22 May 2026

EBF COMMENTS TO THE ESMA/EBA DRAFT JOINT GLS ON THE ASSESSMENT OF THE SUITABILITY OF MEMBERS OF THE MANAGEMENT BODY AND KEY FUNCTION HOLDERS – FINAL DRAFT

1. Introductory remarks:

The European Banking Authority ("**EBA**") and the European Securities and Markets Authority ("**ESMA**") have published for consultation the Draft Joint 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 (the "**Draft Guidelines**").

As part of the banking sector's contribution to this consultation, we welcome the opportunity to provide comments on this important initiative, which plays a central role in strengthening governance standards across the European Union. We fully support the objective of ensuring that members of the management body and key function holders meet high standards of integrity, competence, independence of mind and time commitment, as these are fundamental elements of sound governance, effective risk management and financial stability.

We recognise the importance of reinforcing supervisory convergence and enhancing clarity in the application of suitability requirements under Directive (EU) 2024/1619 of the European Parliament and of the Council of 31 May 2024 amending Directive 2013/36/EU as regards supervisory powers, sanctions, third-country branches, and environmental, social and governance risks ("**CRD VI**"). At the same time, we consider it essential that the final Guidelines remain strictly within the boundaries set by the Level 1 framework under CRD VI. In our view, several elements of the Draft Guidelines risk extending the scope and intensity of suitability requirements beyond the mandate conferred by Articles 91 and related provisions of CRD VI. In particular, we believe that the final text should:

- preserve the **principle-based character of the suitability regime** set out in CRD VI, ensuring that broadly framed supervisory standards are not converted into highly granular requirements that, in practice, reshape or expand the substance of the Level 1 framework;

- apply the **proportionality principle** in a meaningful and operational manner, recognising the diversity of institutional sizes, risk profiles, ownership structures and business models across the Union, rather than implicitly applying a "one-size-fits-all" supervisory approach;

- **refrain from introducing *de facto* new substantive requirements** that are not explicitly grounded in the Directive (e.g., cooling-off periods applicable to former executive directors), especially where such requirements materially alter the practical scope of suitability assessments and governance arrangements;

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- **reconsider the envisaged timing of the evaluation in case of "*ex-post assessment*"**; and

- **ensure full consistency with national company law frameworks**, which continue to govern key aspects of board structure, appointment processes, allocation of responsibilities and internal functioning.

We are particularly concerned that certain provisions of the Draft Guidelines appear to be implicitly designed around governance assumptions more closely aligned with dual-board structures. This approach does not sufficiently consider the structural and functional particularities of one-tier systems, where executive and non-executive functions coexist within a single board under national corporate law. In this context, the Guidelines should avoid creating interpretative tensions or practical constraints that could interfere with nationally established governance models.

While the Draft Guidelines provide helpful clarifications in several areas, some provisions risk becoming overly prescriptive, expanding the material scope of suitability requirements beyond the wording and intent of CRD VI, and generating legal uncertainty as well as operational complexity for institutions operating under different governance traditions.

These rules risk undermining the competitiveness of regulated institutions by limiting their ability to recruit the diverse and skilled profiles essential for their future.

It would be necessary to indicate that this new version replaces the versions dated, 2 July 2021 (EBA/GL/2021/06).

The following comments are therefore intended to contribute constructively to the consultation process, with the objective of ensuring that the final Guidelines achieve supervisory convergence without exceeding the CRD VI mandate, while preserving legal certainty, proportionality and respect for national corporate law diversity across the European Union.

2. General comments

Simplification: It is worth noting that the consultation was presented in the broader context of simplification and regulatory streamlining. However, the draft does not remove any existing obligations and instead introduces multiple new requirements, clarifications and reporting expectations. These Guidelines, as drafted, reflect a certain degree of mistrust towards management bodies and nomination committees in the exercise of their responsibility to assess the suitability of board members and key function holders, and result in highly burdensome documentation and procedural requirements.

The review of the Guidelines should start by asking a fundamental question: what would be the practical consequence if these Guidelines did not exist? If the core suitability requirements are already embedded in Level 1 legislation and in directors' fiduciary duties under national law, the incremental value of further prescriptive guidance should be clearly demonstrated.

In any event, a genuine simplification exercise would require eliminating redundant provisions, consolidating overlapping requirements and reinforcing proportionality. As currently drafted, the Guidelines move in the opposite direction, increasing regulatory density without clear evidence of added prudential benefit. For instance:

- Section 4 (Sufficient time commitment of a member of the management body) in Title III: the level of detail and granularity in this section is excessive and fosters unnecessary bureaucracy. The cumulative effect of these provisions may result in a highly formalistic monitoring framework that resembles a time-recording or "clocking-in" regime, which has been widely criticised in other contexts as an ineffective and disproportionate means of controlling professional performance. Such an approach does not necessarily enhance the quality of governance and risks shifting the focus from substantive contribution and effective oversight to procedural compliance and documentation.

  From a simplification and proportionality perspective, the assessment of time commitment could be framed in a much more principle-based manner:

  - At the time of initial appointment, the assessment should focus on analysing the candidate's other professional commitments and their nature, in order to evaluate to what extent such commitments may undermine the individual's ability to dedicate sufficient time to the board, or conversely, may enhance their expertise and preparedness to perform their functions, thereby potentially requiring less time to achieve an equivalent level of effectiveness.

  A streamlined drafting of Section 4 along these lines would preserve supervisory objectives while avoiding disproportionate operational burdens and unnecessary formalism.

- Title IV (Human and financial resources for training of members of the management body): while induction and training are essential elements of sound governance, the Draft Guidelines introduces additional layers of prescriptiveness that are not proportionate, particularly for well-established institutions with mature governance frameworks.

  However, this objective should be achieved without introducing implicit quantitative benchmarks or overly detailed documentation expectations that may lead to supervisory box-ticking exercises. A more proportionate and streamlined approach, with just a general obligation to devote sufficient resources for that training, would be sufficient to achieve supervisory objectives.

- Title V (Diversity within the management body): gender balance at board level is already comprehensively regulated at Level 1 through Directive (EU) 2022/2381 and its national transposition measures. The introduction of parallel, partially overlapping and potentially more granular Level 3 requirements risks duplication, interpretative divergence and unnecessary administrative burden.

  This is a clear example where regulatory streamlining could be achieved by avoiding re-regulation of matters already harmonised in primary legislation. The Guidelines could simply cross-reference the applicable legislative framework and reaffirm the

importance of diversity within a principle-based governance approach. Such an approach would preserve the policy objective of promoting diversity while reducing regulatory density and legal uncertainty.

- Sections 18 (Assessment of the suitability of individual members of the management body) and 20 (Ongoing monitoring and re-assessment of the individual and collective suitability of the members of the management body) in Title VII: paragraphs 164 and 173 introduce a level of detail that risks transforming a governance evaluation into a formalistic compliance checklist.

  From a simplification perspective, the Guidelines should avoid duplicating existing governance obligations and should instead rely on high-level principles. Overly detailed reassessment criteria increase documentation burden and supervisory expectations without materially enhancing prudential oversight. A streamlined drafting, focused on material developments that could affect suitability, would be more consistent with the stated objective of regulatory simplification.

- **ESG references and individual statements/mapping of duties**: the draft introduces multiple additional references to ESG factors, ESG risks and impacts, and to individual statements and mapping of duties under the Internal Governance Guidelines. Each of these references should be carefully reviewed to ensure consistency with Level 1 legislation and to avoid duplication or cross-referencing that may generate operational complexity without enhancing supervisory effectiveness.

- In addition, the draft Guidelines contain several references to the EBA Guidelines on internal governance, despite the fact that the amendment process of those Guidelines has not yet been finalised and their final version has not been formally approved. This creates a risk of regulatory misalignment, as institutions may be required to interpret or implement cross-references to a framework that remains subject to change. From the perspective of legal certainty and regulatory consistency, it would therefore be advisable that the finalisation of the Draft Guidelines on the assessment of the suitability of members of the management body and key function holders be aligned with the adoption of the final version of the EBA Guidelines on internal governance.

- Finally, even where the Draft Guidelines refer to simplification and supervisory cooperation, they do not sufficiently address the administrative burden for institutions in practice in relation to the repeated submission of suitability related information nor the requirements of the General Data Protection Regulation. For example, in the context of a regular supervisory procedures such as the notification of a change of control institutions in many instances are still required to recollect and resubmit fit and proper information, such as criminal records and CVs, even where this information is static and already available to EU competent authorities. As members of the management body and key function holders (1) are always assessed in accordance with the joint ESMA and EBA Guidelines and moreover (2) are subject to ongoing suitability requirements, we consider that information on the suitability of these persons should never need to be (re)submitted in regular supervisory procedures. In addition, we request EBA to take into consideration that requiring resubmission of personal data (such as passport copies or criminal

records extracts that were already filed at the time of the initial fit and proper assessment) that competent authorities already possess is generally not compliant with the General Data Protection Regulation, in particular Article 5.1(c).

