

ESMA/2016/1529

28/10/2016

Consultation Paper

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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Responding to this consultation

The EBA invites comments on all proposals put forward in this paper and in particular on the specific questions summarised in 5.2. *[The part of the phrase from ‘and in particular’ onwards to be added only if, as the case may be, specific questions are provided in the CP].*

Comments are most helpful if they:

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

Submission of responses

To submit your comments, click on the ‘send your comments’ button on the consultation page by 28.01.2017. Please note that comments submitted after this deadline, or submitted via other means may not be processed.

Publication of responses

Please clearly indicate in the consultation form if you wish your comments to be disclosed or to be treated as confidential. A confidential response may be requested from us in accordance with the EBA’s rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the EBA’s Board of Appeal and the European Ombudsman.

Data protection

The protection of individuals with regard to the processing of personal data by the EBA is based on Regulation (EC) N° 45/2001 of the European Parliament and of the Council of 18 December 2000 as implemented by the EBA in its implementing rules adopted by its Management Board. Further information on data protection can be found under the Legal notice section of the EBA website.

Executive Summary

In accordance with the requirements introduced by Directive 2013/36/EU and Directive 2014/65/EU, ESMA and EBA issue jointly guidelines on the notions of suitability, as required by Article 91 (12) of the Directive 2013/36/EU and Article 9 (1) Directive 2014/65/EU¹, and on the assessment of suitability by institutions and competent authorities.

The directives aim at remedying weaknesses that were identified during the financial crisis regarding the functioning of the management body and its members. The Guidelines aim at further improving and harmonising the assessment of suitability within the EU financial sector and at ensuring sound governance arrangements in institutions.

The guidelines specify that all institutions have to assess the members of the management body. Institutions that are subject to Directive 2013/36/EU have also 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 and for significant institutions the heads of internal control functions and the CFO, when they are not a member of the management body.

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 of members of the management body.

To ensure that members of the management body commit sufficient time to performing their duties, the guidelines set a framework for assessing the time commitment expected of members of the management body and specify how the number of directorships has to be counted, in the case of significant institutions.

It is important to improve the diversity of management bodies to overcome the risk of 'group thinking'; to this end, the Guidelines determine how diversity is to be taken into account in the selection process for 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 ESMA will finalise these guidelines subsequent to the public consultation. The EBA is updating in parallel its guidelines on internal governance.

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

Background

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. Member State company law usually provides for a unitary and/or a dual board structure; the guidelines apply to both structures. The guidelines do not advocate any particular structure and are intended to embrace all existing governance structures. The management body in its management function sets the direction for the institution and is responsible for the day-to-day running of the institution. The management body in its supervisory function oversees and challenges the management body in its management function and provides appropriate advice. This oversight role includes reviewing the performance of the management body in its management function, its decision-making and the achievement of objectives, and ensuring the integrity of financial information as well as sound and effective risk management and internal controls.
5. 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. In some situations, the management body may comprise a small group of individuals who will each perform both the 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.
6. Branches in a Member State of institutions authorised in a third country are subject to equivalent suitability requirements as 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 Chief Financial Officer, 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 in analogy.

7. These guidelines set out the measures for the assessment of the suitability of members of the management body, including the chief executive officer (CEO), even when he or she is not part of the institutions governing bodies according to national law, the key function holders (i.e. the chief financial officer (CFO) where they are not part of the management body and the heads of internal control functions and, where identified by institutions on a risk based approach other key function holders). Where the guidelines refer to the CEO, CFO, the 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. In the case that the 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.
8. 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 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 Members States appears divergent across the EU and limiting the achievements of harmonization in this particular area and therefore the prudence targeted to the special companies which credit and financial institutions are. The Consultation Paper (CP) highlights where such limitations in the achievements lie due to this situation.
9. The Guidelines take into account the European Commission's recommendation of 15 February 2005² 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. The existing EBA guidelines, published 22 November 2012 on the EBA's website³, 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

10. To further harmonise the assessment of suitability within the European Union banking and securities sector in line with the requirements introduced by Directive 2013/36/EU and Directive 2014/65/EU, 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 only subject to Directive 2014/65/EU but not to Directive 2013/36/EU, the guidelines refers to CRD-institutions.
11. 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

² 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>

³ 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>

subject to the same suitability requirements as institutions that are subject to Directive 2013/36/EU.

12. The Guidelines also foresee the assessment of the CFO, where he or she is not a member of the management body, and the heads of internal control functions and, where identified on a risk-based approach by institutions, 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 Article 91 of Directive 2013/36/EU and by Article 9(3) and Article 16(2) of Directive 2014/65/EU.
13. 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 respective guidelines.
14. 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.
15. Article 16 of Directive 2014/65/EU requires investment firms to (2) establish adequate policies and procedures sufficient to ensure compliance of the firm including its managers, employees and tied agents with its obligations under this Directive.
16. According to Article 13 of the Directive 2013/36/EU, competent authorities shall refuse to grant an authorisation as a credit institution if the members of the management body do not meet the requirements referred to in Article 91(1).
17. According to Article 9(4) of Directive 2014/65/EU the competent authority shall refuse authorisation of investment firms 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.
18. 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 paragraph (2) to (8) of this Article.
19. 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 to act with honesty, integrity and independence of mind.

20. 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 that 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.
21. In accordance with Article 122 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.
22. 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 and 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.
23. 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 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 regulatory technical standards under Article 7(4) of Directive 2014/65/EU on information and requirements for the authorisation of investment firms, the implementing technical standards under Article 7(5) of Directive 2014/65/EC, the RTS under Article 80(3) of Directive 2014/65/ 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 report⁴ 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 principles⁵.
24. These guidelines should be read in conjunction with other relevant EBA and ESMA guidelines, in particular EBA's guidelines covering internal governance, including remuneration, risk management and outsourcing, the supervisory review process and disclosures.

Rationale and objective of the guidelines

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

⁵ E.g. the Corporate governance principles for banks, published 07/2015 by the Basel Committee of Banking Supervisors

25. The guidelines specify the notion of sufficient time commitment, adequate individual and collective knowledge, skills and experience, the notions of honesty, integrity and independence of mind, the notion of adequate human and financial resources for induction and training as well as the notion of diversity which is to be taken into account when recruiting members of the management body.
26. 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, complies with regulatory and other legislative requirements and has robust governance arrangements in place, 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.
27. 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.
28. 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 management function directs and is accountable for the business of an institution; the supervisory function oversees the management decision making and the management body in its management function of an institution. The suitability of both functions is equally important for the well-functioning of an institution. Members of the management body representing any shareholding interest owned by a Member State or a public authority of a Member State or a public entity must also be suitable at all times. As the members of the management body of the different functions have specific roles, the assessment process and criteria can differ.
29. Events which may potentially affect the required knowledge, skills and experience of a person 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 reassessment of the collective suitability of the management body.
30. The guidelines aim to establish harmonised criteria for the assessment of the suitability of the members of the management body, and key function holders in order to ensure sound assessment processes as part of institutions governance arrangements.
31. 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, such as, 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.

32. Members of the management body should also have sufficient time to acquire, maintain and enhance their knowledge and skills – if necessary through additional training – in order to be able to understand the institution’s structure and its development, the changes in the legal and economic environment and to maintain an up-to-date knowledge and deliver a high level of performance at all times.
33. 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.
34. The members of the management body need to have sufficient knowledge, skills and experience to fulfill their individual position in an institution and also 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.
35. Individuals proposed as members of the management body of an institution should also be able to demonstrate, as part of the overall suitability assessment, independence of mind in order to effectively assess, challenge, oversee and monitor management decision-making.
36. A sufficient number of independent directors within the supervisory function of the management body helps to ensure a discussion that looks at all different aspects in the absence of conflicts of interests and other biases. The guidelines provided in this regard are based on the Commission Recommendation of 15 February 2005 on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board.
37. Institutions need to provide for 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 and how it is embedded in its group structure (where relevant), business and risk strategy. Ongoing training should aim at improving and keeping up to date the qualifications of members of the management body so that the management body collectively at all times meets or exceeds the level that is expected. Ongoing training is a necessity to ensure sufficient knowledge about changes in the relevant legal and regulatory requirements, markets and products, the institution’s structure, business model and risk profile.
38. 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 members of the management body.
39. Diversity within the composition of the management body 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.

