

# Guidelines compliance table

ESMA35-43-1215

Updated on 15 December 2021

Date of application – 30 June 2018

## 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 (ESMA71-99-598 (EBA/GL/2017/12))

The following competent authorities\* comply or intend to comply with the Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders<sup>1</sup>:

Member State	Competent authority	Relevant ESMA/EBA	Complies or intends to comply	Comments	
BE	Belgium	National Bank of Belgium	EBA	No	The National Bank of Belgium will generally and almost entirely comply with the EBA Guidelines on suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU (EBA/GL/2017/12). However, as some aspects in the Guidelines differ from the requirements laid down in the Law of 25 April 2014 on the legal status and supervision of credit institutions and stockbroking firms ("Banking Law"), the following aspects of the Guidelines will be taken into account as a good practice, rather than a formal requirement: <u>Calculation of the number of directorships (§§ 52-55 Guidelines)</u>

<sup>1</sup> Where the notifications provided by a competent authority to ESMA and the EBA are identical, they are represented in this compliance table in single consolidated form.



					<p>According to article 62, § 9 of the Banking Law, the exercise of several directorships in undertakings that form part of the group to which the institution belongs or of another group shall be counted as one single mandate. For the application of this article, "group" shall be understood to mean a set of undertakings that are formed by one parent undertaking, its subsidiaries, the undertakings in which the parent undertaking or its subsidiaries have a direct or indirect holding within the meaning of article 3, 26° of the Banking Law, as well as undertakings forming a consortium and undertakings that are controlled by the latter undertakings or in which these latter undertakings have a holding within the meaning of article 3, 26° of the Banking Law. Therefore, according to this article, the definition of group encompasses, amongst others, both subsidiaries and qualifying holdings. Consequently, the Banking Law does not require to count (i) directorships held within entities that belong to the group and (ii) directorships held in all qualifying holdings of the same group as two (separate) directorships. "Being independent" (§§ 91-92 Guidelines) In the Banking Law, independence of directors is defined with reference to the independence criteria laid down in article 526ter of the Belgian Companies Code. Although many of these criteria concur with the criteria listed under § 91 of the Guidelines, it is not an identical match (both wider and narrower). Moreover, the criteria of article 526ter of the Belgian Companies Code are mandatory: in case one of the criteria for being independent is not met, then, automatically, the person cannot be considered as independent anymore according to the Banking Law, which is more stringent than the approach put forward in §92. Therefore, where the Banking Law requires directors to be independent, this independence will in first instance be verified according to the legal criteria put forward in article 526ter of the Belgian Companies Code, while any additional criteria put forward in the</p>
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					<p>Guidelines will be applied as a good practice rather than a formal requirement.</p> <p><u>Assessment of the suitability of the CFO (in case not part of the management body) by the competent authority for significant CRD-institutions (§ 171 Guidelines)</u></p> <p>The Banking Law does not require the competent authority to assess the suitability of the CFO, where not part of the management body. However, it is to be highlighted that for significant CRD-institutions, based on sound prudential supervisory expectations, the CFO should in principle always be a member of the management body, in which case, the suitability will be assessed. Consequently, we expect this issue to be non-material in practice as currently we have not a significant CRD-bank where the CFO is not part of the management body.</p>
		Financial Services and Markets Authority (FSMA)	ESMA	Yes	As at 18.05.2018, notification date.
BG	Bulgaria	Българска народна банка (Bulgarian National Bank)	EBA	Yes	As at 25.10.2019, notification date.
		Financial Supervision Commission (FSC)	ESMA	Yes	As at 05.06.2020, notification date
CZ	Czech Republic	Czech National Bank (CNB)	EBA	Yes	As at 05.02.2019, notification date.
		Czech National Bank (CNB)	ESMA	Yes	As at 30.06.2018, notification date.
DK	Denmark	Finanstilsynet (Danish Financial Supervisory Authority)	ESMA	Intends to comply**	By 31.12.2018.
			EBA	Yes	As at 14.01.2019, notification date.
DE	Germany	Bundesanstalt für	EBA	No	BaFin intends to comply with the Guidelines by 31.12.2018 except for the provisions on formal independence (GL