The final Guidelines should therefore more clearly reflect a once only or reuse of information principle, clarifying that information already available to EU competent authorities on persons that are subject to initial and ongoing suitability requirements should not be requested again. If EU competent authorities want to doublecheck whether members of the management body or key function holders have indeed been assessed, we propose the authorities liaise with the competent authority that is responsible for the ongoing suitability requirement. This would support proportionality, efficiency and data minimisation objectives and ensure compliance with the General Data Protection Regulation, while reducing unnecessary duplication and operational burden for institutions and the relevant persons.

EBF COMMENTS

Question 1: Are subject matter, scope of application, definitions and date of application appropriate and sufficiently clear?

Draft Joint ESMA and EBA Guidelines Executive summary:
We would like to keep the following sentence that has been deleted since it is key to keep the principle of prevalence of national laws on the EBA Guidelines: "*The terms 'management body in its management function' and 'management body in its supervisory function' should be interpreted throughout the Guidelines in accordance with the applicable law within each Member State*".

The executive summary and following points of the draft revised guidelines (ie § 64) suggest that competent authorities may unilaterally assess "*other KFH on request*", than the heads of the internal control functions and the CFO, these provisions are without any legal basis in CRD VI (see article 91bis, par. 5, CRD VI) and so they should be deleted.

The GL should clearly specify the extent to which it interprets the definition of key function holders under the CRD, as well as the criteria applied for such interpretation. CRD VI does not establish a general category of individuals with "significant influence" below the level of the management body or the expressly identified key function holders (in CRD or in other level one legislation). Introducing such a concept through Guidelines risks creating de facto new regulated roles. The proposed definition is formulated in broad and open-(not)ended terms, potentially capturing a wide range of individuals who contribute to decision-making processes without exercising actual decision-making authority. In alternative EBA could delete the definition of Significant influence - limiting the scope of suitability strictly to categories explicitly identified in CRD VI or other level one legislation - or clarify the definition within its mandate. Paragraph 131 should also be amended accordingly.

Paragraph 13 (Background and rationale): This paragraph refers to the "*cooling-off period*" that the draft revised Guidelines on internal governance recommend applying when a former CEO or an executive director becomes chair or a member of the management body in its supervisory function (paragraph 107(b) of the draft revised Guidelines on internal governance) and to the mitigating measures to be taken in the absence thereof.

As we indicated in our response to the consultation on the draft revised Guidelines on internal governance, we consider that by providing a "*cooling-off period*" to (i) all members of the management body in its supervisory function (including the chair) and to (ii) all members of the management body (in its executive function), the EBA goes far beyond the requirements of the CRD and the existing national legal frameworks based on it. This would, in practice, amount to a pre-emption of legislation that normally falls within the competence of national parliaments and/or the EU legislator.

Furthermore, company law already provides mechanisms to address conflicts of interest (for example, the obligation to recuse oneself or the possibility of excluding certain individuals from discussions).

It was highlighted that such a situation may indeed be relevant for the purposes of the formal independence requirement applicable only to some directors, but not for the independence of mind requirement applicable to all directors.

In fact, having previously held an executive position does not, per se, create a "*divergence*" of interests from that of the company; rather, such interests are fully aligned. While we acknowledge that, the relationships maintained with the bank by virtue of the executive office could lead to the conclusion that an executive Director cannot be deemed to meet formal independence requirements, this does not in any way impair their capacity to exercise independence of mind.

In place of the proposal included in the consultation document, it is therefore requested that it be clarified that an executive director, a senior manager of the bank, or a member of an executive committee, who at the end of their mandate takes up the position of Chair of the management body in its supervisory functions or of non executive director, may not be qualified as an "independent director" unless at least the period provided for under national legislation on independence requirements for fit & proper assessments of directors has elapsed.

General safeguards for the management of specific conflicts of interest would in any case remain applicable, pursuant to the ordinary rules on disclosure and abstention, which are already extensively governed by national corporate law.
By introducing a three-year "*cooling-off period*", the EBA would exceed the mandate conferred on it by Article 74(3) of the CRD, read in conjunction with Article 16(1) of the EBA Regulation, which allows it to fill gaps in the requirements set out in the CRD, but not to establish rules that go beyond it.

In this respect, it is requested that the text of the Guidelines be amended as set out below.

~~*Par. 13: Because independence of members of the management body in its supervisory function is crucial and as appointing a former CEO or, where applicable, another executive*~~

~~*director or former executive director as a Chair or as member of the management body in its supervisory function can lead to conflicts of interest, it is appropriate to apply a cooling-off period to manage such conflicts. The new Chair may face challenges overseeing decisions made during their previous CEO role. Where a cooling-off period is not always possible to implement, entities should take other steps to manage such situations effectively as further specified in the EBA Guidelines on internal governance.*~~

Paragraph 27 (Background and rationale): The last sentence states that members of the management body and key function holders should have knowledge regarding climate risks. We would like to know on what basis the requirement referred to key function holders is grounded (there is nothing on this in the CRD). Besides, this requirement should not apply individually to each member of the management body but to the management body as a whole.

Paragraph 64 (Background and rationale): The executive summary and § 64 suggest that competent authorities may unilaterally assess "*other KFH on request*", than the heads of the internal control functions and the CFO, without any legal basis in CRDVI (see article 91bis, par. 5, CRD VI); these provisions should be deleted.

Paragraph 65 (Background and rationale): Under this paragraph, the RTS on the minimum information to be submitted to the supervisor in the context of an ex-ante assessment request would apply to the assessments of the suitability of all entities. We consider that the EBA cannot rely on the mandate concerning the file relating to ex-ante suitability applications, which was granted to it by Article 91(10) of CRD VI, to frame the content of all suitability applications of all entities.

Paragraphs 5-20 – Subject matter, Addressees, Scope of application, Definitions, Date of application: we welcome the efforts undertaken by EBA and ESMA to clarify the suitability framework under CRD VI. However, we consider that certain aspects of the Draft Guidelines, particularly regarding their subject matter, scope and definitions, would benefit from further refinement to ensure alignment with the Level 1 framework, proportionality and consistency with national corporate law.

First, while CRD VI establishes a principle-based regime under Articles 91 and related provisions, the Draft Guidelines introduce a level of operational detail that in several instances appears to go beyond clarification and risks transforming open-textured supervisory standards into highly granular requirements. Such an approach may inadvertently shift the suitability assessment from a qualitative and risk-based exercise to a predominantly formalistic compliance process. This could encourage a box-ticking implementation and reduce the flexibility intentionally embedded in the Directive. The Guidelines should therefore preserve the principle-driven character of the Level 1 framework and avoid creating de facto new substantive expectations not expressly grounded in CRD VI.

Second, the Draft Guidelines contain multiple references to the revised EBA Guidelines on Internal Governance, whose final wording has not yet been adopted. From a legal certainty perspective, it is problematic to anchor supervisory expectations in instruments that remain under development. This creates interpretative uncertainty and may lead to sequencing inconsistencies. We would therefore recommend ensuring that cross-

references are carefully framed or coordinated with the finalisation of the relevant governance Guidelines, so as to avoid overlap or unintended expansion of obligations.
As an example of this, the definition of "executive directorship" raises concerns in light of national company law diversity. The current drafting appears to associate executive directorship primarily with the effective direction of the business, a notion that is closely aligned with the role of a CEO. However, in several Member States (particularly within one-tier systems) it is legally possible for a board member to hold executive functions without being responsible for directing the day-to-day business of the entity. Executive directors may be entrusted with strategic, transformational or other delegated responsibilities under national law, without falling within the concept of effective business direction in a prudential or operational sense. A definition that implicitly conflates executive directors with chief executive responsibilities fails to reflect the structural distinctions embedded in certain national corporate law systems and may give rise to inconsistencies in its practical application. It is therefore necessary to provide greater precision to ensure that the concept adequately accommodates the diversity of governance models existing across the Union.

To address these concerns, we would suggest adopting a definition that reflects a functional and nationally contextualised approach. For instance, "*executive directorship*" could be defined as: "*a position held by a member of the management body who performs executive functions involving the effective management of the entity or exercises delegated managerial powers, in accordance with the applicable national corporate law and the internal allocation of responsibilities within the institution*". Such a definition would avoid an automatic assimilation of executive directors to the chief executive function and would better capture the diversity of governance structures, including one-tier systems where executive responsibilities may coexist with collective board decision-making without necessarily implying day-to-day operational control.

In addition, we would suggest that the date of application of the final Guidelines be calibrated to the transposition timelines of CRD VI at national level or postponed to December 2027. In Member States where the Directive has not yet been transposed at the time the Guidelines enter into force, the immediate application of supervisory expectations that are closely linked to CRD VI amendments may create inconsistencies with binding national legislation still in force. To avoid legal uncertainty and potential conflicts between soft law and applicable domestic rules, the Guidelines could provide that their application in each Member State be aligned with the date of national transposition of CRD VI or postponed to December 2027. Such an approach would ensure coherence within the legal hierarchy and facilitate orderly implementation by institutions and competent authorities alike.

