FÉDÉRATION BANCAIRE FRANÇAISE

FBF position on Consultation on draft joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders

22 May 2026

Introductory remarks

We thank the EBA-ESMA for this consultation as internal governance is essential for financial stability and French banks support especially high standards of integrity, independence of mind and competence.

We consider that consistent framework contributes to the competence of the members of the management body and KFH, legal certainty and facilitates a coherent supervisory approach across the Union, when it is done in the spirit of proportionality and simplification as stated in particular by the European Commission in its Simpler is better Communication dated 28 April 2026 (https://ec.europa.eu/commission/presscorner/detail/en/qanda_26_902) and by the EBA in its report on the efficiency of the regulatory and supervisory framework (https://lnkd.in/dGgZrgdW).

Although, as it has been presented in the broader context of joint calls for the simplification of the regulatory framework for financial services, Better Regulation and European competitiveness, we were expecting the removal of some unnecessary, redundant existing obligations, especially those which have no legal basis in CRD. Unfortunately, it hasn't been the case.

We also feel that the draft Guidelines go into unnecessary details regarding the new obligations introduced by the revision of CRD and add disproportionate obligations and reporting expectations, compromising suitability assessments remaining proportionate, operationally feasible, legal certainty and competitiveness without any evidence of added prudential benefit or any tangible improvement of the competence of the members of the management body and KFH.

Considering the size and profile of institutions is important, particularly for smaller entities.

On the contrary, these rules risk undermining the competitiveness of French regulated institutions by limiting their ability to recruit the diverse and skilled profiles essential for their future.

We would like to highlight that Level 3 texts such as guidelines should not add obligations to Level 1 acts (cf. Less is more report: https://lnkd.in/eHkSrQKX).

We also fear that national principles such as collective responsibility and specific organisations such as cooperative banks, which have proved to support the diversity and therefore resilience of the EU financial sector, might be compromised by the revised GL.

We have concerns regarding the growing demands of the supervisors, notably regarding competence, diversity and time commitment as it might undermine the ability to get the interest and appoint members with the most appropriate knowledge and experience as the new ECB report https://www.bankingsupervision.europa.eu/ecb/pub/html/ssm.report_on_time_commitment_NEDs_feb26.en.html.

It would be necessary to indicate that this new version replaces the versions dated XXX.

We stay at the EBA disposal for exchanges until the end of the revision process.

We wonder why these revised draft Guidelines will be published after the deadline for national transpositions.

These Guidelines will apply at the latest by 31 December 2026, whereas the provisions stemming from the CRD VI Directive have been applicable since 11 January 2026. The gap in timing places credit institutions in a situation of legal uncertainty as to the regulatory framework now applicable to them. This misalignment does not allow those institutions to adequately prepare for the new requirements introduced by the European legislator.

We hope that the expected ECB Guide will be fully align with the revised EBA guidelines, taking into consideration the reactions from the banking industry.

EBA-ESMA Executive summary and Background and rationale

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 designate and assess “other KFH on request”, than the heads of the internal control functions and the CFO, without any legal basis in CRDVI.
The following amendment should be made to the sentence on assessment of KFH by competent authorities to specify that the extension of the scope of KFH to other persons should be up to each institution: “Competent authorities may also, **on request,** assess other key function holders **when appointed as such by the entities** ~~on request~~ “

We would like to draw the EBA’s attention to the wording defining the scope of application of the Guidelines (pages 29 to 31). These paragraphs make the Guidelines particularly difficult to understand and do not allow for a clear determination, for each topic, of the categories of institutions concerned. This complexity is further compounded by the fact that the Guidelines extend the scope of certain obligations to institutions that are not covered by the CRD VI Directive. The fact that the EBA found it necessary to provide examples in an annex to the Guidelines to illustrate the scope of application is indicative of this complexity.

Paragraph 13
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” applying 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.
The entities should be free to choose who is the most suitable person to be appointed as Chairman/member of the board. A former CEO has a deep knowledge of the institution and can bring this expertise and efficiency to the Board, being understood that all banks have suitability policies in place that provide for the management of conflicts of interests.
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).
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.

Paragraph 27
The last sentence states that key function holders should have knowledge regarding climate risks.
We ask for the removal of this requirement, which is not grounded in the CRD, it is an overly specific criterion with regard to control functions and the CFO, whose primary competence should remain their core area of expertise.
In addition, this requirement should not apply individually to each member of the management body but to the management body as a whole.

