

AMF Italia response to EBA/ESMA Consultation: “Draft Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU”

Q1 – Subject matter, scope of application, definitions and date of application

Scope of application

- With regard to paragraph 12, which extends the application of the Guidelines on an individual basis to subsidiaries that are not subject to the CRD, including those established in third countries (including offshore jurisdictions), we note that such an extension – even if applied in accordance with the principle of proportionality – would entail a significant increase in organisational and compliance burdens. Indeed, it appears to transform the obligation to integrate governance arrangements on a consolidated basis (as provided for under Article 109 CRD) into a compliance requirement directly assessable at the level of each individual entity, including entities falling outside the scope of the Directive. Furthermore, should such an expansive approach be maintained, its application should in any event be limited to subsidiaries whose applicable legal framework already provides for fit and proper requirements.
- With regard to paragraph 15 and the definition of “Management body in its management function”, we believe it would be appropriate to clarify that the management body, when performing its management function, may also consist of a single individual (for example, the Chief Executive Officer and/or the General Manager) and does not necessarily need to be a collegiate body.

Definitions

- “Key function holders”

The definition expressly includes the heads of internal control functions. Under Article 3(1), point (9b) CRD, these currently include the heads of the risk management, compliance and internal audit functions. We therefore note that the definition would exclude the head of the ICT risk management function (where established) pursuant to the DORA Regulation.

- “Significant influence over the direction of an entity”

This expression, included in the definition of KFH, may significantly broaden the range of individuals falling within the scope of the Guidelines. This may be the case, for example, for deputy office holders acting as substitutes for senior executives.

In this regard, the Italian competent authority has repeatedly clarified on an informal basis that, applying the principle of proportionality, only deputy office holders vested with decision-making authority should be subject to fit and proper requirements.

However, the notion of “significant influence” contained in the KFH definition could potentially extend fit and proper requirements also to deputy office holders who do not

have autonomous decision-making powers but nevertheless exercise significant influence over the direction of the institution.

We therefore consider it necessary for the Guidelines to provide further guidance on the interpretation and practical application of this criterion and to clarify who should be responsible for determining the degree of influence exercised by the individual concerned (for example, whether this should be based on self-assessment or whether a specific body or function should be responsible for making such determination).

Date of application

- Given that the consultation closes on 25 May and considering the time required to assess the feedback received, the proposed implementation timeline (six months after publication of the translations in the official EU languages and, in any event, no later than 31 December 2026) appears difficult to meet.

Consideration should also be given to the expanded personal scope of application, the complexity of implementing certain processes (such as continuous suitability assessments/ongoing monitoring and the arrangements required for the assessment of KFHs), as well as the need for national competent authorities, when exercising their delegated powers at local level, to coordinate their approaches with a view to achieving greater standardisation of information requirements, particularly for senior executives and KFHs operating on a cross-border basis.

For these reasons, we propose amending the provision so that the Guidelines apply “within six months of the publication of the translations and, in any event, no later than 31 December 2027”.

- The Guidelines should also clarify whether, once the final version enters into force, institutions will be required to carry out a new suitability assessment of the members of the management body currently in office or whether the new Guidelines will only apply from the first renewal of the management body and KFH appointments.

Q3

Sufficient time commitment

Paragraph 50 should provide more detailed guidance on the methods and criteria to be used for the assessment and documentation of elements such as “active engagement”, which are inherently qualitative in nature and therefore difficult to translate into objective, measurable or formally documented parameters.

Calculation of the number of directorships

The Guidelines reveal a potential lack of clarity and a risk of inconsistent application in cases where individuals hold directorships across multiple jurisdictions, creating a concrete risk of divergent interpretations by national competent authorities.

Adequate knowledge, skills and experience

For the purposes of the individual suitability assessment, paragraph 69 includes, among other criteria, the “ability to express views and discuss business strategies and objectives”. The same criterion is also reflected in Article 6 of the draft RTS on the minimum content of the suitability questionnaire, with specific reference to the assessment of independence of mind.

We therefore request further guidance on the appropriate methods for identifying and assessing this capability. Consideration could also be given to relocating this criterion exclusively to Annex II of the Guidelines.

Collective suitability criteria

Among the areas of competence relevant for the assessment of collective suitability, paragraph 77 now includes:

- under point (j), “experience in fostering a culture that encourages challenge and scrutiny of board members’ decisions”; and
- under point (m), “ESG factors, ESG risks and their impacts”.

With regard to the competence referred to under point (j), we reiterate the observations made above concerning the criterion set out in paragraph 69.

With regard to ESG factors, the Guidelines should clarify that the assessment of collective competence across the three ESG pillars should be carried out in a manner proportionate to the risk profile and business model of the individual institution.