In light of the above, while the subject matter and scope of application are broadly identifiable, certain provisions would benefit from recalibration to ensure that the final Guidelines remain proportionate, legally certain and fully consistent with CRD VI and national company law traditions.

Paragraph 10 (Scope of application): [NEW] "*i. These Guidelines are also addressed to the central body as referred to in Article 10 of Regulation {EU) No 575/2013, or, where waivers referred to in Article 21 of Directive 2013/36/EU apply, to the whole as constituted by the central body together with its affiliated institutions.*"

The proposed clarification of the scope of application is necessary to ensure legal certainty, consistency with Union law and effective supervisory application of the Guidelines in article 10 CRR central body structures specifically recognised under EU banking legislation.
Article 10 of Regulation (EU) No 575/2013 establishes a specific prudential framework for central body arrangements, under which affiliated institutions are permanently linked to a central body that exercises binding powers in key areas of prudential regulation, incl. internal governance, risk management and control. Where no waiver under Article 21 of Directive 2013/36/EU applies, supervisory responsibilities and accountability for internal governance, including suitability-related matters, it is appropriate and legally accurate that these Guidelines are explicitly addressed also directly to the central body, in addition to the affiliated institutions.

At the same time, where waivers under Article 21 of Directive 2013/36/EU are granted, Union law explicitly recognises that the central body and its affiliated institutions operate, for prudential purposes, as a single economic whole. In those circumstances, internal governance requirements, including fit and proper arrangements, are designed, implemented and overseen at the level of the central body and affiliated institutions as a whole rather than at the level of individual affiliated institutions on a standalone basis. Explicitly addressing the Guidelines, in such cases, to the whole constituted by the central body together with its affiliated institutions reflects the legal effects of the Article 21 CRD waiver and avoids an artificial fragmentation of governance responsibilities.
This clarification also supports supervisory convergence. In the absence of an explicit reference to Article 10 CRR structures and the interaction with Article 21 CRD waivers, competent authorities may apply the Guidelines inconsistently, either by focusing solely on the central body or by duplicating requirements at the level of affiliated institutions despite the existence of a waiver. Such divergent practices would undermine the objective of the Guidelines to promote a harmonised approach to suitability assessments across the Union.

Finally, the proposed wording does not extend the material scope of the Guidelines or introduce additional obligations. It merely clarifies the appropriate addressee of existing requirements in light of governance structures expressly recognised by Union law. As such, it enhances legal clarity, proportionality and effective implementation while remaining fully aligned with the CRR/CRD framework and established supervisory practice.

Paragraph 15 and Definitions: It appears appropriate to clarify throughout the document that the management body may be a single-person (for example, a CEO and/or a General Manager) and not necessarily a collegial body.

In this respect, it is requested that the text of the Guidelines be amended as set out below.

Par. 15: In Member States, where the management body appoints ***a person or*** *persons that effectively direct the business of the institutions,* ~~*those persons*~~ ***they*** *belong in accordance with Article 3(1)(8a) of Directive 2013/36/EU to the management function of the management body and are therefore be assessed for their suitability in line with Article 91 of this Directive.*

Or:

Definitions: Chief executive officer (CEO) means the person who is responsible for managing and steering the overall business activities of an entity and is part of the management body in its management function ***or may coincide with it****.*

Paragraph 19 - Definitions: The definition of significant influence over the direction of the entity goes beyond the requirements and lacks a legal basis. Institutions are already facing an excessive burden involving Key Function Holders in the FAP Assessment. This should not be extended to include individuals below senior management level.

The definition of "*Large entities*" precising "*means institutions defined in Article 4(1), point (3) of Regulation (EU) N° 575/2013*" needs to be reviewed or clarified. When checking this reference, Article 4(1), point (3) seems to refer to the following definition: "*institution means a credit institution or an investment firm*". There is no link to the notion of large entities. The definition of "*Large entities*" should be adjusted to refer to Article 4(1), point (146) of Regulation (EU) N° 575/2013.

Paragraph 20 - Date of application - The Guidelines under consultation will apply six months after the publication of the translations and, in any event, no later than 31 December 2026.

Considering that the consultation will close at the end of May 2026, the deadline appears rather challenging, given that, after the publication of the translations, it will still be necessary to take into account the "*comply or explain*" process to be carried out by the Supervisory Authorities of the various Member States and thereafter the potential amendments to national secondary legislation.

It is therefore proposed to postpone the application of the Guidelines, in order to provide supervised entities with sufficient time to implement the necessary implementing measures.

Please find below the proposed amendments.

*20. These Guidelines apply 6 months after the publication of all translations of the GL, but not later than 31.12.~~2026~~****2027****.*

On the application of the proportionality principle:

We support the inclusion of the proportionality principle in the draft Guidelines and acknowledges its importance in ensuring that governance requirements are applied in a manner appropriate to the size, nature and complexity of institutions.

However, we would like to highlight that, in practice, the increasing level of detail and formalisation required across the Guidelines may limit the effective application of proportionality, particularly for smaller institutions and subsidiaries within a banking group.

In particular, smaller entities, including certain subsidiaries within a group, often rely to a significant extent on group-level governance frameworks, policies and processes, and operate with limited resources and simplified organisational structures.

In this context, applying the same level of expectations in terms of documentation, formalised processes, and governance arrangements as for larger or more complex institutions may not be proportionate. Proportionality should therefore result in simpler and less burdensome suitability processes, rather than requiring the same level of formality and documentation in all cases.

We would therefore welcome further clarification that the principle of proportionality should allow:

- a simplified implementation of suitability processes for smaller entities,
- and a greater reliance on group-level frameworks, where appropriate.

This could include for example:

- relying on group-level assessments or frameworks for the evaluation of key function holders, where functions are aligned with group standards and methodologies;
- allowing flexibility in the composition of the management body, taking into account the size and complexity of the entity, rather than applying uniform expectations across all institutions;
- limiting the need for additional local documentation where equivalent governance arrangement are already in place at group level.

Such clarification would contribute to ensuring a more practical and proportionate application of the Guidelines across institutions of different sizes and organisational structures.

Question 2: Are the changes made in Title II appropriate and sufficiently clear?

Paragraph 28 - The reference to the mapping of duties in Art. 88(3) CRD should be deleted, or at the very least it should be made clear that this does not apply to members of the management body in its supervisory function. Article 88(3) CRD does not refer to the members of the management body in its supervisory function.

Paragraph 29: This paragraph specifies that institutions are required to use individual statements in the assessment of the suitability of members of the management body in its management function, whereas the CRD VI Directive does not provide for the use of this tool for that purpose, as it is primarily intended for competent authorities when assessing governance arrangements (Recital 54 of the CRD VI Directive). Furthermore, this paragraph appears to require that the statement of responsibilities be established prior to taking up office, although such a requirement is not provided for by the CRD VI Directive.

Consequently, we request that all references to the aforementioned documents be removed from this consultation document.

The content of this document (together with "*the mapping of duties*") was object of attention during last year's consultation on the EBA Guidelines on internal governance. At

that time, we called for significant changes to the proposed regulation, simplifying the obligations imposed on banks.

Moreover, it is therefore necessary, also for the purposes of this consultation, to take into account the comments already submitted during the previous consultation and, in particular, the request to eliminate the obligation to prepare a "*mapping of duties*" document for the body in its supervisory function, given that the roles and responsibilities of the governing bodies are already extensively described in other internal regulatory documents.

Paragraph 30 - according to Paragraph 30 (d), the reassessment should be made "*in any event that can otherwise materially affect the suitability of the management body*". The fact that a member of the management body assumes additional duties does not necessarily impact his time commitment.

Paragraph 31 – Additional duties: The Draft Guidelines propose that the time commitment of members of the management body should be reassessed not only when they take on additional directorships or activities, but also when they assume "*additional duties*".

This new reference to "*additional duties*" should be deleted, as it cannot extend to any additional duty assumed in the context of an existing executive role. Executive roles, by their very nature, are dynamic and evolving. The scope of responsibilities of executive directors, or the responsibilities associated to other executive roles undertaken by non-executive directors, may change frequently in response to business needs, organisational adjustments or regulatory developments. Introducing an obligation to reassess time commitment every time an executive assumes undefined "additional duties" would create significant operational burden. It would be extremely difficult to determine which additional duty should trigger a formal reassessment and which should not.

Moreover, such a broad and open-ended requirement risks leading to excessive formalism and continuous reassessment exercises, without necessarily improving the substantive assessment of time commitment. The current framework, which already requires reassessment when additional directorships or relevant external activities are assumed, provides a sufficiently objective and measurable trigger.

For these reasons, the reference to "*additional duties*" should be removed in the interest of legal certainty, proportionality and effective governance.

Paragraphs 34/173 and 174 – Mapping of duties and individual statements: See comments to Paragraph 29.

The proposed revisions to the text are set forth below.

