

**AFG RESPONSE TO THE ESMA AND EBA CONSULTATION
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**

General comments

The Association Française de la Gestion financière (AFG) ¹ is grateful to have the opportunity to respond to the ESMA and EBA's consultation on the assessment of the suitability of members of the management body and key function holders under CRD 4 and MIFID 2 directives. AFG fully supports the authorities' objective to seek feedback from the stakeholders on this matter, which is of utmost importance.

As a preliminary comment it seems to us that soft law is the most suited solution concerning the topic of governance, particularly as regards to asset management companies. It is essential to allow a flexibility to offer the most appropriate framework to all structures.

It is essential for the management body to have a maximum of efficiency, which requires among other things, that the composition of the body be proportionate to the size of the entity.

French asset managers are aware that the key point is to ensure that investor protection, market integrity and financial stability are fully endorsed as key requirements by the firm and that the Board has to give the pace and show its total dedication to those objectives. Both collectively and individually, members of the Board have to take the necessary steps to ensure efficiency and effective control of the management.

Particular attention should be paid to maintaining the competitiveness of European asset management players which involves:

- avoiding an unfair and inadequate extension of banking concepts to subsidiaries not exercising banking activity, and
- aiming to only apply these guidelines to subsidiaries having a significant impact on the risk profile of the investment firms' group. This means to take into account appropriateness to their size, organization and the nature, scope and complexity of their activities.

¹ The Association Française de la Gestion financière (AFG) represents the France-based investment management industry, both for collective and discretionary individual portfolio managements. 600 management companies are based in France. AFG members manage 3,600 billion euros, making the Paris fund industry a leader in Europe for the financial management of collective investments (with 1,700 billion euros managed from France, i.e. 19% of all EU assets managed in the form of investment funds). In the field of collective investment, our industry includes – beside UCITS – the whole range of AIFs, such as: employee savings schemes, regulated hedge funds/funds of hedge funds, private equity funds, real estate funds and socially responsible investment funds. AFG is an active member of the European Fund and Asset Management Association (EFAMA) and of PensionsEurope. AFG is also an active member of the International Investment Funds Association (IIFA).

If we were to summarize our position and main comments on the proposed guidelines, we would list our main concerns as follows:

- The definition of a limited number of entities within a group (conceived in a different manner than a banking group for prudential regulation purpose) that will have to directly apply the guidelines, the others relying on the compliance at the top of the group or subgroup;
- The neutrality towards dual or unitary Board structure
- The necessity to introduce more proportionality with the complexity/simplicity of the firm and its activities;
- The need for flexibility in the application of the guidelines in order to better adjust to realities of a firm; in particular the ability to mutualize the nomination committee in a group or a sub-group, as is already allowed for the remuneration committee
- The limitation of extraterritorial application of these guidelines which intend to harmonize practices in the EU and should not impact non EU subsidiaries governed by local legislation, particularly for asset management entities;
- The maximum limitation of the guidelines to the professional sphere, notably in terms of time commitment. This means no obligation to collect time commitment on private – i.e. non paid and non-employer-related – activities.

In addition, the following technical items are also very important:

- The definition of the independence of a director, which appears to be too restrictive
- The neutrality of European regulation vis à vis ex ante or ex post clearance of appointments by the competent authority should be assured
- The evidence that honesty, integrity as well as independence of mind cannot be quantified and are assessed in a subjective manner through direct contact with the candidate;
- Cross checking obligations should be limited to easily accessible official data / have a “reasonable efforts” limitation
- The Board or management body’s confidentiality, which does not systematically allow for all authorities to be an observer, in particular for asset management entities.



Q1: Are there any conflicts between the responsibilities assigned by national company law to a specific function of the management body and the responsibilities assigned by the Guidelines to either the management or supervisory function?

We approve the clarification given in the box under §6 on the relative responsibilities of the management and the supervision body. We have already worked with AMF to determine, under UCITS 5 for example, what is the management body under French law. We now feel confident that the area has been largely cleared .

