

Financial and Capital Market Commission Regulation No. 94

Riga, 14 July 2020

(Minutes No. 28, Point 14 of the Meeting of the Board
of the Financial and Capital Market Commission)

Regulation on the Assessment of the Suitability of the Executive and Supervisory Board Members and Key Function Holders

*Issued in accordance with Section 50(2) and
Section 57(1.¹) of the Credit Institutions Law and Section 4.² of the
Financial Instrument Market Law*

1. General provisions

1. *Regulation on the Assessment of the Suitability of the Executive and Supervisory Board Members and Key Function Holders* (hereinafter - the Regulation) shall lay down the criteria and processes to be observed by credit institutions and investment firms (both jointly hereinafter referred to as an institution) registered in the Republic of Latvia, when assessing the nominated or elected (appointed) supervisory and executive board members of an institution (hereinafter - supervisory and executive board members), conditions for the assessment of key function holders (employees), as well as the measures applicable in cases where such persons are not suitable for the position concerned. Key principles for the assessment of the suitability laid down in the Regulation with respect to the executive and supervisory board member shall be observed by such financial holding companies and mixed financial holding companies, which operate mainly in the financial sector and are subject to the conditions laid down in Section 112.²(8) of the Credit Institutions Law.

2. Terms used in this Regulation:

2.1. officer - the member of the supervisory board (management body in its supervisory function) or executive board (management body in its management function) or a key function holder of an institution;

2.2. key function holders - persons (employees) who, through their position, have significant influence over the direction of an institution, but who are not members of the supervisory or executive board of an institution. Key function holders are, for example, heads of business lines specific to an institution, heads of branches or subsidiary undertakings established by an institution in a Member State, heads of the support and internal control functions, incl., chief risk officer, head of compliance function, head of the internal audit function, person in charge of fulfilment of the requirements of anti-money laundering and combating the financing of terrorism and proliferation, procurement holder, company controller;

2.3. suitability - assessment of the suitability of an individual, considering the reputation, knowledge, skills and experience of an individual, individually and collectively, *inter alia*, her/his ability to perform her/his official duties in good faith and independence in decision-taking, as well as the ability to commit sufficient time to perform her/his official duties;

2.4. other terms shall have the same meaning as ascribed to them in the Credit Institutions Law, the Financial Instrument Market Law and Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for

credit institutions and investment firms and amending Regulation (EU) No. 648/2012 (hereinafter - Regulation No. 575/2013).

3. An institution shall comply with the requirements of this Regulation on an individual, consolidated or sub-consolidated basis, taking into account its organisational structure and the scale, nature, complexity and specificity of its activities, as well as considering that which is referred to in Point 4 of this Regulation.

4. A credit institution and an investment firm being an institution within the meaning of Regulation No. 575/2013 (hereinafter - an institution under Regulation No. 575/2013) and deemed to be a parent undertaking, shall ensure the introduction of adequate policies and procedure for the assessment of suitability of the officers in all subsidiary undertakings belonging to a consolidating group in accordance with Regulation No. 575/2013 (hereinafter - consolidating group), considering the requirements of the legal framework in the country of location of a subsidiary undertaking, as well as shall supervise the implementation thereof, incl., shall ensure mutual information exchange amongst the consolidating group undertakings regarding persons subject to suitability assessment, taking into account the organisational structure and the scale, nature, complexity and specificity of activities of each subsidiary undertaking, as well as the legal framework applicable thereto. An institution under Regulation No. 575/2013 deemed to be a parent undertaking, and a subsidiary undertaking belonging to a consolidating group, shall also ensure the introduction of the relevant group level policies in their subsidiary undertakings not bound by legal acts transposing the requirements of Directive 2013/36/EU of the European Parliament and of the Council 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, taking into account the requirements of the legal framework in the country of location of a subsidiary undertaking, as well as shall supervise the implementation thereof.

5. Even though the suitability assessment is carried out by both an institution and the Financial and Capital Market Commission (hereinafter - the Commission), it is primarily the duty of an institution. The assessment performed by the Commission in accordance with that which is referred to in the Credit Institutions Law, the Financial Instrument Market Law and regulation determining licensing arrangements for credit institution and credit union, obtaining permits regulating the operation of separate credit institutions and credit unions, settlement of documents and provision of information (hereinafter - Licensing Regulation), or other type of assessment performed, when ensuring supervisory functions, shall not release an institution from the duty to perform the assessment of the officers referred to in Point 2.1 of this Regulation and shall not replace the assessment performed by an institution.