~~*34. Entities should use the individual statements, established under Article 88(3) of Directive 2013/36/EU and the EBA Guidelines on internal governance, setting out the roles and duties of the members of the management body in its management function for assessment and re-assessment of the collective suitability of the management body in its management function. To assess the collective suitability, entities should assess the*~~

~~mapping of duties of the members of the management body and ensure that all the relevant duties within the entity are covered.~~

173. When re-assessing the individual or collective performance of the members of the management body, the members of the management body in its supervisory function or, where established, the nomination committee, should consider in particular:
[…] ~~c) the performance of the roles and duties set out in the individual statements by the members of the management body; […]~~

174. When a re-assessment is triggered, due consideration should be given to:
a. the assigned duties and reporting lines within the institution~~, taking into account the individual statements and mapping of roles and duties under Article 88 of Directive 2013/36/EU~~, including where applicable within the group, in order to establish whether any material fact or finding should be allocated to one or more responsible members of the management body. In this context, assigned duties should be determined taking into account all relevant documentation, including but not limited to governance charters and codes, internal organigrams and other forms of designating areas of responsibility, internal policies, assessments of the suitability available and additional information provided in this context, letters of appointment or job descriptions, and minutes of meetings of the management body; […]

Paragraph 40 - See comments to Paragraph 29.

Paragraph 42 - Assessment of the suitability of key function holders: it should be appropriate to provide for the possibility for less significant banks to apply the principles on assessment of the suitability of key function holders in accordance with the principle of proportionality, e.g. focusing on knowledge, skills and experience, while limiting the assessment of reputation, honesty and integrity to the moment of appointment, combined with an obligation for key function holders to disclose any subsequent relevant events.

Few other areas would benefit from further clarification to support consistent implementation.

- **Interaction with group level assessments:**
  Although group aspects are addressed elsewhere, a brief cross reference or clarification in Title II on how individual entity assessments should interact with group wide suitability processes would enhance operational clarity for cross border groups.

- **Proportionality for smaller and less complex entities:**
  While proportionality is a guiding principle, more explicit confirmation that simplified reassessment processes are acceptable for nonsignificant entities could further support consistent application.

Question 3: Independent non-executive directors:

The Joint GL set out provisions on independent non-executive members of the MB. The Joint GL apply in a proportionate manner and distinguish

between different types of entities (GSII, OSII and other institutions) and specify that for institutions other than significant ones only one independent director as a minimum is required. Furthermore, the Joint GL provide criteria for the assessment of "being independent". In light of the above, the EBA and ESMA would appreciate further input on the impact of the independence criteria.

Do you have any views on the provisions regarding these independence criteria? Please share any experiences related to the effectiveness, clarity, or implementation of these independence criteria across different business models/types of institutions.

and

Question 4: Are the changes made in Title III appropriate and sufficiently clear?

We fully support the objective of ensuring that members of the management body, including independent non-executive directors, contribute effectively to sound governance, constructive challenge and robust oversight. However, we consider that certain elements of the independence framework set out in the Draft Guidelines warrant further reflection to ensure proportionality, legal coherence and practical workability across different governance models and business structures.

First, while it is essential that the management body as a whole has an adequate understanding of emerging risks, it does not follow that each individual director must have granular technical knowledge in all such areas. In particular, the reference to Article 77 introduces a significant "extra burden" by effectively requiring individual directors to possess a granular understanding of highly complex and technical frameworks, such as the Artificial Intelligence Act (Regulation (EU) 2024/1689) and the Digital Operational Resilience Act (DORA) (Regulation (EU) 2022/2554), alongside detailed ESG solvency models. Additionally, certain regulatory frameworks, such as the technical standards developed under DORA, contain a level of operational and technical detail that are more closely aligned with executive management responsibilities rather than the oversight function of the board.

Accordingly, we believe that the practical implementation of the above through Paragraph 77 requires further clarification to ensure proportionality. The independence criteria should therefore clearly distinguish between collective board competence and individual expertise, to avoid unrealistic expectations that may unduly restrict the pool of qualified independent candidates. Such an outcome could also negatively affect gender diversity at board level, as it may reduce the pool of available candidates from under represented genders and thereby undermine wider EU diversity objectives.

Second, with respect to "independence of mind", we agree that the ability to form and express independent views is a core attribute of any non-executive director. However, the practical assessment of this attribute is inherently behavioral and context-specific. While past conduct and experience may provide useful indicators, the effective exercise of independence of mind can ultimately only be observed in practice within the dynamics of management body deliberations. Imposing detailed ex ante documentation or predictive

assessments of behavioral independence risks turning a qualitative and experiential characteristic into a formal compliance exercise. The Guidelines should therefore acknowledge the inherent limits of ex ante evaluation and avoid placing unrealistic burdens on institutions in this respect.

Third, the provisions relating to AML-related independence considerations appear excessively granular (paragraph 86). The identification of certain sectors (such as energy or cash-generating activities) or geographical connections as risk factors may inadvertently create broad presumptions of concern that could encompass a wide range of legitimate business activities. While it is appropriate to ensure that there are no reasonable grounds to suspect ML/TF risks, the primary responsibility for assessing such risks lies with competent public authorities, including AMLA and national AML supervisors. The suitability framework should not implicitly transfer or duplicate that supervisory function at the level of individual board assessments, nor should it introduce sectoral biases that could unduly stigmatize otherwise legitimate professional backgrounds.

Finally, we have concerns regarding the proposed cooling-off expectations applicable to former executive directors. While we fully share the overarching objective of CRD VI to ensure sound governance arrangements within institutions, including effective oversight, appropriate checks and balances and the capacity of the management body to exercise independent judgment, we observe that the Level 1 text (CRD VI) does not prescribe specific temporal thresholds for the transition from a CEO to a Chairperson role. In this regard, it is important to note that CRD VI does not introduce a mandatory cooling-off requirement, nor does it establish temporal restrictions on the appointment of former executives to supervisory or chairmanship roles. Introducing such a rigid three-year expectation through Guidelines risks going beyond the requirements set by the legislator and effectively adding a substantive condition not contained in CRD VI. Furthermore, such a restriction may unnecessarily limit the flexibility of institutions to design strategic succession plans and effectively promote high-level internal talent.

CRD VI's governance objectives can be effectively achieved through well-established governance mechanisms such as the presence of independent directors, the functioning of specialized board committees, robust internal policies and clear allocation of responsibilities, which ensure independent challenge without the need for formal temporal limitations. Where adequate internal safeguards and structural checks and balances are in place to ensure independent challenge and proper oversight, a rigid cooling-off approach is not necessary and may unduly restrict governance flexibility. The focus should therefore remain on the effectiveness of the governance framework as a whole, rather than on formal temporal limitations that are not explicitly provided for in CRD VI. Accordingly, we would propose that the cooling-off expectation be removed from the final texts since, had the EU legislators intended to include these requirements, they would have been included in the Level 1 texts.

The current drafting may be particularly detrimental to governance systems. The transition from executive to non-executive roles within the same board is a legitimate practice, allowing institutions to retain valuable expertise and ensure continuity in governance and oversight. A rigid cooling-off expectation, applied without sufficient regard to the specific governance framework and existing safeguards, could in practice prevent the appointment of former executive directors as non-executive members, irrespective of the broader context.

While we acknowledge that, under applicable company law, former executive directors may not be considered formally independent for a certain period of time (e.g., under Spanish law they are considered as "other external directors"), this should not be conflicted with the concept of independence of mind. Non-executive members who are not formally independent directors remain valid and legitimate figures within the governance system and are fully capable of exercising independent judgement. Disregarding this distinction would overlook the role played by the overall board composition, including the presence of independent directors, as well as committee structures and conflict of interest policies, which collectively ensure effective oversight.

Moreover, without prejudice to the above, and with regard also to less significant banks, it is considered necessary to apply the principle of proportionality and therefore to disapply the cooling off period for those banks with private ownership, in cases where the chairperson is also a shareholder.

In light of the above, we would encourage EBA and ESMA to recalibrate the independence criteria to ensure that they remain principle-based, proportionate and adaptable to different business models and governance structures across the Union, while preserving the core objective of effective oversight and independent judgment.

Paragraphs 50 – Monitoring of time commitment: The new requirement to not only monitor but also to record if members of the management body commit sufficient time to performing their duties by assessing preparation for meetings, attendance and active involvement has no legal basis in the CRD VI and should be deleted as it adds unnecessary bureaucratic requirements next to the already existing periodic assessment of suitability (e.g. No. 160) that also includes time-commitment elements such as amounts of other mandates.

[Comment on Title III - Section 6 relating to Knowledge, skills and experience]

Our members would support the objective of ensuring that members of the management body possess adequate knowledge, skills and experience, both at an individual and collective level.

However, we would like to highlight the importance of maintaining a clear distinction between individual suitability requirements and the principle of collective suitability of the management body.

In particular, the draft Guidelines introduce more detailed expectations regarding individual knowledge, including in areas such as ESG risks, ICT and emerging technologies. While these developments are understandable in light of recent regulatory and technological evolutions. It would therefore appear that the Guidelines require for each individual member to have a deep expertise covering all the aeras of the entity.

We would like to recall that, in line with Article 91 of Directive 2013/36/EU, the management body is expected to possess collectively adequate knowledge, skills and experience. In practice, this implies that different members contribute complementary expertise, rather than each member covering all areas in depth.