We agree that regulators should not take a view on the advantages or drawbacks of either the unitary or the dual structure for the Board.

Please also include the notions indicated in § 116 of the guidelines (cf. our answer to question 10 below).

Q2: Are the subject matter, scope and definitions sufficiently clear?

We suggest that a new definition be introduced: “Competent authorities”. In the present guidelines, “Competent authorities” must be understood as EU competent authorities. In particular for asset management activities, these guidelines have no power to describe what should be the conduct of third country authorities in the matter of collaboration and exchange of information for example.

Considering definitions, we also suggest that the meaning of “entities that do not pursue predominantly commercial objectives” that appears in §53 be transferred to §13 among the other definitions as it is a definition which is used not only in §53 but also in §39 (d).

Q3: Is the scope of assessments of key function holders by CRD-institutions appropriate and sufficiently clear?

As a reminder, Portfolio Management Companies are generally not directly subject to CRD, as CRD’s scope definition in article 4.1 of CRR 575/2013, excludes companies which do not take clients’ deposits. However, EU law currently defines an oversight duty under CRD IV’s art 109, and CRR 575/2013 art 4.26, where asset management subsidiaries are deemed part of the prudential consolidation perimeter. This creates layering of regulations, notably in the field of remuneration, adding unnecessary complexity and often inadapated one-size-fits-all situations between banking and asset management sectors.

Q4: Do you agree with this approach to the proportionality principle and consider that it will help in the practical implementation of the guidelines? Which aspects are not practical and the reasons why? Institutions are asked to provide quantitative and qualitative information about the size, internal organization and the nature, scale and complexity of the activities of their institution to support their answers.

We do support the application of proportionality in the guidelines. As a general rule we consider it to be fair when properly applied. Thus, we totally share the view in §35 that there is no room for proportionality when it comes to integrity or honesty: they are matters of conduct that cannot suffer sub-standard appraisal. The same in our view with independence of mind. But we do not believe that when the regulator asks for a full dossier to be prepared to justify the application of proportionality it helps smaller firms. The rationale for proportionality is that simpler situations allow simpler monitoring and organization.

The main cases for proportionate application of the guidance relate especially in our view to the size of the board and the education and training of Board members which should be adapted to the complexity of the firm. Furthermore, within a group, technical entities (see below some examples in our response to Q5) should be exempted provided that the top company in the group is compliant...(see also our “Identified Entities” proposal in answer to question 5 below).

Q5: Do you consider that a more proportionate application of the guidelines regarding any aspect of the guidelines could be introduced? When providing your answer please specify which aspects and the reasons why. In this respect, institutions are asked to provide quantitative and qualitative information about the size, internal organization and the nature, scale and complexity of the activities of their institution to support their answers.

See also our general comment on proportionality above in question 4.

The proportionate application of the guidelines is essential in order not to spread rules where they are either unnecessary or inappropriate, which would risk burdening the competitiveness of our entities, which means:

- avoiding an unfair and inadequate extension of banking concepts to subsidiaries not exercising banking activity. Asset management is a specific industry: it should be reminded that asset management companies, unlike banks, bear no credit risks on their balance sheets, as they are agents providing investment services on behalf of their clients who own the assets (and retain them on their balance sheets).
- limiting the perimeter (scope) to the EU regulated entities, particularly for asset managers
- strictly limiting detailed application to subsidiaries having a significant impact on the risk profile of the group, which could be called “ Identified Entities”, i.e. drawing on experience, policies and processes implemented for remuneration governance of so-

called “identified staff”. As for identified staff it should be left with institutions to determine their list of identified entities, with their own procedure and practice.

It would be logical that within a group only identified entities should be subject to the guidelines and that smaller entities should be able to benefit from procedures applying at group level. Entities within the same group that conduct the same type of activities (intermediation, banking, asset management)...could be grouped and these guidelines should apply in detail to one or a few entities in the same sector, the “identified entities”. Some companies are set up for technical purpose (link with a distributor, tax, history, niche strategy, capital structure...) where the management body does not need full governance standards as set out in the guidelines, to be applied, provided that those firms rely on the procedures at group level to show compliance.