40. Diversity within the management body leads to a broader range of experience, knowledge, skills and values. A diverse composition within the management body can be achieved by taking into account such aspects as educational and professional background, age, gender and geographical provenance. Diversity should always be considered when appointing members of the management body, taking into account the nature, scale and complexity of the institution’s activities.
41. 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 are aimed at improving gender diversity⁶.
42. Institutions are responsible for ensuring that members of the management body fulfill 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 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 to fulfill the tasks that are normally performed by the nomination committee in order to ensure the effective and prudent management of the institution and the effectiveness of the institutions governance arrangements.
43. Institutions should assess the suitability of proposed members and members of the management body prior to or when duly justified as soon as practicable, but in any case within 3 weeks, after their appointment and inform the competent authority of the proposed appointment or appointment. Indeed, where shareholders nominate and appoint members of the management body at the general assembly a prior assessment may not always be possible.
44. Competent authorities have in any case specific 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 CFO, where they are not part of the management body, of significant institutions. 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.
45. The suitability assessment conducted by competent authorities is prudential and preventive in nature and highly dependent on available information; it is not a criminal or administrative infringement procedure. It belongs to institutions to ensure that members of the management body and key function holders are suitable for their respective roles. Particularly regarding the individual’s reputation, honesty and integrity, when concerns have been risen, it is up to the institution to demonstrate that the individual meets reputation, honesty and integrity standards.
46. 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, where

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

they are not part of the management body, of significant institutions to have access to and to assess specific information about the persons.

47. The Guidelines set out in Annex III the documentation and information to be provided for initial⁷ and ongoing assessments. However, competent authorities are not limited to this information; e.g. within the supervisory process, a competent authority can also gain 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 the information is deemed to be reliable.
48. It is important to ensure that institutions and competent authorities intervene effectively in cases where a member of the management body, a proposed member for such a position or the management body collectively is not suitable. This applies in principle also to key function holders. Measures available to competent authorities may differ between Member States depending on the applicable laws. Such measures can range from imposing conditions or ordering the institution to take action to improve the skills and knowledge of a member, or to shift responsibilities between members, the prohibition of a member or an institution to continue performing tasks, the temporary ban or replacement of a member of the management body, or ultimately the withdrawal of the institution authorisation.

⁷ 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/rtts/160714-rtts-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) as well as the CP on draft RTS on authorisation published by EBA.

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Draft Guidelines

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

Compliance and reporting obligations

Status of these guidelines

1. These guidelines are issued pursuant to Article 16 of the ESA Regulations⁸. 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, competent authority will be considered by the EBA and ESMA to be non-compliant. Notifications should be sent by submitting the form available on the EBA website to compliance@eba.europa.eu with the reference 'EBA/GL/2017/xx' and with the form available on the ESMA website to [...]@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 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.

⁸ 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

Subject matter, scope and definitions

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/EU⁹ and the second subparagraph of Article 9(1) of Directive 2014/65/EU¹⁰, 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, 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 CFO, where they are not part of the management body, of credit institutions and certain investment firms 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 and governance structures.

Member States' company law usually provides for a unitary and/or a dual board structure; the guidelines apply to both structures. The guidelines do not advocate any particular structure and are intended to embrace all existing governance structures. The management body in its management function sets the overall direction for the institution and includes those persons who effectively direct the business of the institution. The management body in its supervisory function oversees and challenges the management body in its management function and provides appropriate advice. This oversight role includes reviewing the performance of the management body in its management function, its decision-making and the achievement of objectives, and ensuring the integrity of financial information as well as sound and effective risk management and internal controls.

Q1: Are there any conflicts between the responsibilities assigned by national company law to a specific function of the management body and the responsibilities assigned by the Guidelines to either the management or supervisory function?

⁹ 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).

¹⁰ 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).

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) 575/2013¹¹ including the European Central Bank with regards to matters relating to the tasks conferred on it by Regulation (EU) No 1024/2013¹², 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 to 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.
9. Unless otherwise specified as directly referring to CRD-institutions, these guidelines apply to all institutions, as defined therein.
10. 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.
11. For the purposes of these guidelines, any reference to the members of the management body or to the members of the management body in its management function should be understood as applying also to the Chief Executive Officer (CEO), as defined in these guidelines, even if he or she has not been proposed or appointed as a formal member of the management body. Likewise, any reference to the management body or to the management body in its management function should be understood as including the CEO.
12. The definitions of Chief Executive Officer (CEO) and Chief Financial Officer (CFO) used in these Guidelines are purely functional and not intended to impose the appointment of those officers or creation of such positions unless prescribed by relevant EU or national law.¹

¹¹ 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).

¹² Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p.63).

Definitions

13. 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:

Institutions	means credit institutions as defined in Article 4(1)(1) of Regulation (EU) 575/2013, financial holding companies as defined in Article 4(20) 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 2014/65/EU.
CRD-institutions	means credit institutions or investment firms as defined in Article 4(1)(1) and (2), respectively, of Regulation (EU) 575/2013.
Significant institutions	means CRD-institutions referred to in Article 131 of Directive 2013/36/EU (global systemically important institutions or 'G-SIIs', and other systemically important institutions or 'O-SIIs'), and, as appropriate, other CRD-institutions and, for the purposes of Article 91 of Directive 2013/36/EU, financial holding companies or mixed financial holding companies, determined by the competent authority, based on an assessment of the institutions' size, internal organisation and the nature, the scope and the complexity of their activities.
Group	means a parent undertaking and all its subsidiaries undertakings, as defined in Article 2(9) and (10) of Directive 2013/34/EU ¹³ .
Suitability	means the degree to which an individual is deemed to have good repute 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

¹³ 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).

and independence of mind of each individual and his/her ability to commit sufficient time to perform her/his duties.

Member	means a proposed or appointed member of the management body.
Chief Executive Officer (CEO)	means the person who is responsible for managing and providing steer to manage the overall business activities of the institution.
Key function holders	<p>means the persons who have significant influence over the direction of the institution, but who are not members of the management body nor 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, EEA branches, third country subsidiaries and other internal functions.</p>
Heads of internal control functions	means the persons at the highest hierarchical level in charge of effectively managing the day to day operation of the risk management, compliance and audit functions.
Chief Financial Officer (CFO)	means the person that is primarily responsible for managing the financial resources and risks, financial planning and reporting and record-keeping.
Prudential consolidation	means the application of the prudential rules set out in Directive 2013/36/EU and Regulation (EU) 575/2013 on a consolidated or sub-consolidated basis, in accordance with Part 1, Title 2, Chapter 2 of Regulation (EU) 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) 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.

Consolidating CRD-institution	Means a CRD-institution which 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) 575/2013.
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 the extent of allowing for a variety of views within the management body.
Geographical provenance	means the region where a person has gained a cultural, educational or professional background.
Induction	means any initiative or program to prepare a person for a specific new position as a member of the management body.
Training	means any initiative or program to improve the skills, knowledge or competence of the members of the management body, on an ongoing or ad-hoc basis.
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.
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.
A 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.
An executive directorship	means a directorship in which a person is responsible for effectively direct the business of an entity.

Implementation

Date of application

14. These guidelines apply from [6 month after the publication of the final Guideline in all languages of the European Union]

Repeal

15. 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 [6 month after the publication of the final Guideline in all languages of the European Union].

Q2: Are the subject matter, scope and definitions sufficiently clear?

Draft guidelines

Title I – Scope of suitability assessments and proportionality

1. The suitability assessment of individual members of the management body

16. 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 suitable at all times and should assess or re-assess their suitability, in particular:

- a. when applying for an 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 institution¹⁴;
 - ii. when re-appointing members of the management body, if the requirements of the position have changed or if the member is appointed for a different position within the management body.
- c. On an ongoing basis in accordance with paragraphs 20 and 21.

17. Institutions should assess, in particular, whether 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 the limitation of directorships under Article 91(3) of Directive 2013/36/EU is being complied with.

¹⁴ See also (draft) ITS on the procedures and forms in respect of acquisitions and increases of qualifying holdings available on EBA's and ESMA's website: <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

18. The assessment of sufficient knowledge, skills, experience and time commitment should take into account the role and responsibilities associated with 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.
19. The assessment referred to in paragraph 16(b)(ii) should be limited to the analysis of the relevant aspects needed, taking into account any additional requirements for the position;
20. 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 reassessment of their suitability should be performed. In particular, a reassessment 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.
21. Institutions should also reassess the sufficient time commitment of a member of the management body if that member takes on an additional directorship.
22. Institutions should base their suitability assessments on the notions defined in Title II, taking into account the diversity of the management body as specified in Title IV, and should implement a suitability policy and processes as set out, respectively, in Titles V and VI.
23. The initial and ongoing assessment of the individual suitability of the members of the management body should primarily be the responsibility of institutions, although the assessment is also carried out by competent authorities for supervisory purposes.

2. The assessment of the collective suitability of the management body

24. Institutions should ensure, in fulfilling the obligation set out in Article 91(7) of Directive 2013/36/EU that the management body collectively possesses at all times adequate

knowledge, skills and experience to be able to understand the institutions' activities, including the main risks.

25. Institutions should assess or re-assess the collective suitability of the management body, in particular:

- a. when applying for an 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 institution¹⁵;
 - ii. when re-appointing members of the management body, if the requirements of the position have changed or if the members are appointed for 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 26.