In this context, we would welcome further specific indications that:

- the assessment of knowledge, skills and experience should continue to primarily rely on a collective approach, and therefore knowledge and experience in certain topics should not be imposed at an individual level; and
- that individual requirements should be interpreted in a proportionate manner, taking into account the specific role and responsibilities of each member.

Paragraphs 62 and 67 – Appropriate understanding of specific areas: The draft adds the requirement for all board members to have an appropriate understanding of all the areas listed in paragraph 77.

This addition should be removed. The current drafting already ensures that the management body collectively understands these areas. This requirement should not be imposed at an individual level for the same reasons explained in the comments to paragraph 69 below.

More broadly, the requirements in paragraph 67 should be removed or only applicable to executive directors. For non-executive directors, knowledge in specific areas should only be requested to the extent compatible with the diversity of profiles that truly enhances decision-making processes.

Paragraphs 68 and 69 – AML/CFT and Data Protection as specific knowledge areas: The draft adds AML/CFT and data protection to the list of required areas of theoretical knowledge and practical experience.

These additions should be deleted. Both AML/CFT and data protection are already embedded within the broader categories of "*legal requirements and regulatory framework*" and, where relevant, "*risk management*".

Moreover, the management body is not a technical-operational body; it is responsible for oversight, strategic direction and ensuring that appropriate governance and control frameworks are in place. It should not be required that each individual member possesses specialised theoretical or practical experience in specific regulatory sub-domains. Requiring explicit expertise in AML/CFT and data protection at the individual level risks transforming the suitability assessment into a checklist of specialised competencies, which is neither consistent with the collective responsibility of the board nor with the principle of proportionality. These areas are typically supported by dedicated control functions and subject-matter experts within the institution.

The current drafting already ensures that the management body collectively understands regulatory and risk frameworks, which adequately covers AML/CFT and data protection considerations. Therefore, the additional explicit references should be removed. So does the current version of the Guidelines on AML/CFT compliance officers, which sets out that the management body should collectively possess adequate knowledge, skills and experience to be able to understand the ML/FT risks related to the credit or financial institution's activities and business model, including the knowledge of the national legal and regulatory framework relating to the prevention of ML/TF (paragraph 11).

More broadly, the entire list in paragraph 69 should be reviewed as it is excessively focused on the banking sector, which is incompatible with fostering diversity of profiles to enrich

the debate with diverse perspectives. And paragraph 68 should make it clear that experience may be much more relevant than education to assess the knowledge and skills of a member of the management body.

Paragraph 70 - The terms "*When assessing the knowledge and experience of a member of the management body of entities which also issue asset-referenced tokens (ARTs) or provide crypto-asset services (CASPs) according to Regulation (EU) 2023/111439, paragraph 24 of the Guidelines on suitability assessments under Regulation (EU) 2023/111440 should be additionally adhered to with regard to the issuance of tokens or CASP services*" should be moved to the end of the paragraph.

Paragraph 77 – Collective knowledge: As in paragraph 69, the entire list should be reviewed under the perspective that the management body is not a technical-operational body; it is responsible for oversight, strategic direction and ensuring that appropriate governance and control frameworks are in place.

Paragraph 84 - The Guidelines identify a number of situations that the entity must take into account when assessing the potential impact on the fulfilment of the reputation requirement. For this purpose, both current and past situations concerning the Director are taken into consideration, including civil decisions and administrative proceedings (para. 84, letter d). It's requested that administrative proceedings and any civil judgments should not be considered relevant for the assessment of reputation requirements.

It is therefore requested that letter (d) of paragraph 84 be deleted.

Besides, a comma is missing after the words "*relevant civil lawsuits*".

Paragraphs 86 – Paragraph 86 assigns to the Competent Authority the task of assessing certain situations detailed under letters (a) to (e).

At this regard, it is not clear whether the situations indicated must also be previously assessed by the bank or otherwise included in the application submitted by the bank, or whether— as appears more plausible — they require an exclusive assessment by the Competent Authority. This point should in any case be clarified.

In this respect, it should also be noted that the situations considered are excessively broad and generic — and therefore subject to an overly discretionary evaluation — and concern facts and circumstances pertaining to the individual concerned, of which the bank may not be aware.

In particular, with regard to the situations identified as potentially risky, the following should be highlighted:

- under letter (a), in identifying the current and past business sectors in which the individual has operated that may be considered relevant, virtually any economic activity is included ("*other cash generating businesses or activities*"), thereby excessively expanding the range of relevant sectors. For this reason, the letter a) should be deleted or limited to specific situations other than sectors where the relevant business activities are ordinarily authorized and regulated

by national and EU legislation based on strict controls and authorization regimes, especially for companies listed in regulated markets;

- with regard to letters (b) and (c), it should in any case be noted that it is extremely complex to verify the existence of trusts, cooperation arrangements or delegations granted to individuals listed on sanctions lists;
- with regard to letter (d), the situations considered should not be extended to the close family members of the individual (whose scope is, moreover, not defined), since the assessment of the reputation requirement should be carried out exclusively with reference to the conduct of the individual concerned, and not of their relatives. In addition, specification needed in order for this provision to be proportional. So far, any "*past*", even "*indirect*" business relation or "*close family members"* could negatively impact the assessment of good repute of the members of the management body and key function holders regarding ML/TF risks. It needs to be clearly defined how far in the past (e.g. 1-2 years?), which kinds of indirect business relations (e.g. directorship? Ownership?) and up to which degree of family relationship (e.g. spouse?) will be considered for this provision to be functional.
- with regard to letter (e), it is requested that the circumstance that the individual is classified as a "PEP" be excluded from the relevant situations, also considering that such classification may simply result from holding a corporate office in a State-owned company. Clear further specification needed in order for this provision to be proportional. Unclear terms such as "*other factors*" and mere "*suspicion*" do not provide any guidance on how evaluation could and would take place.

It is therefore requested that paragraph 86 be reconsidered, taking into account the considerations set out above.

Paragraphs 86, 87 and Section 26 - Extensive list of circumstances and ML/TF risk factors: The draft excessively expands the list of circumstances and risk factors that competent authorities should consider when assessing reputation and potential AML/CFT risks with the risk that such extension may lead to assessments based on association or exposure rather than on personal conduct, responsibility or demonstrable involvement. This would conflict with fundamental principles such as proportionality, legal certainty and the presumption of innocence.

Besides, the description of factors in paragraphs 86(d) and (e) lacks sufficient precision. Their consideration in isolation (in the absence of the other factors referred to in points (a) to (c)), where no suspicion of money laundering or terrorist financing exists, may give rise to discriminatory outcomes, as individuals could be adversely affected solely on the basis of their links to a high-risk country or their status as politically exposed persons. The proposed criteria may, in practice, lead to assessments based on indirect associations or exposure rather than on the individual's own conduct, responsibility, or demonstrable involvement. Further clarification should therefore be provided to ensure that only material, well-substantiated, and directly relevant factors are taken into account in the assessment.

Paragraphs 91: Point (a) provides that, in order to have independence of mind, a person must in particular be able to **independently** assess the decisions proposed by the other members of the management body and act **independently**. However, CRD does not

demand formal independence and we consider that independence cannot be defined by formal independence. This is of no practical use and deeply compromises the diversity of organizations that have proven their resilience.

Independence of mind should not be defined as acting independently, as this could lead to confusion between independence of mind and formal independence, whereas paragraphs 89 and 90 distinguish between these two concepts. The terms "*independently*" and "*and act in an independent manner*" should therefore be removed.

Paragraphs 93/95 and paragraph 13 of the background and rationale – Cooling-off period: The draft introduces a recommended three-year cooling-off period for an executive director who becomes a non-executive director or chair of the board, in order to preserve independence of mind. In the absence of such a period, the draft suggests a possible conflict of interest to be mitigated in accordance with Section 11 of the Internal Governance Guidelines.

This proposal should be deleted. Cooling-off periods are already regulated at legislative level in several Member States for the purposes of qualifying as an independent director. Introducing an additional prescriptive requirement at Level 3 risks interfering with national company law and exceeding the mandate of the Guidelines.

Moreover, the automatic presumption that independence of mind is impaired without a three-year cooling-off period does not sufficiently account for the diversity of governance structures across Member States. The assessment of independence of mind should remain case-by-case, based on objective criteria and actual conflicts of interest.

Par. 93, h) - 93. When assessing the existence of conflicts of interest referred to in paragraph 91(b), entities should identify actual or potential conflicts of interest in accordance with the institution's conflict of interest policy and assess their materiality. At least the following situations that could create actual or potential conflicts of interests should be considered: […]
~~*h: without prejudice to national law, the former CEO or, where applicable another executive director or former executive director takes on the role of chairperson or as member of the management body in its supervisory function within the same entity within a time period of three years after their position of a member of the management body in its management function ended.*~~

~~*95. A conflict of interest arising from the role change mentioned in paragraph 93 (h) with regard to being a member of the management body in its supervisory function should be mitigated in line with Section 11 of the EBA guidelines on internal governance.*~~

Paragraph 98 - The scope of the recommendation to have independent members has been extended to all institutions (the terms "*relevant institutions*" have been replaced by the terms "*all institutions*"), with no legal basis. We are opposed to that.