Also, it would help if, akin to the remuneration committee for remuneration governance in other ESMA Guidelines (e.g. Guidelines ESMA 2016/411, relating to remuneration in UCITS & AIFMs), the guidelines made it clear that, in the context of a group, a nomination committee could be established at a group or a sub-group level. For example, such nomination committee would assess the suitability of a candidate to the management body of the identified entities of the group (or the sub-group).

Q6: Are the guidelines with respect to the calculation of the number of directorships appropriate and sufficiently clear?

With regard to the time commitment of members of the management body, we do not agree with the approach that is suggested in the guidelines. Regarding § 38, if a “buffer” of spare time were to be factored in the appraisal of time commitment, it should be mutualized across mandates held by a given individual.

We disagree on §39 (d) and (g): Both criteria refer to the personal, non-professional activities of the board member, and we believe that his or her ability to devote sufficient time to the board responsibilities should be based on professional activities relative to the working day and year, and not to the amount of private time the candidate has and how he/she allocates it. The honesty which we require from a board member includes for him/her to dedicate a sufficient time for his mandate. It seems neither practically feasible nor desirable (with a risk of contradiction with article 8 of the European Court of Human Rights -ECHR on the right for the respect for privacy) to require institutions to investigate the private life of board members. We would suggest that board members give evidence themselves that they dedicate sufficient time to their mandate. The time commitment identification & records should be strictly limited to the professional activities, leaving full privacy to individuals for the time they commit to their private – i.e. non paid and non-employer-related - activities.

We do not think appropriate that the firm should define a quantitative time commitment nor refer to benchmarks, nor, as required in §42, monitor the exact amount dedicated to their job by Board members. Members commit to dedicate sufficient time to accomplish their duties. They are not paid according to the time spent, as consultants are. They have a general duty

and it is, assuming they show honesty and integrity, far more demanding than any quantitative approach. Some members may spend far more time than others, it depends on skills, experience, intellectual agility, participation to sub-committees... The only quantitative monitoring that the firm can easily and efficiently do is on the presence to meetings that are scheduled. At the end of the day, it is easy to know who is not active and productive in the Board and there is no need to be inquisitorial on the way people work and spend their time in order to assess the efficiency and suitability of the Board.

Q7: Are the guidelines within Title II regarding the notions of suitability appropriate and sufficiently clear?

Please refer to our answer to question 6 on our disagreement with the monitoring of time allocated by members to their task that is required in the guidelines. For the other chapters of Title II, we would like to share four comments.

1. On skill, knowledge and experience: the main source of information lies with the candidate to be appointed. He or she is responsible for the CV received and on many other chapters his/her other declarations are the only first-hand information available. Nevertheless the firm, before considering appointment, has to double check the veracity of these elements. Some items are easier to check: university diplomas, past experience through contact with former colleagues,...but real responsibilities and personal achievements are often more difficult to assess. When a head hunter has been appointed it is part of his mission to conduct those verifications. But it should not be mandatory to appoint one HR consultant. We appreciate the quality of the Annex II where skills are detailed in an interesting way. We consider it as a good illustration of the queries that the firm (and more specifically the nomination committee) should have in mind. But we feel that guidelines focus too strongly on financial skills (when the diversity within the college of the management body is an objective) and on the necessary experience. We believe that experience should not mean cooptation of similar profiles and fear that the guidelines will prompt firms to follow that erroneous route. It is a natural trend and guidelines should on the contrary incentivize firms to take a more positive view towards less standard profiles, with less experience of management in a financial institution and, for example, more ethics and conduct expertise.
2. On collective suitability criteria: we suggest the following wording: "The management body should, ideally and generally, collectively be able to understand the institution's activities, including the main risks. Unless otherwise indicated in this section, these criteria should be applied separately, where appropriate, to the management body in its management function and the management body in its supervisory function."
3. On reputation, honesty and integrity: the guidelines lack a positive view on personal achievements in this field. We believe that a candidate could provide examples of

circumstances where he feels he has demonstrated capacity to manage conflicts of interest. We also believe that a self-declaration to act in compliance with ethical standards is a powerful tool to inform bona fide candidates of their responsibility and to identify those who show dubious conduct.