		Finanzdienstleistungsaufsicht (Federal Financial Supervisory Authority, BaFin)			section 9.3) and the supervisory requirements regarding key function holders (GL para 170 ff.). We see no adequate legal basis for such rules in directive 2013/36/EU (CRD IV). In addition, as regards formal independence, the intended supervisory added value is not evident.
		Bundesanstalt für Finanzdienstleistungsaufsicht (Federal Financial Supervisory Authority, BaFin)	ESMA	No	BaFin intends to comply with the Guidelines by 31.12.2018 except for the provisions on formal independence (GL section 9.3). We see no adequate legal basis for such rules in directive 2014/65/EU (MiFID 2). In addition, as regards formal independence, the intended supervisory added value is not evident.
EE	Estonia	Finantsinspeksiioon (Financial Supervision Authority, FSA)	EBA/ESMA	Yes	As at 21.05.2018, notification date.
IE	Ireland	Central Bank of Ireland	EBA	Yes	As at 01.02.2019, notification date.
		Central Bank of Ireland	ESMA	Yes	As at 27.08.2018, notification date
EL	Greece	Bank of Greece	EBA	Intends to comply**	By such time as the necessary legislative or regulatory proceedings have been completed.
		Hellenic Capital Market Commission (HCMC)	ESMA	Yes	As at 23.05.2018, notification date.
HR	Croatia	Hrvatska narodna banka (National Bank Croatia)	EBA	No	As stated in our previous notification from 25 May 2018, CNB does not comply and does not intend to comply with parts of the Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body (EBA/GL/2017/12) with respect to Competent authorities assessment procedures for heads of internal control functions and the CFO as stipulated in points from 170. to 192. of the Guidelines. CNB will in accordance with the SREP Guidelines continue to assess the overall internal governance framework of the institutions and

					<p>whether the independent risk control function ensures that the institution's risk measurement, assessment and monitoring processes are appropriate. If there are doubts or detected serious deficiencies of the internal control functions and thus the appropriateness of the internal control framework and internal controls is considered inappropriate CNB will take appropriate supervisory measures.</p> <p>Most provisions of the 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 (EBA/GL/2017/12) have been implemented in the Decision on the assessment of the suitability of the chairperson of the management board, members of the management board, members of the supervisory board and key function holders in a credit institution (OG 93/2018).</p> <p>In addition, CNB sent in 2018 a Circular letter to credit institutions clarifying the supervisory expectation regarding these Guidelines.</p> <p>Implementing document: Decision on the assessment of the suitability of the chairperson of the management board, members of the management board, members of the supervisory board and key function holders in a credit institution, OG 93/2018 of 19 October 2018 Link: Decision on the assessment of the suitability of the chairperson of the management board, members of the management board, members of the supervisory board and key function holders in a credit institution</p> <p><a href="https://www.hnb.hr/documents/20182/526913/e-odluka-procjena-primjerenosti-predsjednik-ostali_93-2018.pdf">https://www.hnb.hr/documents/20182/526913/e-odluka-procjena-primjerenosti-predsjednik-ostali_93-2018.pdf</a></p>	
		Hrvatska agencija nadzor	za	ESMA	<b>Yes</b>	As at 16.05.2018, notification date.

		financijskih usluga (HANFA)			
ES	Spain	Banco de España	EBA	No	<p>Banco de España intends to comply with the Guidelines by 30.06.2018, except with respect to Guideline 91 (last sentence) and Guideline 186 as we consider them inconsistent with the Spanish national provisions implementing Directive 2013/36/EU. Please find below further details:</p> <ul style="list-style-type: none"> <li>Guideline 91, paragraph g (partially): the Spanish national provisions implementing Directive 2013/36/EU do not deal with the definition of independent directors. Spanish Corporate Act 10/2014 -in line with the UE "Commission Recommendation on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board of 15 February 2005"- sets forth for listed companies a cooling-off period of 1 year for professional advisers or material consultants, while the Guidelines extend it to 3 years.</li> <li>Guideline 186 (partially): Spanish law sets forth a 3 months term for the competent authority to issue a resolution on the suitability other individual being assessed. However, in those cases where the procedure has been suspended, Spanish law does not specifically foresee a maximum term of 6 months to render a decision.</li> </ul>
		Comisión Nacional del Mercado de Valores (CNMV)	ESMA	Intends to comply**	By end 2018.
FR	France	Autorité de Contrôle Prudentiel et de Résolution	EBA	No	<p>The ACPR intends to comply with the Guidelines with the exception of those paragraphs relating to the supervisory authority's assessment of the suitability of key functions holders.</p> <p><u>Non-compliance on the supervisory authority's assessment of the suitability of key functions Holders</u></p> <p>The declaration of non-compliance applies to paragraphs 162 and 176 (transmission to the competent</p>