We also note that certain criteria mentioned in the guidelines, such as the duration of the mandate or the existence of certain economic relationships (linked to the employee's role or the belonging to the Group), may arise in practice without necessarily impairing the ability of a member to exercise objective judgment. The possibility for institution to justify

to the competent authority that independence is not compromised is therefore an important element of the proposed framework.

Question 5: Are the changes made in Title IV appropriate and sufficiently clear?

Paragraph 109: It should be clarified that the induction and training policy regarding members of the management bodies can also be adopted by the Nomination Committee of the Supervisory Board, when established, not only by the "*management body*" (see also No. 112). At least when the Supervisory Board has in its by-laws delegated this topic to the Nomination Committee.

Question 6: Are the changes made in Title V appropriate and sufficiently clear?

Paragraphs 116 et seq. – Gender balance: At board level, gender balance requirements are already comprehensively regulated by Directive (EU) 2022/2381 and relevant national transposition measures. Introducing parallel and potentially overlapping requirements in Level 3 Guidelines creates duplication and legal uncertainty, unless the concept of "gender balance" referred to herein is the one that applies in accordance with national law.

At nomination committee level (paragraph 123), extending gender balance expectations raises proportionality concerns and is not grounded in Article 91 of CRD VI, which does not extend diversity requirements beyond the management body itself. Nomination committees are often composed of a limited number of members selected based on expertise in governance, people and remuneration matters. Imposing additional gender composition constraints on such small bodies may undermine the ability to appoint members with the most appropriate knowledge and experience.

We support the objective of strengthening induction and training policies for members of the management body. However, certain elements in Title V appear to go beyond the mandate of CRD VI. In particular, the reference suggesting that, where established, the nomination committee should, where possible, be gender balanced risks creating de facto additional obligations not grounded in actual legislation.

We therefore recommend that this reference be removed or clearly framed as a non-binding good practice. More generally, Title V should remain strictly aligned with the principle-based approach of CRD VI and avoid expanding substantive governance requirements through soft law.

Alternatively, it could be envisaged, where possible, that at least one member of the less represented gender be included.

The proposed wording amendments are set out below:

123. In order to facilitate an appropriately diverse pool of candidates for management body positions, entities should implement a diversity policy for staff, including career planning aspects and measures to ensure equal treatment and opportunities for staff of different genders. Such measures should include that the aspect of appropriate gender representation is also taken into account when selecting staff for management positions or when providing management training. Where the entity established a nomination committee their composition should, where possible, ~~be gender balanced.~~ ***include at least one member of the under-represented gender.***

Paragraph 118:
We do not see the added value of this paragraph, under which should be documented the reasons why we supposedly have not met our objective regarding gender balance within the management body, the measures that will be taken, and the timeframe within which these measures should be implemented in order to ensure that the objective is achieved, compared with paragraph 122 which is much broader.

Furthermore, it should be specified in the Guidelines that this recommendation does not introduce any additional obligations for institutions that are already subject to Directive (EU) 2022/2381 ("*Women on Boards*"), which provides for similar measures.

An additional point could benefit from additional guidance:

- Use of qualitative targets for small management bodies: While allowed, the notion of "qualitative targets" could be further illustrated (e.g. examples of acceptable formulations) to ensure supervisory convergence across jurisdictions.

Paragraph 123 – Gender balance on Nomination Committees: the recommendation on gender balance is extended to the nomination committee, with no legal basis. This addition must be removed.

Question 7: Are the changes made in Title VI appropriate and sufficiently clear?

Paragraphs 125 and 127: It should be clarified that the Suitability policy regarding members of the management bodies can also be adopted, or at least amended, by the Nomination Committee of the Supervisory Board, when established, not only by the "*management body*". At least when the Supervisory Board has in its by-laws delegated this topic to the Nomination Committee.

Question 8: Are the changes made in Title VII appropriate and sufficiently clear?

Paragraph 150: The requirement that the management board in its supervisory function or the nomination committee shall assess the suitability of members of the management body prior to their appointment is not feasible in banks where, due to their legal form or national law and state law regulations, the composition of the management body is not the responsibility of the management body in its supervisory function (see also Art. 91 (14) CRD VI). This requirement should therefore be deleted or, at the very least, clarified

to specify that it applies only to the extent that it does not conflict with applicable national law (e. g. corporate law) and state law regulations.

Paragraph 151: The number of this paragraph should be moved up to the level of the words "*Without prejudice to Article 91(1a)…*", which appear in paragraph 150. We appreciate that the EBA takes into account exceptional cases concerning the urgent replacement of executive directors, but it would be legitimate for this also to apply to the chair of the management body in its supervisory function and to key function holders.

Besides, the possibility of post-appointment evaluation in the case of representatives appointed by the General Assembly and not proposed by the institution should be reintroduced.

It appears more realistic to require that the competent authority be informed, rather than consulted, as a consultation requirement could suggest that the institution must wait for the authority's opinion for completing the suitability assessment of the member of the management body after they have taken up their position. By definition, this paragraph addresses situations where the vacancy could not be anticipated, and the replacement process should therefore not be unnecessarily delayed.

Paragraphs 160 and 171 – Report of material changes: The draft requires institutions to keep up to date the information on suitability of members of the management body, to review it at least annually and to inform the competent authority of any material change.

It should be clarified that only changes that could affect the individual's suitability must be reported. A general obligation to report any "material change" is overly broad and may lead to unnecessary supervisory notifications. The reporting obligation should be clearly limited to changes that could affect the individual or collective suitability of the management body or key function holders.

Paragraph 161: Under this paragraph, the RTS on the minimum information to be submitted to the supervisor in the context of an ex-ante assessment request would apply to the assessments of the suitability of all entities. We consider that the EBA cannot rely on the mandate concerning the file relating to ex-ante suitability applications, which was granted to it by Article 91(10) of CRD VI, to frame the content of all suitability applications or all entities.

Furthermore, it should be recalled that these provisions are intended to be transposed only in Member States that have adopted an ex-post regime for the assessment of the suitability of members of the management body by the competent authorities.

This comment also applies to paragraph 162.

Paragraph 166 – Assessment of suitability of individual members of the management body: We are concerned that the amended text goes against the principle of collective responsibility embedded in several Member States' legal frameworks.

Where a member of the management body or a key function holder is reappointed to the same position within the same institution, the Guidelines should recognise a rebuttable

presumption of suitability, provided that no new material facts or circumstances have arisen since the previous assessment.

In such cases, the reassessment conducted by the institution should be limited to new information or material developments that may affect the suitability of the individual. Institutions and individuals should not be required to resubmit, reassess or reproduce information and documentation that has already been provided, assessed and validated in the context of a previous suitability assessment and that remains unchanged.

The individual concerned should be allowed to provide a self-declaration confirming that no material changes have occurred regarding the relevant suitability criteria.

Such an approach would be consistent with the principles of proportionality, supervisory efficiency, legal certainty, data minimization and the "once only" principle, while ensuring that supervisory attention remains focused on genuinely new or relevant information.

Paragraph 167 – Allocation of all material individual roles: The draft adds that entities "*should also ensure that all material individual roles and duties of the management body are allocated to a member of the management body*".

This requirement should be deleted. The management body is a collegiate body with collective responsibility. Requiring formal allocation or mapping of duties of all material roles to specific members risks blurring the distinction between collective responsibility and individual executive functions and may be incompatible with certain governance models.

Moreover, the following sentence is not sufficiently clear: "*The assessment of collective suitability should provide a comparison between the actual composition of the management body and the management body's actual adequate collective knowledge, skills and experience, and the required collective suitability*." What is the difference between "*actual adequate collective knowledge*" and "*required collective suitability*"?

Paragraph 179 – Notification of re-assessment upon new circumstances becoming known: The draft requires institutions to inform the competent authority each time a re-assessment is triggered because new circumstances "become known".

It should be clarified whether this includes unverified information or media leaks. In any event, this requirement should be deleted or limited to cases where suitability could be affected. Triggering a notification obligation merely because information becomes known—without any conclusion that suitability is impacted—creates disproportionate reporting burdens.

If the competent authority desires further information on publicly available matters, it retains the power to request it. Automatic notification should be limited to situations where the institution concludes that suitability could be materially affected once analysed by the nomination committee.

Question 9: Are the changes made in Title VIII appropriate and sufficiently clear?

Sections 23 and 24 - As is well known, CRD VI introduces significant changes to Article 91 of the CRD, generally requiring banks to assess their senior management before they assume their duties (ex ante assessment).