Of course, checking past activities, absence of sanction or misbehavior in business or financial operations is of importance. But it is not sufficient to assess integrity and honesty. Besides, the list of checks appears too detailed and there should be a reminder that these checks will always have to be on a best efforts basis. Also, we do not understand why “tax” is given such a key and specific weight in the criteria (cf § 70.a.iii, next to other items – i, ii and iv- which include it already).

We further disagree on two points with the guidelines.

First, in §72 (a) we do not accept the idea to rely on non-official sources and disregard the reference to a “reliable credit bureau”.

Second, in §73 (a) we fear that the requirement to be “cooperative “ in dealings with authorities may suggest that people should renounce their right to organize their defense as they wish if subject to an investigation by an authority. Even if, as rightly stated in §70, such investigation or sanction should be considered and analyzed with more details and should not systematically veto a candidacy.

4. *On independence of mind:* we share the view that “courage, conviction and strength” are required to show independence of mind. They are marks of character that are not, and cannot be, taught in any specific class. Education at college or university does not provide any hint on that skill. It is a very personal matter. Before focusing on the matter of conflicts of interest, we think that guidelines should expand §76 and suggest that candidates would help the process if they accept personal questions to be asked in a meeting with a few members of the nomination committee that would be specifically required to keep confidential all the discussion they have. In other words, we feel that it is possible to work to assess the independence of mind in a meeting, but that it may be in conflict with the privacy right of the candidate. Above all, we believe independence of mind is substantially distinct from absence of conflicts of interest and/or ability to manage these.

In §77 (f), we suggest to replace “political influence and political relationships” with “political position or political relationships that would make the candidate a “politically exposed person”; We believe the current redaction is vague and could either lead into an inappropriate intrusion into the personal life and views of the candidate, as well as lead to an unharmonized approach to analyzing this type of conflict across Europe. We believe that our proposal provides a harmonized practicable approach, which is also aligned with other European law.

In § 78, we note the compatibility of holding of shares with the quality of independence, which we believe at odd with certain local regulators’ policies & supervision in the EU.

Q8: Are the guidelines within Title III regarding the Human and financial resources for training of members of the management body appropriate and sufficiently clear?

We do not consider that benchmarking is a good policy in that matter. It can easily lead to 2 types of deviations. On the one hand, it may prompt firms to organize seminars for members of the board with the view to spend the budget and be at the benchmark or exceed it, without sufficient consideration to the appropriateness of the content or efficiency of the training. On the other hand it can limit education investments that could be necessary, just because the budget is calibrated to a benchmark.

We further disagree with the reference in §83 to a 1 month delay to implement the induction program. It is not workable with members of a Board who are part of the management body in a unitary structure. We suggest instead “should receive induction ideally before the first board meeting that the new member will attend, but no later than 6 months after taking up their position”, giving time for an induction more tailored to the needs of the new Director. Furthermore, we disagree with the reference in §84 to a 6 month delay for customized training. Due to the timing of the offering, as well as duration, of such technical trainings, we propose that you either remove all references to a specific time frame, and rely on the reference in the preceding sentence (“...as soon as possible after the position is effectively taken up”) or that you adapt the relevant sentence to “ In any case, a member should start to take appropriate action as soon as possible, but no later than 6 months after taking up the position, considering the non-exhaustive list of relevant skills provided in Annex II.) To provide a concrete example, in the case that a board member is assigned responsibilities for portfolio management oversight and the company has newly acquired a corporate loans portfolio management team, and the board member should enhance his/her understanding of corporate loan techniques and regulations, in France, the AFG provides such courses once a year.