26. Institutions should reassess the collective suitability of the members of the management body, in particular, in the following cases:

- i. when there is a material change to the institution's business model, risk appetite or strategy or structure at individual and group level.;
- ii. as part of the review of the internal governance arrangements by the management body;
- iii. in any event that can otherwise materially affect the collective suitability of the management body.

27. Institutions should base their suitability assessments on the notions defined in Section 8 [collective suitability criteria] and should implement a suitability policy and processes as set out in Titles V and VI.

28. The assessment of the initial and ongoing collective suitability of the management body should primarily be 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 primarily with the institutions.

¹⁵ See footnote 14

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

29. While all institutions should ensure that their staff are suitable to perform their functions, CRD-institutions should specifically ensure that key function holders are of sufficient good repute, have honesty and integrity and possesses sufficient knowledge, skills and experience for their positions at all times and assess such suitability requirements, in particular:
- when applying for an authorisation or, where not possible, as soon as practicable when the institution is taking up the business;
 - 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;
 - where necessary, in accordance with paragraph 30.
30. 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, in the following cases an assessment should be made:
- where there are concerns regarding their suitability;
 - in the event of a material impact on the reputation of the individual;
 - as part of the review of the internal governance arrangements by the management body;
 - in any event that can otherwise materially affect the suitability of the individual.
31. 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 for the assessment of such suitability requirements of the members of the management body. When assessing knowledge, skills and experience, the duties and responsibilities of the specific position should be considered.
32. Assessing the initial and ongoing suitability of key function holders should primarily be the responsibility of the institutions. Where the assessment is for some key function holders 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 primarily with the institutions.

Q3: Is the scope of assessments of key function holders by CRD-institutions appropriate and sufficiently clear?

4. Application of the proportionality principle

33. 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.
34. 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. Significant institutions should have more sophisticated policies and processes, while in particular small and less complex institutions may implement simpler policies and processes. Policies and processes should ensure that the criteria to assess suitability and the requirements to take into account diversity when recruiting members to the management body and to provide sufficient resources for their induction and training, are complied with.
35. 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 the complexity of its activities and the duties and responsibilities of the specific position, including memberships held in committees of the management body.
36. For the purpose of the application of the principle of proportionality and in order to ensure an appropriate implementation of the requirements, 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 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, taking into account also 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;¹⁶ and
- j. the nature and the complexity of the products, contracts or instruments offered by the institution.

Q4: Do you agree with this approach to the proportionality principle and consider that it will help in the practical implementation of the guidelines? Which aspects are not practical and the reasons why? Institutions are asked to provide quantitative and qualitative information about the size, internal organisation and the nature, scale and complexity of the activities of their institution to support their answers.

Q5: Do you consider that a more proportionate application of the guidelines regarding any aspect of the guidelines could be introduced? When providing your answer please specify which aspects and the reasons why. In this respect, institutions are asked to provide quantitative and qualitative information about the size, internal organisation and the nature, scale and complexity of the activities of their institution to support their answers.

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

5. Sufficient time commitment of a member of the management body

- 37. Institutions should assess if 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 is being complied with.
- 38. Institutions should consider that in periods of particularly increased activity, such as 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, a higher level of time commitment than in normal periods may be required. The assessment of whether a member of the management body has sufficient time to commit to his or her role should also include the assessment of whether

¹⁶ 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 is a client, as described in Article 30 of Directive 2014/65/EU.

there exists an appropriate “buffer” of time for the member to be able to fulfil his or her duties in such periods of increased activity.

39. In the assessment of sufficient time commitment of a member, institutions should at least take 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 between such positions 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 member’s geographical presence and the travel time required for the role;
- c. the numbers of meetings scheduled for the management body;
- d. the directorships in organisations which do not pursue predominantly commercial objectives held by that member at the same time;
- e. 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;
- f. the nature of specific position and the responsibilities of the member, including specific roles such as CEO, Chairperson, 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;
- g. other external professional, political activities and any other functions and relevant activities, both within and outside the financial sector;
- h. the necessary induction and training;
- i. any other relevant member’s duties that institutions consider to be necessary to take into account when carrying out the assessment of sufficient time commitment of a member; and
- j. available relevant benchmarking on time commitment, including the benchmarking provided by the EBA¹⁷.

40. Institutions should record in writing the functions and responsibilities of different 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 training.

¹⁷ Figures for the year 2015 are included as an Annex to the impact assessment of these Guidelines.

41. 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.
42. 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.
43. 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.
44. Institutions should keep records of all external professional, political and other functions and relevant activities exercised 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 of such activities may impact the time commitment of the member of the management body, the institution should reassess the member's ability to respect the required time commitment for his or her position.

6. The calculation of the number of directorships

45. 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.
46. 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.
47. Where multiple directorships count as a single directorship, as described in Article 91(4) of Directive 2013/36/EU and as further developed in paragraphs 48 to 53, 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.
48. In accordance with Article 91(4)(a) of Directive 2013/36/EU, all directorships held within the same group count as a single directorship.
49. 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 that 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.

50. 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.
51. 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 one 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).
52. 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.
53. Entities which do not pursue predominantly commercial objectives include:
 - 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 provided that they do not require day-to-day management by the member of the management body.

Q6: Are the guidelines with respect to the calculation of the number of directorships appropriate and sufficiently clear?

7. Adequate knowledge, skills and experience

54. 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.
55. Members of the management body should have a clear understanding of the institution's governance arrangements, their respective position and responsibilities and, where applicable, the group structure. Members of the management body should be able to contribute to the implementation of an appropriate culture, corporate values and behaviours within the management body and the institution¹⁸.
56. In this respect, the assessment of adequate knowledge, skills and experience should consider:
- a. the knowledge and skills attained through education and training,
 - b. the practical and professional experience gained in previous positions,
 - c. the relevant skills required for the position, and
 - d. the knowledge acquired and demonstrated by the professional conduct of the member of the management body.
57. 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.
58. The level and profile of the education of the member and whether 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, administration, financial regulation, information technology, and quantitative methods can in general be considered to be relevant for the financial services sector.
59. 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 occupations depends on the nature, scale and complexity of the business as well as the function that the member performed within it.
60. 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. financial markets;

¹⁸ See also EBA's CP on Guidelines on internal governance: <https://www.eba.europa.eu/regulation-and-policy/internal-governance>

- b. legal requirements and regulatory framework ;
 - c. strategic planning, and 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. the assessment of the effectiveness of an institution's arrangements, ensuring effective governance, oversight and controls; and
 - f. the interpretation of an institution's financial information, the identification of key issues based on this information, and appropriate controls and measures.
61. 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.
62. A member 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 may be gained from academic or administrative positions and through the management, supervision or control of financial institutions or other firms.

8. Collective suitability criteria

63. 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.

64. 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.
65. 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. 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.
66. 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.

67. While the management body in its management function should collectively have a high level of managerial skills, the supervisory function of the management body 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.

9. Reputation, honesty, and integrity

68. A member of the management body should be deemed to be of good repute and as with honesty and integrity if there is no objective and demonstrable grounds to suggest otherwise in particular taking into account the relevant available information as listed in paragraphs 70 to 73. The assessment of reputation, honesty and integrity should also consider the impact of the cumulative effects of minor incidents on a member's reputation.
69. Without prejudice to any fundamental rights, any relevant criminal or administrative records should be taken into account for the assessment of the 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 period 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.

The differences in national criminal and administrative laws as for example, the type of offences, penalty received, the seriousness of any relevant offence, periods of limitation, are different from a Member State to another and therefore limits the achievement of the harmonisation of practices when assessing this particular aspect of suitability.

70. 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 of 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 enforcement actions by any regulatory or professional body for non-compliance with any relevant provisions governing banking, financial, securities, or insurance activities.
- 71. On-going investigations should be taken into account when resulting from judicial, administrative procedures or other analogous regulatory investigations without prejudice to fundamental individual rights¹⁹.
- 72. 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. inclusion on the list of unreliable debtors or any negative records on this kind of list conducted by 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 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 they can have a significant impact on the financial soundness of the member or entities owned or directed by it, or in which the member has a significant share.
- 73. 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;
 - b. refusal, revocation, withdrawal, termination 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 any position of trust, fiduciary relationship, or similar situation, or having been asked to resign from employment in such a position;

¹⁹ 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

- 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.