Independence of mind

With reference to paragraphs 93 and 95 (the so-called *cooling-off period*), we note that, already during the consultation on the Internal Governance Guidelines, which concluded in November 2025, the industry expressly called for the removal both of the cooling-off period applicable where a CEO or another senior executive assumes the position of Chair or non-executive member of the management body, and of the specific mitigating measures envisaged in relation to potential conflicts of interest.

This request was based on the premise that the case of a former CEO, another former executive member of the management body, or a former senior executive assuming the position of Chair or member of the management body in its supervisory function within the same institution is relevant only for the purposes of the formal independence requirements applicable to certain members of the management body and not for the purposes of the requirement of independence of mind, which applies to all members of the management body.

As an alternative to the approach proposed in the Guidelines, we therefore request clarification that an executive member of the management body, a senior executive of the institution, or a member of an executive committee who, upon completion of his or her mandate, assumes the position of Chair of the management body in its supervisory function or of a non-executive member of the management body should not be considered an “independent member” until the expiry of the period prescribed under the relevant national legislation governing independence requirements for suitability assessments.

In any event, the general safeguards applicable to the management of specific conflicts of interest should continue to apply, in accordance with the ordinary disclosure and abstention requirements already provided for under the company law framework of the respective Member States.

Q5

Diversity policy objectives

The concept of “diversity” is broadly defined in the Guidelines and encompasses, in addition to gender balance, other dimensions such as educational and professional background, age and, particularly for institutions operating internationally, geographical provenance. However, only gender balance is associated with quantitative targets, disclosure obligations and reporting requirements.

We consider it important for the Guidelines to provide further guidance on the other dimensions of diversity that are relevant for suitability assessments, in order to avoid situations where some competent authorities take into account the full range of diversity criteria while others focus almost exclusively on gender balance. Furthermore, when addressing these additional dimensions of diversity, the Guidelines should refer to qualitative objectives, given that the applicable regulatory framework provides for quantitative targets only in relation to gender balance.

With regard to paragraph 123 and the requirement to ensure gender balance in the composition of the nomination committee, we request clarification that this requirement may also be deemed satisfied where the committee includes at least one member belonging to the underrepresented gender.

In our view, this approach would appropriately take into account the concurrent need for institutions to ensure that nomination committee members possess professional profiles and expertise that are consistent with the committee’s mandate, which may not always allow institutions to achieve a more balanced gender representation within the committee.

Q9

Suitability assessment by competent authorities

The procedure and timeline for submitting applications in cases involving the appointment of an executive member of the management body or the Chair of the management body raise particular concerns, as the application must be submitted to the competent authority at least 30 days before the candidate takes up his or her duties.

In this regard, due consideration should be given to the critical importance of these positions for the governance of institutions and, consequently, to the need for such individuals to assume their functions without delay in order to ensure full continuity in these roles.

We therefore propose that the requirements set out in the Directive be deemed fulfilled through the submission by the institution — including prior to the formal appointment — of a simplified set of information, including the personal details of the candidate proposed by the shareholders and, for example, the candidate’s curriculum vitae. On the basis of such information, the supervisory dialogue with the competent authority could already commence.

Alternatively, we suggest referring directly to the relevant national provisions implementing Article 91(1)(d) CRD, while allowing the Guidelines to regulate only the arrangements governing the dialogue with the competent authority, as envisaged in paragraph 24 and paragraphs 217 et seq.

Reasonable grounds to suspect ML/TF activities or risks

It is unclear whether, for the purposes of the AML/CFT suitability assessment as proposed in the Guidelines, only the conduct of the individual concerned is relevant or whether consideration should also be given to positions held by that individual in other entities.

For example, a member of the management body may simultaneously hold a position in another entity that has been subject to a collective supervisory measure or public reprimand by a competent authority, a circumstance of which the institution conducting the assessment may have become aware through publicly available sources, such as the press, owing to the listed status of the entity concerned or of the funds managed by it.

If positions held in other entities are considered relevant, a further issue arises as to whether the mere fact that an individual has been associated, even only collectively, with circumstances potentially relevant from an AML/CFT perspective could, in itself, justify a finding that the candidate is not suitable.

It is therefore necessary for paragraph 26 of the Guidelines to provide further clarification both on the scope of application of these provisions and on the practical modalities for carrying out the assessment.

Q11

With regard to the suitability assessment matrix set out in Annex I, the information required concerning the professional experience and expertise of members of the management body appears excessively detailed.

We therefore propose simplifying the template through a comprehensive review of its structure, with a view to facilitating its practical use by institutions.