Q9: Are the guidelines within Title IV regarding diversity appropriate and sufficiently clear?

§94: here as well, benchmarking does not seem relevant to us for similar reasons as above: matching the company’s specificities should be encouraged, not discouraged.

We are not convinced that an annual review is relevant, even for significant institutions, and would prefer a more in depth review on a less frequent tempo. Every 3 years would be more appropriate in our view, with a partial review at each change in the composition of the management body.

We consider that §97 is out of topic and should be deleted. We do not oppose the view that firms should implement a diversity policy for staff, but consider that it does not relate to the suitability of members of the management body, the matter of the guidelines. We think that suggesting that candidates for the management body should be recruited internally is not adapted especially in a unitary structure of the Board, or requires many caveats.

Q10: Are the guidelines within Title V regarding the suitability policy and governance arrangements appropriate and sufficiently clear?

We do not share the approach concerning groups in chapter 15 (See our comments in question 5).

Firstly, it relies on the definition of a group that applies for the purpose of prudential consolidation in the banking industry. We do not consider that it is valid for non-banking entities. Secondly, the purpose of the guidelines is to ensure suitability of management and supervisory bodies in CRD and MIFID firms. A group in that framework must be limited to the standard commercial law definition supplemented by accounting international principles. It means top entity and its affiliated where it holds directly or indirectly a majority of the shares or a stake sufficient to have the power to decide.

The over-extensive definition taken for risk management of large banking groups is not adequate for pure governance issues. We insist on the necessity to define “identified entities” that are different from smaller and/or technical entities which have a lesser impact on the risk profile of the group. Non-identified entities would be globally compliant with the guidelines if relying on general governance procedures developed at the level of their mother or head of group entity. Typically procedures followed by the nomination committee of the head company could be mutualized and applied for nominations in the smaller company (whose management body in its supervisory function will be discharged). See our answer to question 5 in that respect.

There is in our view another limitation to the scope of the regulation, notably for asset management. It cannot have extraterritorial applications that would put EU firms at a disadvantage in their competition with firms of third countries. Extra territorial application would mean a duplication of regimes (local and European) for EU based firms. It could also imply third countries authorities’ implication in EU companies governance. We urge ESAs to confirm that, in particular for asset management, the guidelines will apply only to EU regulated entities and EU-based “Identified Entities”.

Thus, we fully disagree with §106 to 109, which we consider generating obnoxious complexity and sometimes vagueness (cf. the notion of “adjustment” in §107), source of litigations and discrepancy.

We read §116 as a further explanation of the role of the management and supervisory functions which is of particular relevance for the unitary Board structure.

In § 180 we suggest to delete “a shortlist containing”, as it is too detailed and prescriptive a requirement in our view. We agree with the limitations of diversity which are mentioned in the last sentence of §120 and consider that it should be echoed in chapter 13 on the diversity policy, as a reminder in a new §97.

The list of cases where independence is presumed not to exist in §124 concerning CRD-institutions does not seem fully suitable. We understand that it is a rebuttable presumption, but we nevertheless consider that the following cases have not to be considered in that list:

- Consultants mentioned in (c) are by definition independent and should not have to wait for 3 years before joining a Board as an independent director;
- In our view, after a 3 year period of non-activity within the firm or its group, a former member of the management body is independent, irrespective of the fact that he or she may have been a manager for more than 12 years (see (f));
- Close family members of people who are (a) shareholder, (b) top manager, or (e) beneficiary of significant fees are rightly suspected of not being independent in (g). But we do not agree that it should extend to close family members in the other three cases (i.e. c, d, f).

Q 11: Are the guidelines within Title VI regarding the assessment of suitability by institutions appropriate and sufficiently clear?