10. Independence of mind

- 74. 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 responsibilities.
- 75. Acting with independence of mind includes having the courage, conviction and strength to effectively assess and challenge the proposed decisions of other members of the management body, to ask questions to the members of the management body in its management function where the member judges it appropriate in the light of the issues and risks involved, and to be able to resist 'group-think'.
- 76. When assessing the independence of mind of a member of the management body, their past behavior within the institution or in other positions should be taken into account.
- 77. In order to be independent of mind, members of an institution's management body should not have conflicts of interest that cannot be managed that impede their ability to perform their duties independently and objectively. At least the following situations that can create conflicts of interests should be considered:
 - a. personal, professional or economic relationships with the owners of qualifying holdings in the institution, with the institution's parent institution, or any subsidiaries;
 - b. personal, professional or economic relationships with relevant external stakeholders;
 - c. past or present positions held;
 - d. personal, professional or economic relationships with other members of the management body of the institution or entities included within the scope of prudential consolidation;
 - e. other economic interests owned by the member (e.g. loans granted by the institution to a company owned by a member of the management body);
 - f. political influence or political relationships;
 - g. to be working for or holding a directorship or being a member of an audit committee in a competing institution; and

- h. other interests, including family interests linked to the institution, that may create conflicts of interest.
78. Holding shares in the institution or any entity within the scope of prudential consolidation is not considered by itself to give rise to a situation of conflict of interest impacting the independence of mind of a member of the management body.
79. A member of the management body should abstain from voting on any matter where that member may have a conflict of interest or where the member's independence of mind or ability to properly fulfil duties to the institution may be otherwise compromised.
80. The institution and the member of the management body should identify any potential or actual conflicts of interest in line with the criteria above and the institution's conflicts of interest policy, assess their materiality and decide on mitigating measures. This process and decisions taken should be documented.
81. Identified conflicts of interest should be subject to appropriate transparency, both within the institution and to relevant stakeholders. This should include informing the competent authority in cases where the institution has identified a material conflict of interest that may impact the independence of mind of a member of the management body if it has not been sufficiently mitigated.

Q7: Are the guidelines within Title II regarding the notions of suitability appropriate and sufficiently clear?

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

11. Setting objectives of induction and training

82. 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 programs. 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.
83. All newly appointed members of the management body should receive induction at the latest one month after taking up their position, key information should be provided at the latest directly after taking up the position.

84. Where appointed members of the management body subject to fulfilling a particular aspect of the knowledge and skill requirements, the training and induction for that member should aim at filling the identified gap within an appropriate timeframe, before the position is effectively taken up or as soon as possible after the position is effectively taken up. In any case, a member should fulfill all knowledge and skill requirements as set out in section 7 not later than 6 months after taking up the position, considering the non exhaustive list of relevant skills provided in Annex II. 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 their knowledge and skills needed to fulfil their responsibilities.

12. Induction and training policy

85. Institutions should have in place policies and procedures for the induction and training of members of the management body. The policies and procedures should be adopted by the management body.

86. 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.²⁰

87. 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 program;
- 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;

²⁰ The annex to the impact assessment includes EBA benchmarking results (2015 data) for training resources and training days provided by institutions.

- d. a clear process under which any member of the management body can request induction or training.
88. 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 trainings as well as relevant internal control functions, where appropriate.
89. 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 programs.
90. 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.
91. Institutions should have an evaluation process in place to review the effectiveness of induction and training provided and ensure compliance with the induction and training policies and procedures.

Q8: Are the guidelines within Title III regarding the Human and financial resources for training of members of the management body appropriate and sufficiently clear?

Title IV –Diversity within the management body

13. Diversity policy objectives

92. 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 be aimed at engaging 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.
93. 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 should include for significant institutions 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 function where a sufficiently large management body exists. In all other institutions, in particular with a management body of less than five members, the target may be expressed in a qualitative way.

94. 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.
95. When setting diversity objectives, institutions should consider diversity benchmarking results published by competent authorities, the EBA or other relevant international bodies or organisations²¹
96. 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.
97. 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.

Q9: Are the guidelines within Title IV regarding diversity appropriate and sufficiently clear?

Title V – Suitability policy and governance arrangements

14. Suitability Policy

98. In accordance with 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. 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.

²¹ See also 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>

99. The suitability policy should include or refer to the diversity policy in order to ensure that diversity is taken into account when recruiting new members.
100. 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).
101. The policy should be clear, well documented and transparent. 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.
102. Internal control functions²² 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, both in its management and supervisory functions.
103. The policy should include principles on the selection and assessment of members of the management body and should set out at least the following:
- a. the process for the selection and appointment 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, the target for the underrepresented gender in the management body is to be taken into account;
 - d. the person in charge of liaising with competent authorities; and
 - e. how the assessment should be documented.
104. CRD-institutions should also include within their suitability policy the processes for the selection and appointment of key function holders. The suitability policy should set out, based on a risk-based approach, those positions that are considered by CRD-institutions as key

²² See also EBA's CP on Guidelines on internal governance available under: <https://www.eba.europa.eu/regulation-and-policy/internal-governance>

function holders in addition to the heads of internal control functions and the CFO, where they are not part of the management body.

105. The management body in its supervisory function and, where established the nomination committee, should monitor the effects of the institution's suitability policy and review its design, implementation and effectiveness. 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.

15. Suitability policy in a group context

106. In accordance with Article 109 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.
107. The policy should be adjusted to the specific situation of the CRD-institutions that are part of the group and subsidiaries that are not themselves subject to Directive 2013/36/EU. Within a group context, competent bodies or functions within the consolidating CRD-institution and its subsidiaries should interact and exchange information for the assessment of suitability as appropriate.
108. 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.
109. The consolidating CRD-institution should ensure that subsidiaries established in third countries that are included in the scope of prudential consolidation have a policy that complies with the requirements of Articles 74, 88 and 91 of Directive 2013/36/EU and is consistent with the group-wide policy and these guidelines, as long as this is not unlawful under the laws of the third country.
110. 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.

16. Nomination committee and its tasks²³

111. Significant institutions must have a nomination committee that fulfils the responsibilities and has the resources as set out under Article 88(2) of Directive 2013/36/EU.
112. Members of the nomination committee should have adequate collective knowledge, expertise and experience about the business of the institution, in order to be able to assess the appropriate composition of the management body, including recommending candidates to fill management body vacancies.
113. 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 two years.
114. The nomination committee, where established, and the management body in its supervisory function, as appropriate, should have access to all necessary information to perform its duties and be able to involve the relevant internal control functions and other competent internal functions, where necessary.
115. 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.

17. Composition of the management body and the appointment and succession of its members

116. The management body in its management function should be able to effectively direct the business of the institution. An institution's management body in its supervisory function should be able to effectively challenge the decisions of the management body in its management function and to effectively oversee and monitor the management body's decision-making.
117. The management body should have an adequate number of members and an appropriate composition. As part of the suitability policy, the management body should have policies and procedures for selecting, monitoring and planning the succession of its members and for re-appointing existing members. The management body should identify and select qualified and experienced members and ensure appropriate succession planning for the management body

²³ Regarding the composition and tasks of committees see also EBA's CP on Guidelines on internal governance available under: <https://www.eba.europa.eu/regulation-and-policy/internal-governance>

that is consistent with all legal requirements regarding composition, appointment or succession of the management body.

118. Without prejudice to national company law, members of the management body should be appointed for an appropriate period. Nominations for re-appointment should only take place after considering the assessment result regarding the performance of the member during the last term.
119. 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 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.
120. 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 IV of these guidelines. The decision should take into account 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.
121. The member of the management body should be made aware of the culture, values, behaviours and strategy associated with that institution and its management body.
122. 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.

18. Independent members of a CRD-institution's management body in its supervisory function²⁴

123. In order to facilitate constructive challenge and discussion, a CRD-institution's management body in its supervisory function should include a sufficient number of fully independent members that do not have a mandate as a member of the management body in its management function within the scope of prudential consolidation, are not employed by any entity within the scope of consolidation and are not under any other undue influence or conflict of interest, internal or external, political or economic that would impede their objective judgment, including as a result of close family relationships to other members of the management body.
124. In the following situations, a member of a CRD-institution's management body in its supervisory function should as a general principle not be considered independent:
- a. the member is a substantial shareholder of the CRD-institution, has a material financial connection with the CRD-institution, is an officer of, or is otherwise associated with a substantial shareholder of the CRD-institution. For this purpose shares received as part of remuneration should not be taken into account;
 - b. the member has previously been employed in a position at the highest hierarchical level, being only directly accountable to the management body, or has been a member of the management body in its management function of the CRD-institution or another group entity, and there has not been a period of at least three years, between ceasing such employment and serving on the management body;
 - c. the member has been, within a period of three years, a principal of a material professional adviser or a material consultant to the CRD-institution or another group entity, or an employee materially associated with the service provided;
 - d. the member is or has been, within the last year, a material supplier or customer of the CRD-institution or another group entity or had another material business relationship, or is an officer of or is otherwise associated directly or indirectly with a material supplier, customer or entity that has a material business relationship;
 - e. the member receives in addition to remuneration for his or her role significant fees or other benefits from the CRD-institution;
 - f. the member served as member of the management body within the group for 12 years or longer;
 - g. The member is a close family member of a member of the management body in the management function of the CRD-institution or another group entity or a person referred to under points (a) to (f).