					<p>authority of the results and documentation relating to the internal evaluation) and paragraphs 171 and 172 (assessment of the suitability of internal control functions managers and the Chief Financial Officer by the competent authority).</p> <p>In the current state of the French legal framework, the ACPR cannot comply with the above mentioned paragraphs. Actually, the suitability assessment of key functions holders is neither explicitly provided for in CRD IV nor in the French provisions and, at this stage. Current legislative provisions on the suitability requirements and assessments can be found in the French Monetary and Financial Code (see in particular articles L.511-51, L.533-25, L.612-23-1). In compliance with these provisions, the ACPR performs suitability assessments for members of the management bodies, and only carries out a formal assessment of the suitability of internal control managers when institutions are being authorized and in case of shareholding changes. The Guidelines go further than these provisions by requesting an external suitability assessment by the competent authority of Key Function Holders at each appointment or renewal. Against this background, the ACPR does not intend to comply with paragraphs 162,171, 172 and 176.</p> <ul style="list-style-type: none"> <li>• Any other additional information that may be necessary:             <ol style="list-style-type: none"> <li>1) Please note that ACPR intends to comply with the paragraphs relating to the presence and the definition of independent members, but under two reserves of interpretation that it deems allowed by the text:                 <ul style="list-style-type: none"> <li>- formal independence of the members of the management body and the members of the Risk Committee and the Nomination Committee does not constitute a suitability criterion, which would be enforceable in the context of examination of an individual application. Pursuant to the French law, indeed the implementation of the guidelines cannot lead to the refusal on this sole ground of an individual application under the "fit</li> </ul> </li> </ol> </li> </ul>
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					<p>and proper" assessment. In addition, except for the specific case of audit committees of public-interest entities, for which Article L. 823-19 of the Commercial Code provides, in principle, for the presence of an independent member, under the transposition of Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, the presence of independent members in management bodies and other committees is considered by ACPR a good practice to be encouraged but is not as legal or regulatory requirement.</p> <p>- In law, failure to comply with one or more of the criteria listed in the guidelines (paragraph 91) does not constitute a presumption of non-independence. Noncompliance with these criteria does not exhaust the notion of independence and the analysis of this quality must also take into account other measures, in particular those that would be developed by French institutions in the context of laws and regulations in force and which could achieve the same objective of independence.</p> <p>2) Please note that the Autorité de contrôle prudentiel et de résolution (ACPR) published on 05 June 2018 on its official register a notice declaring its partial compliance with the Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body (EBA/GL/2017/12) by 30 June 2018.</p>
		Autorité des Marchés Financiers (AMF)	ESMA	No	<p>The AMF complies with the joint Guidelines to assess the suitability of members of management body and key function holders except for paragraphs 162, 171, 172 and 176 of the guidelines for the reasons detailed below.</p> <p>The AMF receives the information on key function holders ("KFH") from the Autorité de Contrôle Prudentiel et de Résolution ("ACPR"), which is the French competent authority to authorise investment firms and/or credit institutions providing investment services. Since CRD IV and MiFID II do not provide for the notification to</p>



					competent authorities of the nomination of KFH during the lifecycle of a firm or institutions, and the assessment of such persons as a result, the AMF cannot comply with paragraphs 162, 171, 172 and 176 of the guidelines.
IT	Italy	Banca d'Italia	EBA	<b>Intends to comply**</b>	By such time as the necessary legislative preceding have been completed. According to Italian Law, suitability requirements for members of the management body and key Junction holders of banks and investment firms must be set in two decrees of the Ministry of Economy and Finance. The Bank of Italy is called to provide an opinion, jointly with the Consob for requirements that apply to investment firms management body and KFH. The decree regarding suitability requirements for banks board members and KFHs was published for consultation in August 2017. It is expected that such a decree could be issued in a short period of time. For suitability requirements applicable to investment firms more time might be needed. The Bank of Italy deems important that the forthcoming national rules on suitability requirements be compliant with the EBA - ESMA Guidelines (as well as other relevant standards); in releasing its opinions to the Ministry, the Bank of Italy strives to achieve this goal. Few marginal pieces of the EBA – ESMA Guidelines are under the direct remit of the Bank of Italy and are already largely compliant with the Guidelines; the Bank of Italy will be able to assess the need for their fine-tuning only once the new decrees will be enacted and their practical impact considered.
		Commissione Nazionale per le Società e la Borsa (CONSOB)	ESMA	<b>Intends to comply**</b>	By such time as the necessary legislative or regulatory proceedings have been completed. The consolidated Law on Finance no. 58/98 as subsequently amended delegates the establishment of suitability requirements of members of the board and key function holders to the Ministry of Economy and Finance. Consob informed the Ministry about the need to amend the Ministerial Decree no. 468/1998 (which is currently under