In §127, we cannot agree with the proposed delay of 3 weeks for a firm to conduct the suitability assessment of the board collectively and individually in case of the nomination of a candidate that was not proposed by the management and whose qualities have not been assessed in advance. Our reading of corporate law is that shareholders in AGM take sovereign decisions. There is no room for assessment by the firm that could lead to a review of the decision. There is as a consequence no need to rush to conduct an assessment. Normal procedures will apply in a timely manner and the most likely result will be an adjustment that will allow the Board to work and the new Director to reinforce his or her skills and competence. That does not prevent competent authorities to conduct their own assessment. We suspect that some confusion results from the unitary structure where the management body is composed of CEO and deputies appointed that should be immediately efficient and directors who oversee and impulse the strategy more than they implement it. The guidelines would be more easily understandable if the two cases were addressed successively and differently.

It does not seem necessary for firms to produce details of the assessment to the competent authority. We strongly suggest making the administrative process less burdensome than in §133 and that institutions only make those documents available to the authority on demand. Further, we think that the list of documents produced in Annex III must be considered as indicative and suggest that it be clearly mentioned.

We also have the following drafting comments:

In §136 (e), after “to the extent possible”, we suggest to add “and reasonable, through publicly available channels and instrument”.

In §143 in the last sentence, we do not follow the idea that guidelines should address “actual or required” suitability and suggest the deletion of these two adjectives.

In §144, we think that it is necessary to introduce the list of items in stating: “... should in particular consider, *where appropriate*.” in order to qualify the approach taken. Among the

items, we suggest (h) to be deleted as redundant with (d) and both difficult to implement without being overly intrusive and unnecessary; we suggest (d) to be drafted as follows: “the adequacy of the number of meetings held, the adequacy of each director participation”. In (j) guidelines should put a limit on “events that may have a *substantial* impact...”

Again, in the assessment of the collective suitability of the management body in its supervisory function, it is important to have the opportunity to mutualize, between entities of the same group, the institution of an appointments and governance committee

If we agree that, as expressed in §150, non-suitable directors or Board should be changed, we find it highly sensitive and thus inappropriate to suggest remedies if these are not collectively agreed upon. We think that proportionality must be taken into consideration as regards reporting to the competent authority. Only important dysfunctions that will amount to crisis of management should be immediately reported.

Q12: Are the guidelines with regard to the timing (ex-ante) of the competent authority’s assessment process appropriate and sufficiently clear?

In §153 (e), after “the institution should”, we suggest to add “take appropriate measures to ensure compliance” (instead of “replace this member”).

In §158 again, we think that only material shortcomings should be mentioned. It is consistent with the fact that remediable shortcomings do not prevent appointments. The competent authority should be informed of those ones that will be difficult to remediate or that create an immediate risk of improper management. There is a question of judgment by the firm on what should be reported.

We think that the neutral approach about ex-ante or ex-post approval of nomination taken by EBA in its 2012 guidelines should be maintained. The discussion that follows about advantages and drawbacks of each approach is illustrative of the fact that it is unclear why a solution should be preferred at the European level. National traditions have developed and should not be modified without a clear advantage resulting from this change. We do not see any clear cut advantage for one or the other approach.

Our view however is that it makes more sense to have ex-post approval in order to maintain workable delays and prevent administrative requirements to block the necessary agility and reactivity of a firm. We do not think that it is useful to prepare succession plans and be organized to face an unexpected departure if when it comes, there is a 4 month delay before being able to announce the appointment of a successor. We are further appalled to read that the competent authority could take as much as 6 month to 1 year to provide an answer. In order to manage the risk of refusal to approve the nomination in case of an ex post assessment, we think that one should consider the 2 different cases of the nomination of a CEO and of a Director. In the first case, the individual assessment is paramount and appointment can be made rapidly under the condition of final approval by the competent authority. We recommend that competent authorities (i) take their decision in the shortest possible delay and (ii) have a discussion with the firm (the Chair of the nomination

committee) before announcing a possible refusal. In the second case, the collective suitability is what matters and there are many more ways to remedy shortcomings of one individual. Therefore, we do not think that the risk of refusal will be high.