²⁴ This section should be read in conjunction with section 10 regarding independence of mind.

Q10: Are the guidelines within Title V regarding the suitability policy and governance arrangements appropriate and sufficiently clear?

Title VI – The assessment of suitability by institutions

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

125. 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. 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.
126. The assessment of suitability should take into account all matters relevant to and available for the assessment. Institutions should consider the risks, including the reputational risk, arising in the event that any weaknesses are identified impacting the individual or collective suitability of the members of the management body.
127. Where members are appointed by the general shareholders' meeting and where the assessment of the individual and collective suitability of members has been performed before the general shareholders' meeting, institutions should provide this information to shareholders before they appoint the members of the management body. Where appropriate, the assessment should comprise different alternative compositions of the management body that can be introduced to the shareholders. Where, in duly justified cases (e.g. if shareholders nominate members that have not been proposed by the institution), members were appointed by shareholders before an assessment of suitability was made, institutions should assess the suitability of the members and the composition of the management body as soon as practicable and at the latest within three weeks after the appointment of the members. If the subsequent assessment by the institution resulted in a member being considered not suitable for his or her role, the competent authority should be informed without delay. The institution should inform shareholders about the assessment made and the need to appoint different members.

Differences in national company laws within EU limit the harmonisation of practices regarding ex ante assessment by institutions in particular where the shareholders appoint members of the management body that have not been proposed by the nomination committee or the management body. In this example, it is not always possible for institutions to do an ex ante assessment before the appointment and therefore an ex post assessment with in a limited time period is envisaged.

128. In any case, 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.
129. Where members are appointed by the management body, such assessments should be performed before the appointment of the members of the management body. In duly justified cases, the assessment of suitability may be performed after the appointment. This should be done as soon as practicable but at the latest within three weeks from the date of appointment. In this case, the institution should inform the competent authority immediately after the appointment of the new member.
130. A new member of the management body should not be appointed where an assessment of suitability by the competent authority is required prior to the appointment of that member.
131. 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.
132. Institutions should document the results of its assessment of suitability, 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.
133. Institutions should transmit to competent authorities the outcome of the suitability assessment for new members of the management body, including the institution's assessment of the collective composition of the management body. This should include the documentation and information listed in Annex III²⁵.
134. Institutions should, at the request of the competent authority, 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.

²⁵ 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 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) as well as the CP on draft RTS on authorisation published by EBA.

20. The assessment of the suitability of individual members of the management body

135. 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 VII and Annex III of these guidelines.
136. As part of the assessment of the suitability of an individual member of the management body, institutions should:
- a. gather information on the members suitability through different channels and instruments (e.g. diplomas and certificates, recommendation letters, curriculum 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 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 24.
137. Where there is a matter which causes concerns about the suitability of a member of the management body, an assessment of how this concern impacts that person's suitability should be undertaken.
138. Institutions should document the assessment methodology or processes used. Such documentation should describe the position for which an assessment was performed, including the role and responsibilities 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.

139. Institutions should also document how the assessed person would contribute to the diversity of the management body, taking into account the institution's diversity objectives and targets.

21. The assessment of the collective suitability of the management body

140. When assessing the collective suitability of the management body, institutions should assess the composition of the management and the supervisory function of the management body 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.

141. Institutions should perform an assessment of the collective suitability of the management body using one of the following:

- a. the suitability matrix included in Annex I. Institutions may adapt this matrix taking into account the criteria described in Section 4 [proportionality];
- b. their own appropriate methodology in line with the criteria set out in these guidelines and required by competent authorities

142. 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 as well as whether the overall composition of the specialised committees of the management body in its supervisory function is adequate. In particular, it should be assessed what added value the individual brings to the collective suitability, how the collective suitability is impacted by the individual and whether the management body is collectively suitable.

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

143. 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.

144. 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 in particular consider:

- 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 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 the 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 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 appropriateness of the time effectively committed by the members of the management body to perform their functions;
- i. 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 IV; and
- j. any events that may have an 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

145. Significant institutions should perform a periodic suitability re-assessment at least annually. Non-significant institutions should perform a suitability re-assessment at least every two years. Institutions should document the results of the periodic re-assessment. Where a

reassessment 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.

146. 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.
147. 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.
148. 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.
149. Significant institutions should inform the competent authority at least annually and non-significant institutions should inform the competent authority at least every two years of any reassessments of collective suitability made, including their outcome and any measures taken as a result of the reassessment. Institutions should submit the documentation supporting the re-assessment, on request of the competent authority.
150. 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.

23. The suitability assessment of key function holders by CRD institutions

151. 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 institutions 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.
152. 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 that ensure the appropriate functioning of this position. Significant 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.

Q 11: Are the guidelines within Title VI regarding the assessment of suitability by institutions appropriate and sufficiently clear?

24. Institutions' corrective measures

153. 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 this member.
154. 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.
155. 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.
156. 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.²⁶
157. 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.
158. In any case, competent authorities should be informed without delay of any shortcomings identified concerning any of the members of the management body and the 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 VII – Suitability assessment by competent authorities

²⁶ See footnote 25

25. Competent authorities' assessment procedures

159. 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 institutions.
160. The suitability assessments of the heads of internal control functions and the CFO, where they are not part of the management body, for significant institutions, should be performed by competent authorities at the relevant group, parent company or subsidiary level that is considered significant e.g. where a group, a parent company or a subsidiary has been identified as being significant, the aforementioned assessments should only be performed for that parent company and/or for the subsidiary.
161. The procedures should ensure that all individuals newly appointed or re-appointed for such positions and, where applicable, the management body as a collective body, are assessed by the competent authority in order to determine their suitability before their appointment. In duly justified cases, the assessment of suitability by competent authorities may be performed after the appointment.
162. Competent authorities should ensure that their supervisory procedures allow them to address cases of non-compliance in a timely manner.
163. Competent authorities should ensure that a description of those assessment procedures is publicly available.
164. As part of the above supervisory procedures, institutions should be required to inform competent authorities without delay on vacant positions within the management body and notify or apply for the proposed appointment or, where applicable, the appointment of a member of the management body. Significant institutions should notify competent authorities or apply for the proposed appointment of heads of internal control functions and the CFO, where they are not part of the management body. Institutions should be required to provide the complete documentation and information in Annex III together with the notification or application²⁷.
165. Competent authorities may set out the supervisory procedures applicable to the assessment of suitability of heads of internal control functions and the CFO when they are not part of the management body in non-significant institutions 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 submit the relevant documentation to them. In this case, competent authorities should, where possible, assess the documentation provided by institutions before the appointment of those persons. Where it is not possible, the suitability

²⁷ See footnote 25

assessment of those persons can be made after their appointment, taking into account in particular a risk-based approach.

166. Competent authorities should set out a maximum time period for their assessment of suitability which should not be less than 3 months and not exceed four months from the point of time the assessment application or notification is provided by the institution or, where the competent authority establishes that the documentation and information is not complete, from the moment of receipt of the complete documentation or information. The period may be suspended from the point in time when the competent authority requests additional documentation and information that is necessary to complete the assessment, until the receipt of that documentation and information. The decision of the competent authority should be taken within the maximum period, or if the period has been suspended within a maximum period of six months after the starting of that period. 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 six months after receipt of the application or, where the application is incomplete, six months after receipt of the complete information required for the decision.²⁸In these cases, a decision to grant or refuse authorisation must, in any event, be taken within 12 months of the receipt of the application.

The draft guidelines require that an ex ante assessment by competent authorities is performed and that a decision is taken before the appointment of members of the management body and, for significant institutions, before the appointment of heads of internal control functions and the CFO, where they are not members of the management body, unless duly justified reasons for an ex-post assessment exist. A three to four month period, to be determined by the competent authority, for the assessment is foreseen which can be suspended when additional information or documentation is needed. The current EBA guidelines published in 2012, which will be repealed after the finalisation of the consulted guidelines, took a neutral approach (competent authorities have been free to implement ex-ante or ex-post assessment processes).

Q12: Are the guidelines with regard to the timing (ex-ante) of the competent authority's assessment process appropriate and sufficiently clear?

The ex-ante assessment aims to ensure that all members of the management body and where relevant, key function holders, are suitable before they are appointed. A prior assessment reduces the risks that members of the management body and key function holders, including the ones appointed by shareholders, that have been assessed by institutions as being suitable might need to be replaced after the assessment by the competent authority. Such replacements may still be necessary as result of the ongoing supervision where new events happen or new information are received that lead to the conclusion that a member is not any longer considered suitable. An ex-ante assessment by the competent authority would prolong the institution's recruitment process, which needs to be accommodated within the institution's succession planning.

²⁸ See footnote 25

Q13: Which other costs or impediments and benefits would be caused by an ex-ante assessment by the competent authority?