However, taking into account the specificities of national governance systems, the Directive has specifically regulated the circumstances in which the assessment may take place after the members have assumed their duties (ex post assessment), establishing that:

- Member States may allow the assessment to take place after new members have assumed their duties "where the majority of the members of the management body are to be replaced at the same time by newly appointed members and the application of the first subparagraph would result in a situation where the assessment of the suitability of the incoming members would be carried out by the outgoing members" (Article 91, paragraph 1a);
- Member States shall at least ensure that the competent authority receives an application for suitability without undue delay and as soon as there is a clear intention to appoint a member of the management body in its management function or the chair of the management body in its strategic oversight function, and in any case, at least 30 working days before the prospective members assume their duties (Art. 91, paragraph 1) and
- the provisions of Member States regarding the appointment of members of the management body in its capacity as a strategic supervisory body by elected bodies at the regional or local level, or regarding appointments where the management body has no role in the selection and appointment of its members, remain unaffected. In such cases, adequate safeguards shall be put in place to ensure the suitability of such members of the management body (Art. 91, para. 14).

In this context, it should be made clear that the suitability assessment itself remains the responsibility of the institution, as carried out under Title VII. The role of the competent authority under Title VIII should be limited to a supervisory review of that assessment and should not result in a duplication or substitution of the internal suitability assessment performed by the entity.

In this regard, it is first and foremost required that the text of the Guidelines faithfully reproduce the text of the Directive, specifying that both the ex-ante and ex-post evaluations must be conducted prior to the taking up the position - and not prior to the appointment - and consequently aligning the wording across the entire document.

Furthermore, it is necessary to take into account the specific features of the ex-post assessment procedure, ensuring better coordination between paragraph 9.4 (sub paragraphs 103 et seq.) - which is dedicated to the "additional safeguards" applicable in cases of appointments made pursuant to paragraph 14 of Article 91 - and the provisions set out in Title VII and, in particular, Title VIII, which respectively govern the assessment of requirements conducted by the bank and by the Supervisory Authority.

Within the paragraph concerning additional safeguards (paragraph 9.4 and sub paragraphs 103 et seq.), it is unclear whether the assessment process and the measures described also apply in situations where the management body has no competence in the selection

and appointment of its members. It should be noted, in this regard, that in Annex 5.1 (Draft cost benefit analysis), the reference to "*additional safeguards*" is made solely with respect to the appointment of members of bodies elected at regional or local level.

Moreover, within Title VIII and the paragraphs concerning "notifications of new appointments" (para. 201 et seq.) and "*notifications in exceptional circumstances*" (para. 207) - which relate to situations where an ex-post assessment mechanism is regulated at Member State level - the submission deadlines for applications to the Authority should be aligned and, in any event, set at 30 days following the assessment of the requirements carried out by the Board.

Finally, a particularly important aspect concerns the process and timeline for submitting the application in the case of the appointment of an executive director or the chairman of the board of directors, for which the application must be submitted to the Authority at least 30 days before the candidates take up their functions. On this point it should be noted that the provisions under consultation seem to entail an increased burden in terms of the documentation set to be provided to the competent supervisory authority for the purposes of the suitability assessment.

In this regard, it is first necessary to consider the importance of such positions for bank governance and, therefore, the need for these individuals to immediately perform their functions, so as to ensure full continuity in those roles.

That said, we request that the requirement set forth in the Directive be deemed satisfied if the bank submits, even prior to the appointment, a simplified set of information that includes the personal data of the candidate proposed by shareholders for the position and, for example, the curriculum vitae. Based on this information, dialogue with the Supervisory Authority could then be initiated.

Alternatively, it is proposed to refer directly to national regulations for the transposition of the provision in question and regulating only the modalities of dialogue with the Authority (referred to in paragraph 24, subparagraphs 217 et seq.), in accordance with the requirements of the Directive.

The proposed wording amendments are set out below.

56. (Background and rationale). Where the competent authority carries out suitability assessments after the member takes up their position (ex post), in line with Article 91(1d) of this Directive, large entities in line with Articles 91(1d) and 91a(5) of the Directive 2013/36/EU should provide ~~a suitability application~~ ***documentation*** *to the competent authority without undue delay but at the latest 30 working days* ***or within the different timeframe provided by national legislation*** *before the prospective member takes up their* position ***including personal data of the candidates for the position of member of the management body in its management function or the chair of the management body in its supervisory function and any available information about the candidates at that time****.*

201. Competent authorities should require entities to notify to competent authorities newly appointed members and provide the required accompanying documents. Notifications of the suitability application and the accompanying documents to the competent authority

should include the information and the documentation referred to in Article 91 (1e) Directive 2013/36/EU as well as, to the extend deemed proportionate by the competent authorities in line with paragraph 161 of these Guidelines, in the RTS on the minimum content of information mandate under Article 91 (10). Such notifications include: […] b) notifications to the competent authority assessing the suitability after the appointment or taking up of the position (ex-post jurisdictions) of a member of the management body and, where applicable, a key function holder. Such notifications should be made ~~not later than two weeks~~ ***in due time and within one month*** *after the ~~appointment~~* ***assessment by the entity****.*

*201. lett. C): […] notifications to the competent authority (ex-post jurisdictions) assessing the suitability of members of the management body in its management function or the chair of the management body in its supervisory function in large entities, as further specified in paragraph ~~203~~****202****.*

202: Competent authorities should require large entities to submit an ex-ante suitability ~~application~~ ***documentation*** *in accordance with Article 91(1d) of Directive 2013/36/EU. This* ***documentation*** *~~application~~ should be ~~made~~* ***sent*** *without undue delay and as soon as there is a clear intention to appoint a member* ***of the management body in its management function or the chair of the management body in its supervisory function****, or based on the appointment decision and in any case before the person takes up their position. For members of the management body in its management function or the chair of the management body in its supervisory function it should be submitted at the latest 30 working days* ***or within the different timeframe provided by national legislation*** *before the prospective members take up their position.*

204: Notifications should at least include the documentation ***on the personal data of the candidates for the position of member of the management body in its management function or the chair of the management body in its supervisory function and any available information at that time****. ~~and information in accordance with Article 91 (1e) of Directive 2013/36/EU for member of the management body in its management function or the chair of the management body in its supervisory function and the RTS on the minimum content of information for such members, the chairperson, the heads of control functions and the CFO.~~*

~~206. Competent authorities should start the assessment procedures as soon as the ex-ante suitability application is received as per Article 91(1d). This aims to identify any material concerns regarding the suitability of the individual. Competent authorities should aim to perform an initial assessment of the suitability in a timely manner before the prospective member takes up the position and should start an enhanced dialogue with the entity where material concerns regarding the suitability exist Section 24.~~

207. In the duly justified cases referred to in the second subparagraph of Article 91(1a) of the Directive 2013/36/EU, entities should be required to provide the complete documentation and information in RTS on the minimum content of information, together with the notification to the competent authority, within one month after the member has been ~~appointed~~ ***assessed by the entity****.*

Paragraphs 217-226 should be changed accordingly.

Section 26 - While we acknowledge the importance of ensuring robust supervisory assessment procedures, we consider that certain AML-related provisions in Title VIII are excessively prescriptive and risk expanding the scope of suitability assessments beyond what is envisaged in CRD VI. In particular, the fact that an entity may have been subject to supervisory findings or infringements should not automatically give rise to suspicions affecting all current or prospective members of the management body. On the other hand, suitability assessments must remain individualised and based on objective and demonstrable grounds.

In this regard, we believe it is essential that any "reasonable grounds to suspect" (as referenced in Paragraphs 30.d and 233) are consistently supported by objective and substantiated evidence, rather than by unverified external resources such as 'adverse media' or investigative journalism. Relying on such sources could introduce significant subjectivity into the assessment process, potentially undermining the rigorous and fact-based approach that should characterise the suitability framework and the principle of legal certainty.

Furthermore, it is essential that the presumption of innocence be fully respected in the context of suitability reassessments. Supervisory concerns relating to AML/TF risks should not result in indirect or anticipatory consequences for individuals in the absence of concrete evidence of personal involvement or responsibility. The Guidelines should therefore clarify that entity-level deficiencies do not, per se, undermine the suitability of individual candidates and that any reassessment must be grounded in specific, substantiated facts attributable to the individual concerned.

Section 27 - Cooperation between competent authorities - A section of the Guidelines is dedicated to the exchange of information regarding members of the governing bodies or Key Function Holders among supervisory authorities, when such information is already available to the authorities themselves (paras. 238 et seq.) as a result of fit and proper assessments or because it is relevant for the purposes of the suitability evaluation.

In this regard, we considered necessary to specify that, within the European Union, entities already subject to supervision by a Supervisory Authority and to the application of the fit & proper procedure should be exempt from providing additional documents and information concerning suitability requirements, since such information is already available to the Authorities.

More specifically, where an individual has already been authorised by the ECB or by a national competent authority to perform management or supervisory functions within another credit institution belonging to the same group within the SSM, the Guidelines should recognise a rebuttable presumption of suitability with regard to the criteria already assessed, including academic qualifications, professional experience, reputation, honesty, integrity and independence, provided that no new material facts or circumstances have emerged since the previous assessment.