Q13: Which other costs or impediments and benefits would be caused by an ex-ante assessment by the competent authority?

Q14: Which other costs or impediments and benefits would be caused by an ex-post assessment by the competent authority?

Q15: Are the guidelines within Title VII regarding the suitability assessment by competent authorities appropriate and sufficiently clear?

§ 167: drafting comment: time commitment is mentioned twice.

We do not object to the possibility for a competent authority to conduct interviews to establish its judgment on the suitability of the management body of a firm. However we do object to the suggestion that the competent authority may attend as an observer to a meeting of the management body. It is a place where confidential matters are discussed and decided and, except for the case when the authority has dismissed the managers and nominated a temporary administrator, at least in the asset management industry, there is no legal basis for public intervention. We hereby warn of a public image which could jeopardize the EU's asset management industry's perception, in terms of privacy and influence from state and political interference. Such right should be, to the least, strictly defined and conditioned, **including in times of crises**. We suggest to delete the following in §171 "or participate as an observer in meetings of the management body in order to assess the effective functioning of the management body". We further request the deletion of §172 which (i) exceeds the framework of the assessment of the suitability of the Management body and (ii) is not properly drafted as it suggests arguable ways to bring evidence.

We think that the list of possible actions by the authority in § 177 should make it clear that some may only be used as an ultimate recourse in case of default to comply with other measures which had been required earlier. At the end of the first paragraph we suggest to add: "as may be appropriate" and in (f) to add at the beginning "where appropriate and provided for applicable law". We would like ESAs to provide possible/likely examples where such penalties could be enforceable.

With regards to the cooperation between competent authorities, we have the view that at least for asset management activities, chapter 27 only applies to EU competent authorities, since it is not in ESA's remit to impose rules on third countries authorities in this field. We believe that the guidelines should include a general principle concerning the exchange of information between EU authorities. On top of the confidentiality principle which has to be firmly confirmed, there is the "Need to know basis" principle. Including it would greatly improve the coherence of the text and reduce the risk (which we fear) that highly sensitive and/or personal information may circulate without appropriate controls and protection. It

further stresses that information should be limited to facts and to the professional sphere exclusively (see answer to question 6 on time commitment).

At the end of § 180 we suggest to delete “any identified shortcomings, measures taken to ensure the suitability, the responsibilities of the position for which the person was assessed and basic information on the size, nature, scale and complexity of the relevant institution”.

In §181 the right for the preliminary information should be specified in order to facilitate the rights of the defense.

Q16: Is the template for a matrix to assess the collective competence of members of the management body appropriate and sufficiently clear?

It is positive to provide a reference that illustrates a way to proceed. It should not be considered by authorities as a requirement to follow this template.

Q17: Are the descriptions of skills appropriate and sufficiently clear?

We think that this annex is quite profitable to illustrate different angles to consider suitability. Additions could be suggested, for example to insist on the psychological skills transversally necessary to develop many other listed skills.

Q18: Are the documentation requirements for initial appointments appropriate and sufficiently clear?

We think that this list should be subject to interpretation by local authorities who should introduce some proportionality in their requirements. We read it as illustrative and not mandatory.

Q19: What level of resource (financial and other) would be required to implement and comply with the Guidelines (IT costs, training costs, staff costs, etc., differentiated between one off and ongoing costs)? If possible please specify the respective costs/resources separately for the assessment of suitability and related policies and procedures, the implementation of a diversity policy and the guidelines regarding induction and training. When answering this question, please also provide information about the size, internal organisation and the nature, scale and complexity of the activities of your institution, where relevant.

There is a huge implementation cost (several million euros for a large European asset manager, for the first year (i.e. at inception of the suitability policy) and then a similar amount every year, for implementation on an on-going basis), and this is why it is crucial it be implemented strictly on a risk-based basis (cf “Identified Entities” concept proposed in our answer to question 5 above).