An ex-post assessment by competent authorities shortens the time period between the start of the recruitment process and the appointment of a member of the management body or where relevant a key function holder. Under an ex post assessment the risk that an institution does not comply with the suitability requirements is higher compared to an ex ante assessment. An ex-post assessment by competent authorities may result in the need to remove member individual, which could be difficult to implement.

Q14: Which other costs or impediments and benefits would be caused by an ex-post assessment by the competent authority?

167. Competent authorities should base their assessment on the criteria regarding sufficient time commitment, reputation, honesty, integrity, independence of mind, adequate knowledge, skills and experience, and adequate collective knowledge, skills, experience and time commitment set out in Title II.

168. 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. In cases where 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 reassess 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.

169. 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 listed in section 4 [proportionality] as well as the individual circumstances of the institution, the assessed individual, and the position for which an assessment is made.

170. 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.

171. 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.

172. 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 position could reasonably be expected to take in order to prevent, remedy or stop the breach.

26. Decision of the competent authority

173. Competent authorities should take a decision based on the assessment of the individual and collective suitability before the members of the management body of an institution, or the heads of internal control functions and the CFO, where they are not part of the management body, of a significant institution, are appointed. In duly justified cases, the decision on suitability by competent authorities can be taken after the appointment.

174. Competent authorities should inform institutions at least of a negative decision taken as soon as possible. A positive decision may be deemed to be taken by silent, where the maximum period for the assessment is reached and the competent authority has not taken a negative decision.

175. Where an institution fails to provide sufficient information regarding the suitability of an assessed individual to the competent authority, the competent authority should object to or not approve the appointment of that person.

176. Where the assessment of suitability by the competent authority results in the fact that an assessed person is not 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.

177. 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. remove 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, impose administrative penalties or other administrative measures (e.g. set out specific obligations, recommendations or conditions), including ultimately withdrawing the institution's authorisation.
178. The measures referred to in letters 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.

27. Cooperation between competent authorities

179. Competent authorities should provide each other, 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 otherwise permitted by national law, 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 him 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.
180. 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 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 when requested. 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.
181. 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 five years against institutions where the assessed person was a member of their management body or key function holder and considering the severity of the underlying cause and the responsibility of the assessed person.

182. 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 only be disclosed with the express agreement of the authorities which have provided the information and solely for the purposes for which those authorities gave their agreement.
183. 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 requested competent authorities of the result of its assessment.
184. When requesting information, the competent authority making the request should provide the name of the individual being assessed together with the 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.

Q15: Are the guidelines within Title VII regarding the suitability assessment by competent authorities appropriate and sufficiently clear?

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

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

Q16: Is the template for a matrix to assess the collective competence of members of the management body appropriate and sufficiently clear?

Annex II – Skills

In line with Title II institutions may consider at least the following relevant skills:

- 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 working language where the institution is situated.
- 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 an appropriate form. Focuses on providing and obtaining clarity, 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 to the development and marketing of products and services and to capital expenditure on, e.g. 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 about relevant financial, economic, social and other developments at national and international level that may affect the undertaking and also about 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, whilst 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.

Q17: Are the descriptions of skills appropriate and sufficiently clear?

Annex III – Documentation requirements for initial appointments²⁹

The following information and/or accompanying documents are required to be submitted to the Competent Authority for each requested assessment. Until such time as all complete information and/or documents are supplied, the period of time referred to in Paragraph [166] of the Guidelines will not be deemed to start.

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

- 1.1 Personal details individual including full name, 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 respective drafts, 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 from employers in the banking or financial sector, including: full name, institution, position, telephone number, email, nature of the professional relationship and information if any non-professional relationship exists or existed with this individual.

2. Suitability Assessment by Institution

- 2.1 The following details should be provided:

²⁹ see footnote 26

- 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 CV containing details of education and professional experience (including professional experience, academic qualifications, 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 as to 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, 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) notably 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 European Union).

4.2 Statement as to whether criminal proceedings are pending or 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 which the individual has been directly or indirectly involved in;
- 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 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 any previous assessment of the individual 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 like a spouse, registered partner, cohabite, 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 substantial shareholder;
- e. any financial obligations to the institution, its parent or its subsidiaries (excluding performing mortgages negotiated at arm's length);
- f. any positions of political influence (nationally or locally) held over the past 2 years.

5.2 If s material conflict of interest is identified, the institution should provide a statement as to 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 of the minimum time that will be devoted to the performance of the person's functions within the institution (annual and monthly indications);
- b. list of the predominantly commercial mandates that the individual holds including whether or not the privileged counting rules³⁰ in Article 91(4) CRDIV apply;
- c. where the privileged counting rules apply an explanation of any synergies that exist between the companies;
- d. 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, number of employees;
- f. 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.

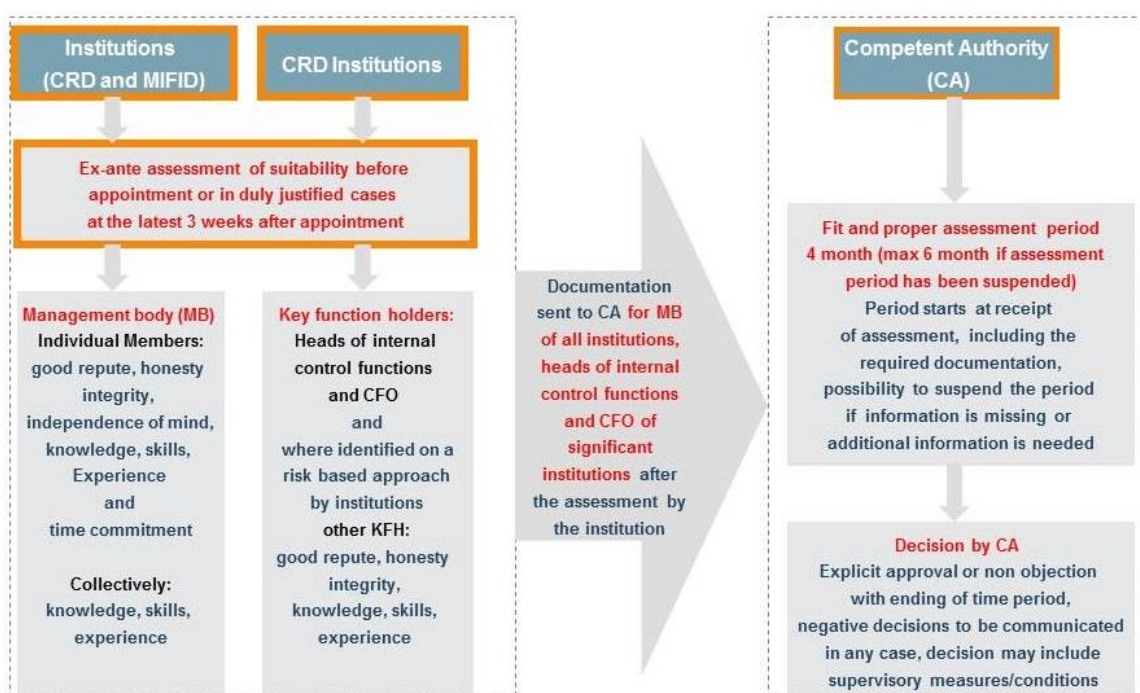
7.2 The institution should provide a statement regarding its overall assessment of the collective suitability of the management body as a whole, including a statement as to how the individual is to be situated in the overall suitability of the management body (i.e. following an assessment using the suitability 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.

Q18: Are the documentation requirements for initial appointments appropriate and sufficiently clear?
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³⁰ 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.

Annex IV – Institution’s and CA’s suitability assessments and re-assessments



Accompanying documents

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 it develops. This analysis should provide an overview of the findings regarding the problem to be dealt with, the solutions proposed and the potential impact of these 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 which 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 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.

EBA has collected a significant amount of data from 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 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.³¹ The main findings are

³¹ The diversity benchmarking report can be accessed under the following link:
<https://www.eba.europa.eu/documents/10180/1360107/EBA-Op-2016-10+%28Report+on+the+benchmarking+of+diversity+practices%29.pdf>

that the representation of the underrepresented gender differs significantly between Member States and that it is in general on 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 body and key function holders³² 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 necessity to revise and update the EBA's current guidelines on the assessment of suitability.

B. Policy objectives

Generally, 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.³³ Being a joint initiative of EBA and ESMA, these guidelines are also expected to strengthen the consistency and reduce potential risk originating from regulatory arbitrage within the EU financial system.

More specifically, these guidelines aim at harmonising and improving the scope and the criteria used for the assessment of the suitability of members of management body, heads of internal control functions 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 of their management and internal control functions in credit institutions and investment firms.

Operationally, these guidelines are 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 members of management body and management body diversity.