6. An institution shall assess the suitability of an officer, based on the criteria and basic principles laid down in this Regulation, as well as considering the requirements and criteria laid down in the Credit Institutions Law, the Financial Instrument Market Law, Regulation of the Commission on establishment of the internal control system (hereinafter - Regulation on Establishment of the Internal Control System) and the Licensing Regulation.

2. Suitability assessment

2.1. Suitability assessment performed by an institution

7. An institution shall ensure that the officers are, at all times and in all cases, of good repute (for example, initial appointment, new circumstances, change of the scope of responsibility), possess the necessary competence and sufficient knowledge, skills and experience to perform their everyday official duties, in line with the standards embedded in the corporate values of an institution.

8. An institution shall ensure that the supervisory and executive board members, when fulfilling their job duties, act with independence of mind, considering the criteria referred to in Point 51 of this Regulation.

9. An institution, when assessing the ability of being independent of the supervisory board members, shall consider the conditions referred to in the Regulation on Establishment of the Internal Control System with respect to the collective structure of the supervisory board members, as well as shall apply the criteria prescribed in Annex 1 to this Regulation, keeping in mind that each and every situation referred to in the criteria shall be carefully analysed and shall not, *per se*, exclude the possibility of the supervisory board member being independent.

10. An institution shall perform the assessment of the officer before they start fulfilling their official duties.

11. An institution shall request the officers to provide information attesting to the suitability of the persons concerned to the requirements set for the fulfilment of the official duties, as well as the compliance with the criteria and basic principles of suitability referred to in this Regulation.

12. An institution shall ensure individual suitability of the officers for the fulfilment of their official duties during the entire period of the employment legal relationship established with an institution.

13. An institution shall ensure that the supervisory and executive board members are collectively suitable, possess sufficient knowledge, skills and experience to understand the nature and specificity of the activities, as well as the risk strategy of an institution.

14. In line with the provisions of Points 12 and 13 of this Regulation, it shall be the duty of an institution to monitor the suitability of the officers on an ongoing basis.

15. If an institution becomes aware of any information that raises doubts as to the knowledge, experience or reputation of the officer, an institution shall assess how it affects and/or is likely to affect the suitability of the person concerned, taking into consideration all known information relevant for the assessment regarding the respective events or circumstances, regardless of the time and place of the occurrence thereof.

16. An institution shall document the performed individual and collective suitability assessment of the supervisory and executive board members, as well as the suitability assessment of the key function holders and the results thereof.

2.2. Suitability assessment of the supervisory and executive board members performed by an institution

17. An institution shall perform an initial suitability assessment of the supervisory and executive board members in the following cases:

17.1. before the application for receipt of the licence for the commencement of operation of an institution is submitted to the Commission;

17.2. when nominating a new supervisory or executive board member for office.

18. When performing an individual suitability assessment of the supervisory or executive board members, an institution shall assess whether or not such persons:

18.1. are of good repute;

18.2. possess sufficient knowledge, skills and experience to perform their official duties;

18.3. are able to act with integrity in accordance with corporate values and standards of professional conduct and ethics of an institution, incl., able to act with independence of mind to critically assess and, where necessary, challenge the adopted decisions, as well as to effectively monitor the decision-taking process, insofar as it concerns the official duties of the supervisory or executive board member concerned;

18.4. are able to commit sufficient time to perform their duties (incl., where established, within the scope of the committees), and, where an institution is significant, in terms of its organisational structure, scale, nature, complexity and specificity of its activities; it shall additionally assess whether or not the limitation of directorships of the supervisory or executive board member concerned is being complied with in accordance with the requirements of Section 26.¹ of the Credit Institutions Law and Section 106.¹ of the Financial Instrument Market Law.

19. When performing the suitability assessment of the supervisory or executive board members, an institution shall consider the specific compliance requirements of each directorship to be reflected during the assessment process. When assessing the individual conformity of each supervisory or executive board member to the criteria referred to in Point 18 of this Regulation, an institution shall consider that in each criteria the requirements for the supervisory board member may differ from those set for the executive board member.

20. For the purposes of assessing the collective suitability of the supervisory and executive board member, an institution may make use of a template in Annex I to the European Banking Authority's "Guidelines on the assessment of the suitability of members of the management body and key function holders" (EBA/GL/2017/12) (hereinafter also referred to as the Guidelines).

21. An institution shall perform the individual assessment of the supervisory and executive board members in accordance with the criteria referred to in Point 18 of this Regulation, concurrently assessing the collective suitability of the supervisory and executive board members, *inter alia*, considering the institution's policy to ensure diversity in the composition of the supervisory and executive board, introducing corresponding policies and the procedure for ensuring individual and collective suitability of the supervisory and executive board members.