Paragraph 56
This paragraph should be specified as follow: "*Where the competent authority carries out suitability assessments after the member* ***of the management body in its management function and Chair of the management body in its supervisory function*** *takes up their position (ex post), in line with Article 91(1d) of ~~the proposed appointment or~~ this Directive, large entities in line with Articles 91(1d) of the Directive 2013/36/EU should provide a suitability application to the competent authority without undue delay ~~after the appointment. Indeed, where shareholders nominate and appoint members of the management body~~* but *at the latest 30 working days before the prospective member takes up their position.*"

Paragraph 64
The executive summary and paragraph 64 suggest that competent authorities may unilaterally designate and assess "other KFH on request", than the heads of the internal control functions and the CFO, without any legal basis in CRDVI.
As mentioned above for the executive summary : "*It is crucial for competent authorities when assessing the suitability of members of the management body of all ~~institutions~~entities and heads of internal control functions and the ~~CFO~~chief financial officer of ~~significant CRD institutions~~large entities in line with Articles 91(1d) and 91a(5) of the Directive 2013/36/EU , and other key function holders* ***where appointed as such by the entities****, where ~~they are not part of the management body~~ required by the competent authority, to have access to and to assess specific information about the persons. The competent authorities performing such assessments should use the ESAs Information System* »

Paragraph 65
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.

Draft Joint Guidelines

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

These provisions are sufficiently clear.
However, we wonder why paragraph 14 of the current Guidelines has been deleted, as it seems to us that it remains fully relevant: “The definitions of CEO, CFO and key function holder used in these Guidelines are purely functional and are not intended to impose the appointment of those officers or the creation of such positions unless prescribed by relevant EU or national law.“

Paragraph 19
The definition of key function holders is not relevant, insofar as the draft Guidelines merely refer to the definition provided by the CRD VI Directive. The definitions set out in paragraph 19 are solely additional definitions intended to supplement, inter alia, those provided by the CRD VI Directive for the purpose of applying the Guidelines. This comment also applies to the definitions of “heads of internal control functions” and “Chief Financial Officer (CFO)”.

Definition of “Significant influence over the direction of an entity”:
We consider that a definition is not useful because it is up to each institution to decide who is concerned. However, if it is deemed necessary to provide one, we propose the following amendment in line with CRD to limit effective decision-makers: “means to have a position with the ability and powers to decide operating and financial policy decisions ~~at the level below the management body or the level below senior management~~. ».
The definition of “Large entities” stating “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 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 in Article 4(1), point (146) of Regulation (EU) N° 575/2013”.
It is not clear which entities are covered by these recommendations.

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

Paragraph 27
The last sentence of this paragraph states that key function holders should have knowledge regarding climate risks.
There is no legal basis in CRD for this requirement. In addition, this requirement should not apply individually to each member of the management body but to the management body as a whole.

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.

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 has no legal basis and as executive roles, by their very nature, are dynamic and evolving. Such a broad and open-ended requirement would lead to continuous reassessment exercises.

A reassessment should only be required where there is a meaningful effect on the member's availability.

Paragraph 34
The comment made in respect of paragraph 29 also applies to paragraph 34.
This paragraph specifies that institutions are required to use mapping of duties 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 mapping of duties be established prior to taking up office, although such a requirement is not provided for by the CRD VI Directive.

Paragraph 40
The comment made in respect of paragraph 29 also applies to paragraph 40.

Question 3: Independent non-executive directors

The independence requirement, as it stands at present in the Guidelines, goes beyond what is provided for by CRD. CRD requires members of the management body to act with honesty, integrity and independence of mind, but does not define any notion of formal independence for example. Likewise, CRD does not require a minimum number of independent members within the management body. The criteria for independence should be left to national level and deleted from these guidelines and ECB draft guide.

It should respect the core purpose of cooperative banks, which is to serve members' interests and requires the involvement of only elected members in the management body in its supervisory function, which involves a business relationship ("self-governance").
The requirement of independence should only refer to independence of mind. Furthermore, the notion of independence should be adapted for fully owned subsidiaries; an independent member could be a Parent company employee who does not report to the Business Line of the subsidiary in which he is appointed.