					revision) in order to fully implement the guidelines.
		Central Bank of Cyprus	<b>EBA</b>	<b>Yes</b>	As at 08.03.2021, notification date.
CY	Cyprus	Cyprus Securities and Exchange Commission (CySEC)	<b>ESMA</b>	<b>Intends to comply**</b>	By 1 January 2019. CySEC has complied with the guidelines by 30 June 2018 by issuing the following circular <a href="https://www.cysec.gov.cy/CMSPages/GetFile.aspx?guid=37222c3a-5e81-43d7-84b9-3445dca9adb0">https://www.cysec.gov.cy/CMSPages/GetFile.aspx?guid=37222c3a-5e81-43d7-84b9-3445dca9adb0</a> , except from the part requiring NCAs to assess the suitability of certain key function holders in relation to Significant CRD Institutions. Such arrangement requires legislative amendments. CySEC will issue a consultation paper in the coming weeks proposing the assessment of these as also of additional key function holders in relation to all Cyprus Investment Firms. The feedback will be evaluated and based on the outcome the necessary amendments will be made in our national legislation in order to incorporate such practice into regulatory framework.

LV	Latvia	Financial and Capital Market Commission (FCMC)	EBA/ESMA	<b>Yes</b>	As at 09.03.2021, notification date. <a href="https://www.fktk.lv/en/law/credit-institutions/fcmc-regulations-en/regulation-on-the-assessment-of-the-suitability-of-the-executive-and-supervisory-board-members-and-key-function-holders/">https://www.fktk.lv/en/law/credit-institutions/fcmc-regulations-en/regulation-on-the-assessment-of-the-suitability-of-the-executive-and-supervisory-board-members-and-key-function-holders/</a>
LT	Lithuania	Bank of Lithuania	EBA	<b>No</b>	Bank of Lithuania will comply with the Guidelines on the assessment of the suitability of members of the management body and key function holders except for the provisions relating to suitability assessment of key function holders (except for internal auditor) to be carried out by competent authority (Title VIII, sections 23-24) due to the following reasons: 1) Key function holders are not considered to be the managers of a

					<p>credit institution according to CRD IV; 2) the Bank of Lithuania would prefer to leave the assessment of key function holders within the competence of a supervised entity as credit institutions, with the managers approved by competent authority, are considered to be competent enough to carry out the assessment of key function holders themselves;</p> <p>3) the assessment of key function holders, carried out by competent authority, would increase administrative burden to both supervised entity and competent authority.</p> <p>According to Lithuanian legislation, key function holders (except for internal auditor) do not need the permission of supervisory authority to hold the positions of key function holders.</p>
		Bank of Lithuania	ESMA	No	<p>Bank of Lithuania will comply with the Guidelines on the assessment of the suitability of members of management body and key function holders except for the provisions relating to suitability assessment of key function holders (except for internal auditor) to be carried out by competent authority (Title VIII, sections 23-24) due to the following reasons:</p> <p>1) Key function holders are not considered to be the managers of a credit institution according to CRD IV; 2) the Bank of Lithuania would prefer to leave the assessment of key function holders within the competence of a supervised entity as a credit institutions, with the managers approved by competent authority, are considered to be competent enough to carry out the assessment of key function holders themselves; 3) the assessment of key function holders, carried out by competent authority would increase administrative burden to both supervised entity and competent authority.</p>
LU	Luxembourg	Commission de Surveillance du Secteur Financier (CSSF)	EBA	Yes	<p>As at 05.03.2021, notification date. <a href="https://www.cssf.lu/wp-content/uploads/cssf12_552eng.pdf">https://www.cssf.lu/wp-content/uploads/cssf12_552eng.pdf</a></p>