22. An institution shall re-assess the individual suitability of the supervisory or executive board member, whenever:

22.1. it becomes necessary, in light of certain circumstances or events, for example, where the supervisory or executive member concerned takes on an additional directorship or starts to perform new relevant activities, or where there are reasonable concerns regarding the

individual or collective non-conformity of the supervisory or executive board members, *inter alia*, material changes in the reputation of the supervisory and executive board members concerned or entire institution, or the non-conformity of the supervisory and executive board members concerned to the institution's policy for the prevention of conflict of interest situations, or upon changes in the nature and complexity of the activities of an institution;

22.2. the supervisory or executive board member is re-appointed;

22.3. changes are introduced to the official duties to be performed by the supervisory or executive board member or the competences required for the performance of such duties, or new supervisory or executive board members are nominated for the position, or the competences and duties are reallocated or otherwise changed amongst the supervisory or executive board members;

22.4. it is necessary to ensure the periodic (at least annual) individual suitability assessment of the supervisory and executive board members referred in the Regulation on Establishment of the Internal Control System.

23. An institution shall re-assess the collective suitability of the supervisory and executive board members, whenever:

23.1. a separate member thereof terminates or commences an employment legal relationship with an institution or is re-elected to his/her position, or the scope of duties to be performed or the position of the person concerned in the relevant supervisory or executive board structure is changed;

23.2. it becomes necessary, in light of certain circumstances or events, for example, upon changes in the nature, complexity or specificity of the activities of an institution, when introducing changes in the risk strategy or an institution or upon material structural changes taking place in an institution or consolidating group it belongs to;

23.3. changes are introduced to the duties to be performed by the supervisory or executive board member or the competences required for the performance of such duties, or new supervisory or executive board members are nominated for the position, or the competences and duties are reallocated or otherwise changed amongst the supervisory or executive board members;

23.4. it is necessary to ensure the periodic (at least annual) collective suitability assessment of the supervisory and executive board members referred in the Regulation on Establishment of the Internal Control System.

24. Where an institution performs the suitability assessment in the cases referred to in Points 22.1, 22.3, 23.2 or 23.3 of this Regulation, it may be performed in a limited form, based on the assessment of whether or not an event being the cause of re-assessment has affected the individual and collective suitability of the supervisory or executive board members.

25. Shortcomings in collective suitability of the members of the supervisory or executive board (or the committees established by them) shall not in themselves form sufficient grounds to conclude that a certain separate member thereof is not suitable for the position.

2.3. Suitability assessment of the key function holders performed by an institution

26. An institution shall identify the key function holders, in line with the corresponding regulatory requirements and the nature, complexity and specificity of the activities of an

institution, and shall assess the suitability thereof in accordance with the policy for suitability assessment of the key function holder referred to in Point 37 of this Regulation.

27. An institution shall assess the suitability of key function holders before appointing them and, if necessary, also re-assess the suitability thereof (for example, where an institution incurs doubts as to the knowledge, experience or reputation of the key function holder or as to the person concerned with respect to a certain event, incl., with respect to changes in the duties to be performed or the competences necessary to perform them).

28. An institution, by way of ensuring the fulfilment of the requirements referred to in Point 12 of this Regulation, shall assess the suitability of the key function holders:

28.1. before the application for receipt of the licence for operation of an institution is submitted to the Commission;

28.2. when nominating a new key function holder;

28.3. whenever it becomes necessary, in light of certain circumstances or events, for example, where there are reasonable concerns as to the non-suitability of the key function holder, incl., material changes in the reputation of a person concerned;

28.4. when ensuring the suitability of staff referred to in the Regulation on Establishment of the Internal Control System, as well as implementation of the functions of executive board with respect to ensuring corresponding qualification and adequate experience of the employees of an institution.

29. When performing the initial assessment or re-assessment of the key function holders, an institution shall rely upon the same basic principles of reputation, honesty, ability to act with integrity in accordance with corporate values and standards of professional conduct and ethics, criteria of conformity of adequate knowledge, skills and experience for the performance of duties, as those applied when assessing the supervisory and executive board members of an institution, concurrently considering the specificity of individual duties and role of each relevant directorship.

30. When performing the suitability assessment of the key function holders, an institution shall ensure that the supervisory and executive board or, where established, the nomination committee is informed about the assessment results before the submission of documents to the Commission, *inter alia*, considering the requirement laid down in the Licensing Regulation to submit the Commission the assessment performed by an institution.

31. Where an institution, having performed the assessment of suitability of the key function holder, concludes that, considering the criteria and basic principles referred to in this Regulation, the candidate for the position concerned is not suitable for the fulfilment of the duties intended for him/her, it shall implement corrective measures, informing the Commission to this effect.