In France, for listed companies, independence criteria are already provided for by soft law.
If the company does not comply with these requirements, it has to explain why in its publicly available registration document. If the independence criteria are maintained in the guidelines, and because those criteria differ from the ones it has to apply according to French soft law, French listed companies will not be able to apply both set of rules.
For other type of companies, no formal independence requirement is provided by French law. Therefore, the ACPR issued a non-compliance notice in 2018 and provided clarifications in this respect. In this notice, the French competent authority specified that the presence of formal

independent members within the supervisory body might constitute a good practice but does not represent a legal or regulatory requirement. The ACPR further stated that the assessment of a member's independence should also take into account other measures, in particular those implemented by institutions in accordance with applicable laws, regulations, and internal organisations validated by the ACPR, which may allow the same objective of independence to be achieved. This approach ensures for example that the specific governance arrangements of cooperative banking institutions are fully taken into account.
This also ensures that within Groups, entities (fully owned or majority-owned) can be managed under consistent, efficient and more competitive manner under the Group Leadership, while preserving prudential and sound objectives, as well as clients and all stakeholders interests. Consequently, paragraph 100 should clarify that this recommendation is formulated without prejudice to national provisions.
The ACPR reiterated its position in 2021.

Paragraph 62
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 as it has no legal basis in CRD and 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.
The role of the executive manager is primarily assessed in light of their ability to ensure the overall proper functioning of the institution and the oversight of risks, without necessarily requiring expert-level knowledge across all technical areas.

Paragraph 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 formation and practical experience.
These additions should be deleted as they have no legal basis and 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.
Besides, the amendment made under point (j) does not appear to be relevant, insofar as the ability to discuss strategy and business objectives does not, in itself, constitute a hard skill.

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 84(d)
A comma is missing after the words "relevant civil lawsuits".

Paragraph 86
Extensive list of circumstances and ML/TF risk factors: The draft significantly expands the list of circumstances and risk factors that competent authorities should consider when assessing reputation and potential AML/CFT risks. This list should be substantially reduced.
The list of business sectors could be aligned with the risk factors set out in the current EBA Guidelines on ML/TF risk factors (§2.4) or with those listed in Annex III of the AMLR Regulation as well as to the forthcoming AMLA guidelines on risk variables and risk factors pursuant to Article 20(3) of the AMLR.
Or we propose:

« *When assessing the good repute of the members of the management body and key function holders and especially when there is information on increased ML/TF risks in connection with the entity,* ***where relevant*** *competent authorities should* ***may*** *consider the following situations and risk factors* »

And how to evaluate/control these points? At present only the extract from the criminal record is required; Good repute is assessed on the basis of what is declared by the candidate and review at the level of institution of negative news.

Paragraphs 86(d) and (e)
The description of these factors 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.
It is necessary to exclude country lists. The criterion based on the existence of family relationships with people located in countries included on such lists may be considered discriminatory, in particular where the member of the management body has a direct link with the country concerned (country of birth, nationality).

Paragraph 91
Directive 2013/36/EU (CRD, as amended by CRD VI) requires members of the management body to act with honesty, integrity and independence of mind, but does not define any notion of formal independence. Likewise, CRD does not require a minimum number of independent members within the management body.

Independence of mind cannot be defined by formal independence. The terms “independently” and “and act in an independent manner” should therefore be removed.

Independence of mind under CRD is clearly conceived as a behavioral suitability requirement, not as a status derived from the absence of relationships or links.

The Joint Guidelines themselves establish a clear and explicit distinction between “Independence of mind” and “Being independent”:
Paragraphs 89 and 90 make clear that:

i. independence of mind is a pattern of behaviour, assessed irrespective of formal independence; and
ii. conversely, a member who is formally independent cannot automatically be presumed to act with independence of mind.

The Guidelines therefore “decouple” formal independence from independence of mind and clarify that being formally independent does not necessarily imply the behavioural ability to exercise independence of mind, which must be assessed separately.

Introducing the requirement that members must “act in an independent manner” in the definition of independence of mind risks blurring this carefully constructed distinction.

Such wording introduces elements of “formal independence” into a concept that is meant to remain strictly behavioral. This has no legal basis and adds no security. It weakens the internal coherence of the Guidelines and creates ambiguity as to whether independence of mind implicitly requires a form of structural or relational independence. We are opposed to these additions.

For the same reasons, we furthermore continue to criticise the lack of a legal basis and the advisability of requiring some points already in the current guidelines, such as at least one

formally independent director, as well as certain criteria such as length of service, which serve as a guarantee of independence.

