8	0.9