		Commission de Surveillance du Secteur Financier (CSSF)	<b>ESMA</b>	<b>Intends to comply**</b>	By such time as the necessary legislative or regulatory proceedings have been completed. The regulatory proceeding including the elements covered by the Guidelines are currently under review and update (est. end 2018).
HU	Hungary	Magyar Nemzeti Bank (National Bank of Hungary, MNB)	<b>EBA</b>	<b>Yes</b>	As of date of notification, i.e. 16.11.2021.
		Magyar Nemzeti Bank (National Bank of Hungary, MNB)	<b>ESMA</b>	<b>Yes</b>	As of date of notification, i.e. 16.11.2021.
MT	Malta	MFSA	<b>EBA</b>	<b>Yes</b>	As at 04.02.2019, notification date.
		MFSA	<b>ESMA</b>	<b>Yes</b>	As at 20.10.2021, notification date
NL	Netherlands	De Nederlandsche Bank	<b>EBA</b>	<b>Intends to comply**</b>	By such time as the necessary regulatory proceedings have been completed. Regarding the concept of formal independence, the Dutch Corporate Governance Code is not fully in line with the Guidelines on the assessment of the suitability of members of the management body. DNB is currently examining how to address these differences and what the cross sectoral consequences would be. In anticipation of these regulatory proceedings, DNB intends to comply with the Guidelines on the assessment of the suitability of members of the management body.
		Netherlands Authority for the Financial Markets (AFM)	<b>ESMA</b>	<b>Yes</b>	As at 23.05.2018, notification date.
AT	Austria	Austrian Financial Market Authority (FMA)	<b>EBA</b>	<b>Yes</b>	By 01.07.2019. The concept of independent members is not inherent to the Austrian legislation applicable to corporations. Therefore a legal basis is needed that introduces the concept of independent members to the supervisory board under Austrian law. A government bill has been passed to parliament to vote on (amending the Austrian Banking Act (BWG; Bankwesengesetz)) in order to allow for a formal independence requirement. While the aforementioned amendment

					<p>will enter into force on 1 January 2019, it will contain a transitional period until 1 July 2019 for implementation. Institutions will have to take into consideration the new independence criteria if any member of the supervisory board is changed on/after 1 January 2019. However all institutions' supervisory boards will have to show a sufficient number of independent members at latest by 1 July 2019. Hence the FMA does intend to comply with the guidelines with effect from 1 July 2019.</p> <p>Update 16.12.2019: By letter of 16 December 2019, the FMA has notified the EBA that it is fully compliant with the guidelines as of 1 July 2019.</p> <p>'In reference to our compliance declaration of 18 May 2018 in which we declared that the FMA "intends to comply" with the 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 with effect from the entry into force of corresponding national legislation, we would like to confirm the following:</p> <p>Following the entry into force of the Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU on 30 June 2018 and corresponding national legislation, the FMA has been fully compliant with these Guidelines with effect from 01 July 2019.'</p>
		Financial Market Authority (FMA)	ESMA	Yes	As at 16.05.2018, notification date.
PL	Poland	Komisja Nadzoru Finansowego (KNF)	EBA	Intends to comply**	By such time as the necessary legislative proceedings have been completed. The full compliance will only be possible, after the amendment of Polish regulatory framework (specifically - the

					<p>Banking Act), in the area of the personal data protection issues.</p> <p>The legislative proceedings in the above-mentioned scope, have already been initiated. However, the date, by which those proceedings will be completed, is yet unknown.</p> <p>Guidelines will be implemented also under Regulation of the Minister of Finance regarding technical and operational requirements of investment firms, banks referred to in Article 70(2) of the Act on Trading in Financial Instruments, and custodian banks. Currently this Regulation is being discussed between the Ministry of Finance, market participants and KNF. Please see below a link where you can find details of legislative proceedings: <a href="https://legislacja.rcl.gov.pl/projekt/12308800">https://legislacja.rcl.gov.pl/projekt/12308800</a> We assume that the Guidelines will be implemented by the end of June 2018.</p>
		Komisja Nadzoru Finansowego (KNF)	ESMA	Yes	As at 23.06.2018.
PT	Portugal	Banco de Portugal	EBA	Intends to comply**	<p>By such time as the necessary legislative or regulatory proceedings have been completed. Banco de Portugal is compliant with most of the provisions of EBA/GL/2017 /12 ("the Guidelines"), which are reflected in the legislation and regulation currently in force in Portugal, notably in the Legal Framework of Credit Institutions and Investment Firms and in the regulation "Instrução do Banco de Portugal n.º 12/2015". Furthermore, Banco de Portugal addressed a Circular Letter (CC/2018/00000018, dated 22 February 2018) to the credit institutions and investment firms included in the scope of application of the Guidelines informing about its publication and encouraging the addresses to adopt the necessary measures to comply with the guidelines as of 1 July 2018. In this Circular Letter, Banco de Portugal highlighted that institutions should comply with the Guidelines that are to be applied in the context of the legislation and regulations in full force and effect, specifically as a complement</p>

