



POLISH BANK ASSOCIATION

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European Banking Authority

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Comments to Consultation Paper on draft joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU

Dear Sirs,

Enclosed please find comments to the above document collected by Polish Bank Association in Polish banking sector.

Most of our comments are related to definitions which are not sufficiently clear and suggestion to relate several issues to the legal regulations in particular EU countries.

Yours sincerely

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President
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Comments to Consultation Paper on draft joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU

Question 1

- It is understood that the Guidelines pay special attention to anti- money laundering and financing terrorism issues, but it would also be important to clearly indicate that the assessment of knowledge of principles, regulations and ability to manage risk in this respect, should be applied only to members of the management body in its management function, while the members of management body in its supervisory function and key function holders should be assessed only in case of possible infringement of the commonly binding regulations in this area.

Question 2

Guideline 27 and 32

- First of all, in case of changes in these two guidelines it is worth considering whether the reassessment in cases described should apply to all members of management/supervisory body (this we understand from the text). We suggest to consider, based on proportionality principles, that the reassessment be performed only for the member of the management body who is responsible for implementing the duties related to AML. Such solution would be coherent with individual requirements for members of management body as specified in Guideline 58.
- The wording „*reasonable grounds to suspect*” is not sufficiently clear; it would be difficult to unambiguously state when such situation takes place.

Guideline 37

- The same wording has been added to suitability assessment of persons in key function – again we suggest to limit the reassessment only to the person responsible for this area of activity.

Question 3

- The changes introduced in Title III are not sufficiently clear. We wonder whether the required knowledge, skills and experience in identifying and assessing AML (ML/TF) risk of a member of management body should be confirmed with an appropriate certificate, or any other document confirming received training, or having proper experience, or it would be sufficient to have his/her written statement confirming his/her sufficient knowledge, skills and experience required in this area.

Guideline 74 (iii)

- It is not clear how we could interpret „tax offences [...] committed **indirectly**”. The Penal Fiscal Code indicates that tax offences could be committed intentionally or unintentionally. In our understanding the notions „directly” or „indirectly” are rather related to offences committed personally or through companies/trusteeship, etc. Therefore we suggest to make this wording more precise for better understanding.

Guideline 75

- “[...] Other adverse reports with relevant, **credible and reliable** (e.g. as part of whistleblowing procedures) **information** should also be considered by institutions and competent authorities.” – “credible and reliable information” may be not be unambiguously interpreted. May be, in the brackets, after “whistleblowing procedures” it would be worth to specify several concrete sources that could be treated as credible.

Question 4

The requirements set out in section 12, Title V, are not sufficiently clear.

- What is understood by „aiming at an appropriate representation of all genders within the management body and ensuring that the principle of equal opportunities is respected when selecting members of the management body.”? Is there a defined percentage of gender representation to fulfill this requirement? And – when establishing the proper representation of genders – is this requirement related to each of these bodies separately, or it is related to both of them?

Guideline 102

- The diversity in gender representation in the management body and at managerial positions should not be treated separately from verification of suitability assessment of candidates and members of the management body (in management and supervisory function) and of candidates for other managerial positions, because the suitability of all members for these functions is superior. Therefore, establishing constant values of gender representation should rather be good practice than a requirement.

Guidelines 107 and 108

- In some countries (like Poland) there are legal provisions related to return to work of staff after maternity or parental leave, and anti-discrimination provisions concerning employment. In such case it would be best only to call for these provisions in the internal policies of institutions covered by these Guidelines.
- Looking at „appropriate gender balance” it is worth to take a long term view at diversity, including the issue of succession (i.e. readiness to be a successor, pool of potential successors). Planning a diverse succession structure will give grounds to diverse structure of the management body in future.

Guideline 108

- In some countries (like Poland) the Labour Law prohibits discrimination in many aspects, including gender. Does this provision fulfill the requirement of having proper policy in this respect? May be it would be enough to call for this provision in the internal regulations of the company to fulfill the requirement.

Question 6

- The changes introduced in Title VII are not sufficiently clear. When assessing the suitability of member of the management body in AML management position, should we take into account the cases of committing or attempting to commit offence and appearance of ML/TF risk, in which the member of the management body has participated or was responsible for the area of providing the AML security, including following the AML requirements? Or, we should rather take into account only the cases which appeared in the whole

institution where he was a member of the management body and the AML issues were under the responsibility of another member of the management body?

Guideline 146c

- „Gathering information on the independence of mind” of the assessed individual is not enough precise. We wonder how this could be performed in practice. It seems there should be more precision in defining how this could be documented.

Guideline 152

- When assessing the collective suitability it is worth verifying if in the institution there have been infringement cases related to the Guidelines and regulations referring to anti- money laundering and financing terrorism, rather than verifying the activities of the management body in this respect
- It should be clarified that this Guideline applies in case of re-assessment of the management body.

Question 7

Guideline 182

- “ [...] including situations that cast grounded doubt **on the past** or ongoing compliance of AML/TF requirements [...]” – the wording “on the past” is not clear enough; we would prefer to have a more precise indication.

Guidelines 196 and 202

- Collecting information related to infringement of the provisions should be performed in the scope which is agreement with the country law.