In such situations, institutions and individuals should only be required to provide information that is specific to the new role or to the particular characteristics of the receiving entity, including time commitment, potential conflicts of interest and entity-specific knowledge requirements. Competent authorities should be able to rely on existing

supervisory assessments and on information already available within the SSM framework, rather than requiring the repeated submission and reassessment of unchanged information and documentation.

Therefore, we suggest outlining a broader exemption regime for credit and financial institutions already under supervision within the European area and within the Single Supervisory Mechanism (SSM). In particular, SSM credit institutions submitting a suitability assessment request should not be required to provide information and documentation for the evaluation of the individual or collective suitability of members — for instance, in the context of procedures relating to the acquisition of qualifying holdings in financial institutions — if such information is already available to the Supervisory Authorities, in full compliance with the regulatory framework both at national and EU level.

Information flows and data exchange should be ensured among the competent Supervisory Authorities within the European Union, or by another competent authority of the same Member State or of another EU Member State, in accordance with the principles of proportionality, supervisory efficiency, data minimisation and the "once only" principle. Such an approach would significantly reduce unnecessary administrative burden and avoid duplicative suitability procedures, while preserving the effectiveness and consistency of supervisory oversight across the Union.

Paragraph 182 - Periodic assessment of Key function holders: this should be deleted as it is not provided for in the CRD and would be very burdensome.

Paragraph 199(c) should be clarified that the situations triggering a suitability re-assessment by competent authorities are limited to clearly identified and substantiated new facts or circumstances relating to the individual concerned. So, the word "*situations*" should be replaced with "*new facts*". In this context, regular supervisory procedures carried out by the institution or circumstances related to the institution do not, in themselves, constitute a trigger for a re-assessment of individual suitability. Where individuals have already been assessed in accordance with the Joint ESMA and EBA Guidelines and continue to be subject to ongoing suitability requirements, the absence of new personal facts or supervisory concerns should not, as a general rule, result in the initiation of a re assessment.

Paragraph 199(d) should be clarified by specifically referring to the maximum period for concluding the suitability assessment and, where applicable, to the circumstances under which this time limit may be extended, as well as to the conditions governing such an extension.

Paragraph 201 - Scope of the assessment of key function holders: The assessment of the suitability of "*key function holders*" by the competent authorities should be limited to the heads of internal control functions and the CFO in large entities (ex Article 91a(5) of Directive 2013/36/UE). Therefore, we would suggest that paragraph 201 be adjusted accordingly. Likewise, we would suggest review and align the wording across the entire document where any different scope or enlargement different to subject Key Function Holders, could be mentioned, as for example:

> Delete last part of paragraph 193 where it says "~~*Where deemed necessary by competent authorities similar procedures should be specified for other key function*~~

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

With the same purpose, delete from paragraph 233 "… ~~*and where applicable other key function holders*~~…"

Paragraph 201 and 202: The heading is not clear: "*Notifications to ex-post jurisdictions of large entities about intended appointments of members of the management body in the executive function or chairperson (ex-ante suitability applications) and appointments of heads of control functions and CFO*". Is this *ex-post* or *ex-ante*?

Please also check No. 206 ("*ex ante*").

Paragraph 201(b) should be reworded so as to be adapted to Member States that have adopted an *ex-post* regime. In the last sentence, reference should be made to the date on which the individual takes up their position as the starting point of the two-week time limit, rather than the date of appointment. Applying the two-week time limit from the date of the appointment decision would, in effect, amount to applying an *ex-ante* regime to such appointments.
The same comment applies to paragraph 203 with regard to the appointment of the heads of internal control functions and the Chief Financial Officer. The starting point of the two-week time limit should be the date on which the individual takes up their position, rather than the date of appointment, failing which the regime would shift to an *ex-ante* approach, in contradiction with the provisions of the CRD VI Directive.
The same comment also applies to paragraph 207.

Paragraph 202: The request for *ex-ante* suitability concerns only the members of the management body in its management function and the chairman of the board of large entities. The wording of paragraph 202 may imply that there are other members who would be concerned.

The point should be worded as follows: "*Competent authorities should require large entities to submit an ex-ante suitability application in accordance with Article 91(1d) of Directive 2013/36/EU. This application should be made without undue delay and as soon as there is a clear intention to appoint a member of the management body in its management function or the chair of the management body in its supervisory function, or based on the appointment decision and in any case before the person takes up their position. It should be submitted at the latest 30 working days before the prospective members take up their position.*"

Paragraph 205: it should be reworded on two points in order to be consistent with the CRD VI Directive:

(i) it should include the exception provided for under CRD VI where the institution is unable to submit certain documents or information: "unless the competent authority is satisfied that it is not possible for such information to be provided.";

(ii) it should be specified that, in such circumstances, the institution must be informed that the competent authority may object to the individual taking up their position in the absence of submission of the requested documents and information. The current wording of this paragraph could give the impression that the decision of the

competent authority is final, without any prior formal request or notice being addressed to the institution.

Paragraph 206: Furthermore, it should be specified under which circumstances an enhanced dialogue should be initiated. It would appear appropriate for such dialogue to be initiated where the competent authority does not have sufficient information to assess the suitability of the candidate, in particular where the institution has not submitted all the required documents and information (see paragraph 205).

Paragraph 208 – Maximum period for assessment by competent authorities: The maximum period for assessment of four months by the competent authorities seems too long (paragraph 208), and we would suggest a reduction to two months, taking into account the following:

- The initial drafts of Directive (EU) 2024/1619 already envisaged a substantial reduction in the maximum timeframe for suitability assessments, reflecting a clear intention to simplify and expedite these procedures.
- The current level of cooperation and information exchange between the competent supervisory authorities has improved significantly, enabling more efficient coordination and reducing procedural delays.
- The increasing integration of digital and AI-based tools into supervisory processes would likely significantly improve the efficiency of reviewing and assessing suitability applications, making shorter timeframes feasible and appropriate.

It is equally important to ensure clarity regarding the starting point of this timeframe. In practice, the absence of clear and objective criteria for determining when the assessment period effectively begins may lead to situations where the timeline is repeatedly suspended or reset. This could undermine the effectiveness of the envisaged time limits, potentially resulting in significantly longer overall assessment periods. To address this risk, the Guidelines should establish clear and objective indicators for when the assessment period starts running, as well as limitations on the circumstances under which the process may be paused.

Paragraph 217: It should be specified in this paragraph that the competent authority's concerns regarding the suitability of the candidate may stem from the absence of the requested documents or information.

Paragraph 221: This paragraph suggests that the institution is not expected to engage with the candidate in order to address the competent authority's potential concerns in the context of the enhanced dialogue. However, it appears necessary to allow institutions to share such information with the candidate where this is relevant in order to enable institutions to respond as effectively as possible to those concerns.

Paragraph 234(c): The conduct described constitutes a serious breach by the obliged entity of its AML/CFT obligations. As such, it should fall within the scope of point (b), rather than being presented as a separate category. Indeed, the competent authority responsible for assessing the suitability of members of the management body and key function holders does not have greater access to information concerning such conduct than it would have in relation to other breaches.

Paragraph 234(d): The situation referred to in paragraph (d) does not appear to differ from that described in paragraph (a). If this paragraph is nevertheless maintained as a separate provision, the consideration of allegations should be made conditional upon the existence of sufficiently reliable sources.

Paragraph 235(f): The possibility of relying on such sources should be subject to the existence of ongoing proceedings or decisions relating to the facts reported therein.

Paragraph 236: The wording of the first sentence lacks clarity. It is therefore unclear whether the identification by the competent authority of several of the criteria referred to in Article 86 automatically constitutes reasonable grounds for suspicion of ML/TF, or merely indicates the existence of a higher ML/TF risk.

Paragraph 237: "*Where the person themselves committed or attempted ML/TF": a finding by the competent authority that a member of the management body or a key function holder has committed or attempted money laundering should be considered immediately disqualifying, provided that such conduct has been established by a final judicial decision...or the person is, or has become, a designated person under EU sanctions lists*": the link established between designation on an EU sanctions list and unsuitability introduces political considerations into the assessment of suitability.

Question 10: Are the changes made in Title IX appropriate and sufficiently clear?

Question 11: Are the changes made to Annex 1 and Annex II appropriate and sufficiently clear?

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

The Guidelines under consultation provide indications for the procedure to assess the collective competence of the Board, setting out in a specific annex (Annex I) a template that entities may use for this purpose. In the introductory notes to the annex, it is specified that the matrix is a tool designed to support the entity's assessment activity and may be used by banks on a voluntary basis.

It should be noted, however, that the indications regarding the skills and competence profiles of board members are excessively detailed. It is therefore proposed to simplify the entire template through a comprehensive review of its structure, in order to enable its effective and practical use by banks.

The updated Annex I appropriately reflects the expanded scope of collective knowledge expectations, notably by explicitly incorporating ESG risks, ICT risks and artificial intelligence related considerations, in line with the revised requirements for management bodies.

The continued use of a flexible template, allowing entities to adapt the matrix to their size, complexity and governance structure, supports the proportionality principle and is therefore appropriate.

Question 12: Is the table on scope of application of the Joint Guidelines appropriate and sufficiently clear?

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