					<p>to the Legal Framework of Credit Institutions and Investment Firms as regards this subject matter. The Carta Circular is available at the following link:<a href="https://www.bportugal.pt/sites/default/files/anexos/cartas-circulares/295915471_5.docx.pdf">https://www.bportugal.pt/sites/default/files/anexos/cartas-circulares/295915471_5.docx.pdf</a></p> <p>Nevertheless, there are three specific aspects mentioned in the Guidelines with which Banco de Portugal cannot ensure compliance by the application date of the Guidelines, but intends to comply with by such time as the necessary legislative or regulatory proceedings have been completed. These aspects are as follows:</p> <p>1) Competent authority's suitability assessment of key function holders (mentioned in section 23. of Title VII of the Guidelines) The existing national legal framework establishes that institutions must assess the suitability of their key function holders. However, under that legal framework, Banco de Portugal will only assess the suitability of key function holders if it considers that a particular circumstance was not properly assessed by the institution or based on new facts that come to Banco de Portugal's attention. In order for Banco de Portugal to assess the suitability of key function holders of significant CRD institutions as provided in the Guidelines a specific binding regulation will have to be enacted. This will probably not take place by the application date of the Guidelines, but it is expected to occur until the end of 2018.</p> <p>2) Calculation of the number of directorships (mentioned paragraphs 52 and 53 of section 5. of Title III of the Guidelines) Whereas paragraph 52 of the Guidelines establishes that all directorships held within the same group count as a single directorship, the Portuguese legal framework provides that directorships held in entities included in the same consolidated supervision perimeter will be count as a single directorship. Hence, in this particular aspect Banco de Portugal cannot ensure compliance with the Guidelines, but only because it follows a more restrictive criterion when it comes</p>
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				<p>to the counting of directorships in a group context. In fact, the rules for calculating the number of directorships set forth in the Portuguese legal framework are more narrow and rigorous for institutions than the one that results from the application of paragraph 52 of the Guidelines, which is also the criterion used in most Member States. Furthermore, when it comes to the counting of directorships held in undertakings in which the institution has qualifying holdings, which are counted as a single directorships, paragraph 53 of the Guidelines provides that this single directorship in qualifying holdings counts as a separate single directorship, i.e., the directorship held within the same institution and the single directorship in its qualifying holdings together count as two directorships. Banco de Portugal in its supervisory practice does not follow this rule, which means that those directorships together count as one directorship only. This is due to the fact that under Portuguese law institutions are subject to a stricter criterion for calculation of the number of directorships within a group context (as mentioned above) and therefore this rule in paragraph 53 of the Guidelines should not be applied for the time being in order to level the assessment with the remaining Member States. Nevertheless, Banco de Portugal is working on a proposal to amend the Legal Framework of Credit Institutions and Investment Firms, which will entail a broad revision of the existing provisions, including the issues mentioned above in order to ensure full compliance with the provisions of the Guidelines. This proposal will be presented to the Portuguese Government, which is the competent entity to enact the corresponding legal instrument.</p> <p>3) Possibility of performing the individual and collective suitability assessment after the person's appointment in exceptional cases (mentioned paragraphs 135 and 139 of section 17. of Title VII of the Guidelines). The possibility of institutions appointing members of the management body</p>
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					without a prior suitability assessment, based on exceptional circumstances established in paragraph 135 of the Guidelines, is not currently foreseen under Portuguese law. Nevertheless, the aforementioned proposal to amend the Legal Framework of Credit Institutions and Investment Firms in which Banco de Portugal is working on foresees this particular issue in order to ensure full compliance with the provisions of the Guidelines. As mentioned above, this proposal will be presented to the Portuguese Government, which is the competent entity to enact the corresponding legal instrument.
		Comissão do Mercado de Valores Mobiliários (CMVM)	ESMA	Yes	As at 24.10.2018, notification date.
RO	Romania	National Bank of Romania	EBA	Yes	As at 09.03.2021
		Romanian Financial Supervisory Authority (ASF)	ESMA	Yes	As of 23.09.2021. ASF, as authority competent for investment firms under the scope of these guidelines, adopted Regulation no.1/2019 regarding the assessment of the suitability of members of the management body and key function holders within the entities regulated by ASF, published in the Romanian Official Journal, Part I, no 107/12.02.2019. The regulation can be accessed here: <a href="https://www.asfromania.ro/ro/a/1653/regulament-nr.-1/-2019-privind-evaluarea-%C8%99i-aprobarea-membrilor-structurii-de-conducere-%C8%99i-a-persoanelor-care-de%C8%9Bin-func%C8%9Bii-cheie-%C3%AEn-cadrul-entit%C4%83%C8%9Bilor-reglementate-de-asf---forma-consolidat%C4%83,-iunie-2020">https://www.asfromania.ro/ro/a/1653/regulament-nr.-1/-2019-privind-evaluarea-%C8%99i-aprobarea-membrilor-structurii-de-conducere-%C8%99i-a-persoanelor-care-de%C8%9Bin-func%C8%9Bii-cheie-%C3%AEn-cadrul-entit%C4%83%C8%9Bilor-reglementate-de-asf---forma-consolidat%C4%83,-iunie-2020</a>
SI	Slovenia	Banka Slovenije	EBA	No	In carrying the tasks and powers of supervision In accordance with Banking Act and Regulation (EU) No. 575/2013, the Bank of Slovenia does not, and does not intend to comply with the Guidelines within the scope of those provisions of Title VIII of the Guidelines that relate to the supervisory assessment of the