This is of no practical use and deeply compromises the diversity of organizations that have proven their resilience.
Besides, the amendments made under point (i) do not appear to be relevant, insofar as the ability to discuss strategy and business objectives does not, in itself, constitute a behavioral skill. It primarily relates to knowledge and technical skills (hard skills). The definition of behavioral competences does not concern the “what” (i.e. the strategic content), but rather the “how” (i.e. the way in which individuals interact and make decisions).

Paragraph 93(h)
We challenge the addition to the list of situations that may create actual or potential conflicts of interest that should at least be taken into account, namely the case of a former CEO or member of the management body who becomes chair of the management body in its supervisory function or a member of the management body in its supervisory function within three years following the end of their executive duties.
See our comments relating to paragraph 13 above.
It’s important to clarify the concept of "executive director".

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.
Why has the scope of this recommendation been extended? We are opposed to that.

Paragraphs 103 to 105
Why mention these additional guarantees in the section on independence? Moreover, does the EBA have the power to set these additional guarantees?
Also, why reassessing the knowledge and experience within 6 or 12 months after the position is effectively taken up?

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

The changes made in Title IV are appropriate and sufficiently clear.

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

Paragraphs 116 and 117
Gender balance: It seems that the draft replaces references to “all genders” with “male and female genders”, which is surprising. It also requires setting a gender balance target with no legal basis.
The requirement to respect gender balance within the management body in its management function should be "mitigated" as proposed:
*"The diversity policy of significant entities ~~should~~ ~~ensure~~ **contributes to ensuring** that the management body in its management function and in its supervisory function ~~are having~~ **benefits** from an appropriate gender balance."*

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.

Paragraph 123
Gender balance on Nomination Committees: the recommendation on gender balance is extended to the Nomination Committee (NomCo), with no legal basis and must be deleted.

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

The changes made in Title VI are appropriate and sufficiently clear.

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

ex-Paragraph 135 (new 151)
We ask for the removal of the possibility of post-appointment evaluation in the case of representatives appointed by the General Assembly and not proposed by the institution (list voting). The a posteriori evaluation could now only take place in the event that the appointment is made to compensate for the replacement of a representative for sudden/unexpected reasons (death) or if a member must be withdrawn because he is no longer "fit".

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 or equivalent meeting and not proposed by the institution should be reintroduced (reproduce verbatim Article 135a).

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.

Paragraph 154
The case referred to in paragraph 151 and to the possibly the appointment of a "provisional" administrator while the authorities examine his or her suitability (to discuss with the authorities).
We don’t’ understand this paragraph compared to paragraph 151.

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 of 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.

Paragraphs 160 and 171
Information on suitability: 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 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.
We ask to delete the notion of "allocated duties" which is applicable only to executive members.

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 in its supervisory function 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, these amendments would result in the establishment of individual statements for members of the management body in its supervisory functions whereas these statements are required to be drawn up only for members of the management body in its management function pursuant to the CRD VI Directive.
In this regard, paragraph 173(c) should be clarified by specifying that individual statements of responsibilities relate to members of the management body in its management function.

Paragraphs 175 and 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 that it does not include unverified information or media leaks.

Moreover, the sentence "Where there are no new facts or circumstances that are to be considered, the reassessment may be limited to establishing this fact." should be reformulated, as it creates uncertainty regarding the burden of proof in the absence of new facts or circumstances. We therefore propose the following rewording: "Where there are no new facts or circumstances that are to be considered, the reassessment may be limited **to noting the absence of such facts or circumstances.**"

Paragraph 184
Annual evaluation for the Key Function Holders. This should be deleted as it is not provided for in the CRD and would be very burdensome.

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

Paragraph 193
It goes beyond CRD provisions and should then be deleted or amended as follow: "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."

Paragraph 197

We understand that a cooperation between competent authorities is possible and should therefore be systematically implemented when Fit & Proper requests are being made with several authorities.

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(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
We understand that time limit for examination by the competent authority is 4 months but could be longer, in what cases?

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 225
No maximum time limit is provided for the enhanced dialogue, even though supervisors may prevent members from taking up their positions.
A maximum time limit should be set to give entities some visibility.

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.
Where the allegations have not given rise to any follow-up, a temporal limitation should be applied to their consideration.

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, and paragraph 234 and 235 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.

Annexe 2 – Skills
b.Language: It's too restrictive for international groups in which members of the management body often need to switch in English.