³² 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>

³³ 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 mainly based 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 large 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 to that geographical variety, 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.

For investment firms, the present MiFID regime under Directive 2004/39/EC (MiFID I) and its implementing Directive 2006/73/EC (the MiFID Implementing Directive) is simpler than one set out in Directive 2014/65/EU and requires: i) persons who effectively direct the business of an investment firm to be of good repute and sufficiently experienced as 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 persons³⁴ (Article 9(4)).³⁵ These persons are qualified as "senior management" under Article 2(9) of the MiFID Implementing Directive and their responsibility is set out in Article 9 of that directive.

Directive 2014/65/EU enters into application 3 January 2018 and aligns 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, by recalling Articles 88 and 91 of that Directive.

As there are not presently ESMA guidelines on the assessment of suitability in investment firms, the baseline scenario for this population of institutions is to continue to rely the national regimes

³⁴ 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 be in place which ensure the sound and prudent management of such investment firms (Article 9(4) second paragraph of Directive 2004/39/EC).

³⁵ 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.

provided for the implementation of existing European standards³⁶ for the assessment of the suitability of members of the management body which, under the requirements in Directive 2014/65/EU (recalling Articles 88 and 91 of Directive 2013/36/EU), should cover at least the assessment of the (two) persons who effectively direct the business at the moment of authorisation and 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 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 in 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 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:

³⁶ FESCO published in April 1999 European standards on “Fitness and propriety to provide investment services” (99-FESCO-A). The 3 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.

- 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 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 and for competent authorities, but limiting the scope of assessments to be made by competent authorities 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.

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 have already been treated as key function holder, only where this was not the case 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 who 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 D has been retained.

Option 3: Time period for assessments

- A) Retaining the time periods set within the previous set of guidelines
- B) Shortening of 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 remain the case for a too long time period.

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 three weeks was deemed as sufficient. While the shortening of periods might create some administrative pressure, it is not expected that this increases the costs of the assessment. As the responsibility for the assessment lies mainly with the institutions, the time period available to competent authorities to finalise the assessment of suitability was set at 4 months, allowing for a sufficient time period to analyse the documents provided, perform interviews and hearings (e.g. where required under administrative law) as appropriate, cooperate with other competent authorities and to form 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 after 6 months of the start of the period.

Option B was retained.

Option 4: Time commitment and number of directorships, 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 for a proportionate application, however to ensure a harmonised application a reference would be made to observed benchmarks. Under this approach, the costs for the assessment would be reduced, as the principles on 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 as the accounting scope.

Option D acknowledges the fact 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 have to have information on all its subsidiaries, including about the risks they pose, and take appropriate measures to manage these subsidiaries because they have an impact on 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 benefit of Option F is 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 for a mandatory assessment tool
- B) Providing for 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 are 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, as a high level of standardisation would be achieved. This option may also lead to a reduction of costs for institutions, as they would not need to develop their own methodology. However, as institutions' business models differ, a fully standardised tool would likely end up being either 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 effectively would 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: 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
- C) Setting out guidelines on independent members of the management body applicable to all institutions
- D) Setting out guidelines on independent members of the management body applicable to CRD-institutions

Option A would provide guidelines that achieve a harmonised and proportionate approach whilst conserving 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 compared to 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 to select 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.

Option C is not explicitly covered under the mandate mentioned in Article 91(12) of Directive 2013/36/EU, but supports the notion of the 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. Setting out what is an independent member increases the clarity of this governance requirement and establishing guidelines on internal governance and organisational arrangements is a part of the mandates of EBA and ESMA. The requirement to have some independent members at 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 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 D is the same as Option C, 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.

Options A and D have been retained.

Option 7: Supervisory assessment

- 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 any case. The assessment processes must also take into account the relevant national company laws and is influenced by the number of institutions under supervision. Hence 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 8: Measures in case of non-suitability

- A) Measures should allow for mitigating action to be taken in a short period of 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 need to be replaced immediately, or if the situation requires it, 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 the management body 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 longer to find and appoint an alternative member compared to providing training or taking 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 period of 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 the staff

interests. For competent authorities a low level of additional costs would arise as in such situations a 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 any time, but may lead to situations where an institution does not have the number of members required or is not collectively suitable. The time period 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 as Option A as it may require less supervisory resource or activity.

Option A has been retained.

E. Cost-Benefit Analysis

Overall the guidelines, compared to 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.

For credit institutions no additional ongoing costs are created by the guidelines, the minor increase of costs for the additional assessment of heads of control functions, which also in the past should have been considered in most cases as key function holders, would be compensated through the adoption of a more proportionate risk based approach to identify and assess other key function holders.

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 and for significant institutions heads of internal control functions and CFO 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, as current processes will most likely be aligned to the requirements under Directive 2004/39/EC. These costs will be mostly represented by necessary setting-up of policies and the procedures, 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 mainly relate 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.³⁷ 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 concerned. Therefore the proportionality principle should be properly taken into account when implementing new policies and processes, and when designing new organisational arrangements.³⁸

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

Via a more harmonised assessment the guidelines facilitate the assessment of suitability set out in the relevant EU directives and make the assessment process more effective, contributing to robust governance arrangements in institutions.

An increased communication between competent authorities will ensure a more consistent assessment of suitability based on a broadened set of information. The consideration of assessments made by other authorities leads to a higher efficiency of the process.

F. Preferred option

The scope of the assessments made by competent authorities should be harmonised. Hence a minimum set of key function holders that are to be assessed should be identified. The assessment of the heads of internal control functions 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, in order 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 compared to different sets of guidelines that separate guidance on the notions of suitability and guidance on the governance processes.

Q19: What level of resource (financial and other) would be required to implement and comply with the Guidelines (IT costs, training costs, staff costs, etc., differentiated between one off and ongoing costs)? If possible please specify the respective costs/resources separately for the assessment of suitability and related policies and procedures, the implementation of a diversity policy and the guidelines regarding induction and training.

³⁷ 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 page XI.

³⁸ 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>

When answering this question, please also provide information about the size, internal organisation and the nature, scale and complexity of the activities of your institution, where relevant.

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 can 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 for 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, the EBA collected in 2015 data from a broad range of institutions on the numbers of directorships held and the time committed by their members of the management body. In addition data on training resources were collected.
4. While benchmarks provide an orientation for the expected time commitment and training resources, they are not sought to replace a case by case assessment that takes into account the position of the member and the institutions size, internal organisation and the nature, scope and complexity of its activities. Where members time commitment or the number of directorships deviates significantly from what normally can be expected, the intensity of the case by case assessment will be increased.
5. The information collected covers 27 EU/EEA 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 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
thereof 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 an executive one or a non-executive one. However, the time commitment usually differs between these two functions and also depends on the role of the person concerned. E.g. a CEO, Chairperson or member of a committee will have a higher time commitment as other members of the same governance body. The time commitment in particular of the supervisor function also depends on the governance system (1-tier or 2-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 only be assessed on a case by case basis as there is a too huge number of possible scenarios.
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 if 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 a CEO is associated only with a slightly higher time commitment compared to other executive directors. The time commitment within a 2-tier system is slightly higher than in a 1-tier system. Very small firms, where possible under the applicable company law, tend to opt for a 1 –tier structure. This explains the low figures in the lower percentiles.

Figure 2: time committed by members of the management body of the management function

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

10. As expected the time committed by the Chairperson of the supervisory function and non-executive directors exceeds in a 1-tier system the time commitment of these persons in a 2-tier system. In both systems the time commitment of the Chairperson is significantly higher as 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
Chairperson (1-tier)	6	14	29	62	178
Non Executive Director (1-tier)	6	12	24	41	80
Chairperson (2-tier system)	7.5	14	25	54.5	140
Non Executive Director (2-tier)	5	9	15	28	46

11. A good number of reporting institutions provided also 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 that are member 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 2-tier system is a random result of the lower number of data available (Figure 4).

