



JOINT GUIDELINES OF THE EUROPEAN BANKING AUTHORITY (EBA) AND THE EUROPEAN SECURITIES AND MARKETS AUTHORITY (ESMA) ON THE ASSESSMENT OF THE SUITABILITY OF MEMBERS OF THE MANAGEMENT BODY AND KEY FUNCTION HOLDERS (EBA/GL/2017/12)

REQUIREMENTS REGARDING ASSESSMENT OF THE SUITABILITY OF MEMBERS OF THE MANAGEMENT BODY AND KEY FUNCTION HOLDERS

Reference text: Article L. 532-2 7° of the Monetary and Financial Code

On 29 May 2018 the AMF declared to ESMA that it complies with the Joint Guidelines of the EBA and ESMA on the assessment of the suitability of members of the management body and key function holders (EBA/GL/2017/12), except paragraphs 162, 171, 172 and 176 of these Guidelines for the reasons set out below. These Guidelines set out the requirements concerning the suitability of members of the management body of credit institutions (CIs) and investment firms (IFs)¹. In particular, they explain the notions of:

- Sufficient time commitment to their duties by members of the management body;
- Honesty, integrity and independence of mind to be shown by members of the management body;
- Collective knowledge, skills and experience of the management body;
- Adequate human and financial resources devoted to the induction and training of members of the management body;
- Diversity, to be taken into account for the selection of members of the management body.

The Guidelines also specify requirements regarding the suitability of the heads of internal control functions and the chief financial officer (CFO) of credit institutions and certain investment firms, where they are not part of the management body, and of other key function holders, as part of the governance arrangements referred to in Articles L. 532-29, L. 532-2 4° and L. 533-10 of the Monetary and Financial Code and (ii) the related assessment processes, (iii) governance policies and practices, including the principle of independence applicable to certain members of the management body in its supervisory function.

It is stipulated that, as regards Joint Guidelines between the EBA and ESMA, the French Prudential Supervision and Resolution Authority (ACPR) likewise published on its website, on 5 June 2018, a Notice of Compliance with these Guidelines in which it is stated:

The ACPR intends to comply with the Guidelines, except the provisions specifying the assessment by the supervisory authority of the suitability of key function holders on each appointment or renewal. The declaration of non-compliance applies to paragraphs 162 and 176 (transmission of the results and documentation relating to the internal assessment to the competent authority) and paragraphs 171 and 172 (assessment of the suitability of the persons responsible for internal control functions and the financial officer by the competent authority). This declaration does not call into question the procedures already in force and which will continue to apply to the assessment of the persons responsible for internal control on authorisation and in the event of change of control.

¹ As well as financial holding companies and mixed financial holding companies

AMF position – DOC-2018-08 – Joint Guidelines of the European Banking Authority (EBA) and the European Securities and Markets Authority (ESMA) on the assessment of the suitability of members of the management body and key function holders

As a reminder, the ACPR is the competent authority for issuing the authorisation to a CI or for the provision of one or more investment services by a CI. In this context, the ACPR assesses the suitability of members of the management body and key function holders jointly with the AMF. Consequently, the AMF has notified the same exceptions to ESMA as those notified to the EBA by the ACPR¹.

The Guidelines supplement the provisions of the MiFID II Directive transposed in particular into article L. 532-2 7° of the Monetary and Financial Code.

Incorporation within the AMF's regulatory practices

This position, incorporating ESMA and EBA Guidelines on the assessment of the suitability of members of the management board and key function holders, is applicable with effect from 30 June 2018.

These guidelines are available in the 'Annexes and Links' section:

- in French: Orientations sur l'évaluation de l'aptitude des membres de l'organe de direction et des titulaires de postes clés;
- in English: Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders.

¹ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments. (OJ L173 of 12 June 2017, p.349).