					<p>suitability of Heads of Internal control functions and of the Chief Financial Officer when these persons are not members of the governing body. Bank of Slovenia intends to comply with the rest of the Guidelines by 30 June 2018. In our view the supervisory assessment of KFH - applicable to the suitability assessment of members of the management body of Institutions, as well as the heads of Internal control functions and the CFO, where they are not part of the management body, in the case of significant CRD-institutions, para 170) - is not reasonable nor proportionate in the conditions of relatively small banks (which is the case in Slovenia compared to EU systemically important Institutions). Namely, this could result in an inappropriate interference to internal governance arrangements of particular Institution. We believe that the supervisor should particularly monitor the effectiveness of the institution's internal governance arrangements and how the Individual KFH contributes to these processes, but not also to assess the professional qualifications of these persons. The choice of these persons should be, in particular, the result of professional decision of the bank in accordance with its needs (size of the bank, riskiness of their portfolios, types of products, internal organization issues, nature, scope and complexity of its activities, risk management systems). Furthermore, these persons carry out their activities within the expert (and not management) functions of the bank. In our opinion the supervisor could find it difficult to adequately assess the professional qualifications of the KFH in relation to the actual needs of the bank, especially for persons who are (yet) not known in the wider banking environment. This could be the case in the smaller banking systems (as in Slovenia). Furthermore, a multiple consecutive negative supervisory assessment of the suitability of the candidates for KFH functions may result in vacant managerial positions of functions in question for a longer period (months, even years), considering the</p>
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					length of supervisory suitability assessment procedures and the length of selection processes in banks. Any other additional information that may be necessary: Slovenian Banking Law does not provide a legal basis for the supervisory assessment of the suitability of the KFH. The Banking Law should therefore first be amended to allow the full compliance with the guidelines.
		Securities Market Agency (SMA)	ESMA	Yes	As at 21.05.2018, notification date.
SK	Slovakia	Národná Banka Slovenska (National Bank of Slovakia, NBS)	EBA	Intends to comply**	By 01.07.2020.
		Národná Banka Slovenska (National Bank of Slovakia, NBS)	ESMA	Intends to comply**	By 01.07.2020.
FI	Finland	Finanssivalvonta (FIN-FSA)	EBA/ESMA	Intends to comply**	By such time as necessary legislative and/or regulatory proceedings have been completed.
SE	Sweden	Finansinspektio nen (The Swedish Financial Supervisory Authority, FI)	EBA/ESMA	No	Does not comply and does not intend to comply with certain parts of the Guidelines and recommendations. Sweden does not comply and does not intend to comply with certain parts of the Guidelines. Non-compliance is for the most part due to Swedish law or binding regulation, which makes it impossible for the Swedish FSA to comply with the Guidelines. The specific reason for noncompliance is set forth below: <b>Paragraph 171</b> Swedish law does not provide for suitability assessments of key function holders. Consequently, those parts of the Guidelines which concern the competent authorities obligations in relation to the suitability assessment of key function holders will not be implemented in Sweden. For the same reason, will paragraph 164 nor be implemented in Sweden. Any other additional information that may be necessary:

					<p><b>Paragraph 174</b> For the avoidance of doubt, the Swedish regulation allows suitability assessment before and after the appointment. Therefore, it should be noted that institutions under the supervision of the Swedish FSA are allowed to notify the Swedish FSA either before or after the appointment.</p> <p><b>Section 9.3 (paragraphs 88-93)</b> Pursuant to paragraph 88 it should be considered good practice to have independent members in the management body for CRD-institutions. In other words this means that the comply or explain scheme does not apply to this section for CRD-institutions.</p> <p><b>Section 15 (paragraphs 124-128)</b> For the avoidance of doubt, according to Swedish law the management body does not have competence in the process of selection and appointment of any of its members. As stated in paragraph 128 the section on nomination committee and its task is thus not applicable in Sweden.</p> <p><b>Annex III paragraph 4.1</b> According to this paragraph criminal records are required to be submitted to the Swedish FSA for each suitability assessment. However, as part of the suitability assessment the Swedish FSA request criminal records directly from the Police Authority. Therefore, there is no need to submit a criminal record to the Swedish FSA as part of the application of each suitability assessment.</p>
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**EU Institutions – Agencies**

ECB	ECB	ECB	EBA	Yes	As at 22.05.2018, notification date. The ECB's compliance with the EBA Guidelines should be considered as operating within the limit of, and without prejudice to, national provisions transposing Directive 2013/36/EU.
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**EEA – EFTA State**

IS	Iceland	Fjármálaeftirliti ð (Financial Supervisory	EBA	Intends to comply**	By such time as the necessary legislative or regulatory proceedings have been completed.
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		Authority Iceland)			
LI	Liechtenstein	Financial Market Authority Liechtenstein (FMA)	<b>EBA</b>	<b>Yes</b>	As at 17.05.2018, notification date.
		Finanzmarktauf sicht (FMA)	<b>ESMA</b>	<b>Intends to comply**</b>	By such time the legislative or regulatory proceedings for the incorporation of MiFID II and MiFIR in the EEA agreement will be completed
NO	Norway	Finanstilsynet	<b>EBA</b>	<b>Yes</b>	As at 16.05.2018, notification date.

GB	United Kingdom***	Prudential Regulation Authority	<b>EBA</b>	<b>Yes</b>	As at 14.05.2018, notification date.
		Financial Conduct Authority (FCA)	<b>ESMA</b>	<b>Yes</b>	As at 18.05.2018, notification date.
GI	Gibraltar***	Gibraltar Financial Services Commission	<b>EBA/ESMA</b>	<b>Yes</b>	As at 04.06.2018, notification date.

\* The competent authorities of the EEA States other than the Member States of the European Union are required to notify their compliance with ESMA’s Guidelines relating to a legal act that has been incorporated in the EEA Agreement. This compliance table reports on Guidelines relating to MiFID II<sup>2</sup> and CRD IV<sup>3</sup>, which have been incorporated in the EEA Agreement.

\*\* Please note that, in the interest of transparency, if a competent authority continues to intend to comply after the application date, it will be considered “non-compliant” unless (A) the Guidelines relate to a type of institution or instruments which do not currently exist in the jurisdiction concerned; or (B) legislative or regulatory proceedings have been initiated to bring any national measures necessary to comply with the Guidelines in force in the jurisdiction concerned.

\*\*\* The United Kingdom formally left the EU on 31 January 2020, following which the withdrawal agreement entered into force. The withdrawal agreement marked the start of a transition period which lasted until 31 December 2020, whereby the UK was no longer an EU Member State but EU

<sup>2</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast).

<sup>3</sup> Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.



law continued to apply to it. The compliance status recorded in this table for the competent authorities of the United Kingdom and the European territories for whose external relations it is responsible under Article 355(3) TFEU (Gibraltar) therefore reflects their compliance status as at 31 December 2020 and is retained for the purpose of historical information. Please note that, from 1 January 2021, EU law no longer applies to those competent authorities.

### Notes

Article 16(3) of the EBA and ESMA's Regulations requires national competent authorities to inform us whether they comply or intend to comply with each Guideline or recommendation we issue. If a competent authority does not comply or does not intend to comply it must inform us of the reasons. We decide on a case by case basis whether to publish reasons.

The EBA and ESMA endeavour to ensure the accuracy of this document, however, the information is provided by the competent authorities and, as such, the EBA and ESMA cannot accept responsibility for its contents or any reliance placed on it.

For further information on the current position of any competent authority, please contact that competent authority. Contact details can be obtained from the EBA and ESMA's website [www.eba.europa.eu](http://www.eba.europa.eu) , [www.esma.europa.eu](http://www.esma.europa.eu)