Figure 4: time committed by members of the management body in its supervisory function that are/are not members of a committee

Function/percentile	Committee member	p10	p25	p50	p75	p90
Chairperson (1-tier)	No	3	8	20	60	130
Chairperson (1-tier)	YES	10	18	35	70	193
Non Executive Director (1-tier)	NO	2	5	12	30	70
Non Executive Director (1-tier)	YES	10	15	26	45	80
Chairperson (2-tier system)	NO	5	10.5	22.5	48	160
Chairperson (2-tier system)	YES	9	15	25	60	140
Non Executive Director (2-tier)	NO	4	7	12	23	40
Non Executive Director (2-tier)	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 to Article 91(3) and (4) CRD almost 30% of executive directors report holding more than one executive directorship, more than 10% report holding more than two. More than 90% of non-executive members of management bodies responded having 4 or less non-executive directorships, almost 95% responded holding

not more than 5. The maximum number of mandates applicable to members of the management body within significant institutions is only met for a relatively few members of the management body. Hence, one could conclude that the limitation of directorships has not material impact on the availability of members of the management body. However, one need also 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 the effect of the limitation might not fully be 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 were holding 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

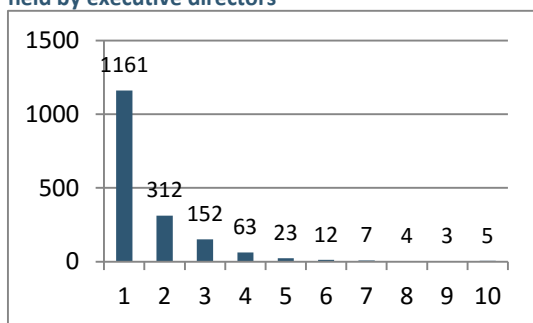
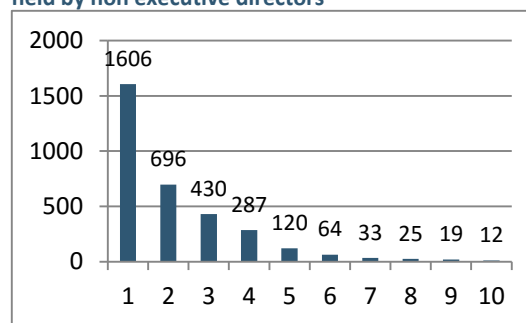


Figure 6: number of directorships under Article 91 held by non executive directors



16. In terms of time commitment it is more relevant to look at the total number of directorships that are effectively held (Figure 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 very carefully consider if there can be sufficient time committed for the directorship held within institutions.

17. The number of additional directorships held is not strongly related to the number of days committed and also not to the size of the institution. Directors of investment firms hold in the highest percentiles a bigger number of mandates compared to directors of credit institutions.

18. There is no big 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 as for directors that hold both kinds of mandates. Directors of investment firms also hold in total more mandates 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 (CI) and investment firms

	Size (Balance Sheet Total)	p10	p25	p50	p75	p90		
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 firms	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 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
2-tier	Investment firms	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 as a full time occupancy, a good number of them holds 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

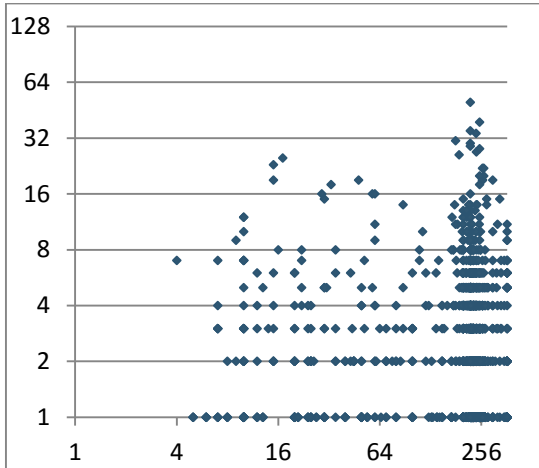


Figure 11: Number of directorships of non-executive directors in credit institutions and time committed for the reported directorship

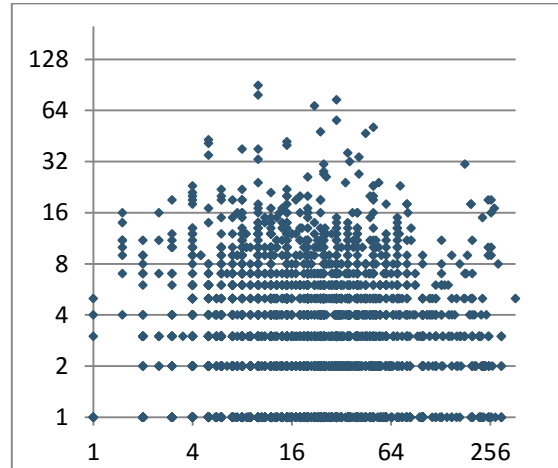


Figure 10: Number of directorships of executive directors in investment firms and time committed for the reported directorship

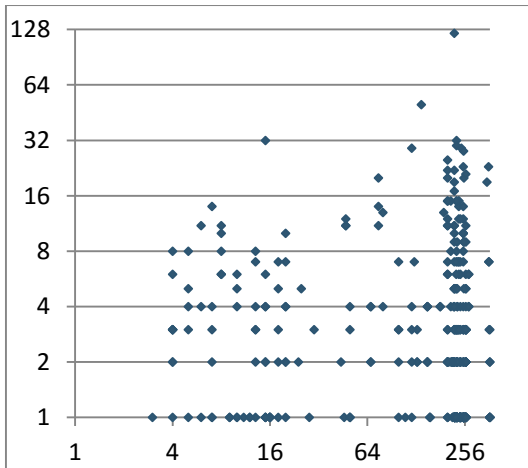
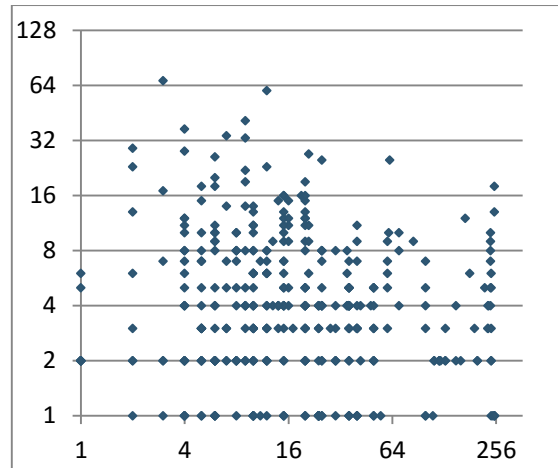


Figure 12: Number of directorships of non-executive directors in investment firms and time committed for the reported directorship



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 to use training facilities provided by their associations. 21% of institutions have no framework for training of members of the management body in place, but should introduce one as it is a requirement of Directive 2013/36/EU.
22. Only 18% of institutions that have responded to the questionnaire provide formally for a training budget. The budgets are with an average of around EUR 1 000 per member quite limited. Some institutions provide for a higher budget of around EUR 2 500 per member.
23. The number of days members of the management body participated in trainings depend 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 trainings 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

Overview of Questions for the public consultation

Q1: Are there any conflicts between the responsibilities assigned by national company law to a specific function of the management body and the responsibilities assigned by the Guidelines to either the management or supervisory function?

Q2: Are the subject matter, scope and definitions sufficiently clear?

Q3: Is the scope of assessments of key function holders by CRD-institutions appropriate and sufficiently clear?

Q4: Do you agree with this approach to the proportionality principle and consider that it will help in the practical implementation of the guidelines? Which aspects are not practical and the reasons why? Institutions are asked to provide quantitative and qualitative information about the size, internal organisation and the nature, scale and complexity of the activities of their institution to support their answers.

Q5: Do you consider that a more proportionate application of the guidelines regarding any aspect of the guidelines could be introduced? When providing your answer please specify which aspects and the reasons why. In this respect, institutions are asked to provide quantitative and qualitative information about the size, internal organisation and the nature, scale and complexity of the activities of their institution to support their answers.

Q6: Are the guidelines with respect to the calculation of the number of directorships appropriate and sufficiently clear?

Q7: Are the guidelines within Title II regarding the notions of suitability appropriate and sufficiently clear?

Q8: Are the guidelines within Title III regarding the Human and financial resources for training of members of the management body appropriate and sufficiently clear?

Q9: Are the guidelines within Title IV regarding diversity appropriate and sufficiently clear?

Q10: Are the guidelines within Title V regarding the suitability policy and governance arrangements appropriate and sufficiently clear?

Q 11: Are the guidelines within Title VI regarding the assessment of suitability by institutions appropriate and sufficiently clear?

Q12: Are the guidelines with regard to the timing (ex-ante) of the competent authority's assessment process appropriate and sufficiently clear?

Q13: Which other costs or impediments and benefits would be caused by an ex-ante assessment by the competent authority?

Q14: Which other costs or impediments and benefits would be caused by an ex-post assessment by the competent authority?

Q15: Are the guidelines within Title VII regarding the suitability assessment by competent authorities appropriate and sufficiently clear?

Q16: Is the template for a matrix to assess the collective competence of members of the management body appropriate and sufficiently clear?

Q17: Are the descriptions of skills appropriate and sufficiently clear?

Q18: Are the documentation requirements for initial appointments appropriate and sufficiently clear?

Q19: What level of resource (financial and other) would be required to implement and comply with the Guidelines (IT costs, training costs, staff costs, etc., differentiated between one off and ongoing costs)? If possible please specify the respective costs/resources separately for the assessment of suitability and related policies and procedures, the implementation of a diversity policy and the guidelines regarding induction and training. When answering this question, please also provide information about the size, internal organisation and the nature, scale and complexity of the activities of your institution, where relevant.