2.4. Policies for the assessment of suitability of officers

32. An institution shall develop and document policies for assessing the suitability of officers, considering the basic principles of internal control system of an institution, *inter alia*, the institution's governance arrangements, corporate values and standards of professional conduct and ethics, as well as the risk strategy. An institution shall document any changes in

the relevant policies, as well as, at least on an annual basis, shall review the effectiveness of the implementation of the principles referred to in the policies.

33. An institution shall ensure that the policies of assessment of suitability of officers are freely available to all employees of an institution.

34. When developing the policies for the assessment of the suitability of officers, an institution, where necessary, shall request and consider information received from the structural units of an institution, for example, structural units of internal control functions, human resources management structural unit and legal structural unit, as well as the committees established in an institution, for example, nomination committee.

35. An institution shall set out in the procedures for selecting supervisory and executive board members, the initial appointment and re-appointment thereof, as well as in the succession planning procedures and suitability assessment policy, at least the following:

35.1. a person or function, or structural unit in charge of performance of the suitability assessment in an institution;

35.2. procedure for the assessment of suitability of the supervisory or executive board member;

35.3. corresponding suitability assessment criteria, considering the basic principles referred to in this Regulation, *inter alia*, the scope of knowledge, skills and experience required to assess the supervisory or executive board member (in light of the duties to be performed) as sufficiently suitable;

35.4. information and confirmation to be submitted by the supervisory or executive board member to an institution for the implementation of the assessment;

35.5. in the event of the appointment of the supervisory board member, the procedure to be observed by an institution to ensure that the shareholders, prior to the appointment of the supervisory board members, are informed about the requirements necessary for the fulfilment of the official duties and the conformity of the supervisory board member to be elected thereto;

35.6. situations requiring the performance of re-assessment of suitability, as well as the measures to be taken to gain awareness of such cases;

35.7. succession planning criteria, considering the requirements for individual and collective suitability;

35.8. requirement that the supervisory and executive board members should report in writing any material changes and events affecting the suitability assessment to an institution (additionally, the requirement may be set for the supervisory and executive board members to provide annual written notification regarding such changes or to provide confirmation that the relevant changes have not occurred during the previous year);

35.9. process of documenting the performed candidate selection, initial appointment and re-appointment, as well as succession planning and assessment;

35.10. procedure for submitting information to the Commission, setting out the situations where in accordance with the legal framework it is necessary to inform the Commission, *inter alia*, for the approval of the suitability of the supervisory or executive board member nominee.

36. Where an institution is significant, in terms of its organisational structure, scale, nature, complexity and specificity of its activities, in addition to that which is referred to in Point 35 of this Regulation, shall include an additional assessment in the assessment policy of

the supervisory and executive board members, as to how the principles referred to in Point 83 of this Regulation are being implemented for the purposes of ensuring diversity in the composition of the supervisory or executive board.

37. An institution shall set out in the procedures for selecting key function holders, the initial appointment and re-appointment thereof, as well as in the succession planning procedures and suitability assessment policy, at least the following:

37.1. positions subject to suitability assessment, *inter alia*, considerations applied to assess the relevant position, the performance of duties whereof enables one to materially impact the direction of the activities of an institution;

37.2. a person or function, or structural unit in charge of performance of the suitability assessment in an institution;

37.3. corresponding suitability assessment criteria, considering that which is specified in Point 29 of this Regulation;

37.4. situations requiring the performance of re-assessment of suitability, as well as the measures to be taken to gain awareness of such cases;

37.5. succession planning criteria;

37.6. process of documenting the candidate selection, appointment and suitability assessment;

37.7. procedure for submitting information to the Commission, setting out the situations where in accordance with the legal framework it is necessary to inform the Commission, *inter alia*, for the approval of the suitability of the key function holder nominee.

38. The supervisory board or the nomination committee (if established) of an institution, shall, on a regular basis, however at least on an annual basis, review the policies referred to in Points 35 and 37 of this Regulation, considering any material changes affecting or likely to affect the implementation of the relevant policies, as well as shall monitor the effectiveness of implementation thereof.

3. Suitability assessment criteria

3.1. Reputation, honesty and integrity in accordance with the corporate values, code of conduct and standards of ethics of an institution

39. Officers of an institution should be of good repute, should meet the corporate values and standards of professional conduct and ethics of an institution, *inter alia*, should perform their duties honestly, observing the highest standards of ethics (with integrity), irrespective of the nature, size, specificity and complexity of the activities of an institution.

40. Non-compliance of an officer with the corporate values and standards of professional conduct and ethics of an institution may be deemed to be an aspect affecting the reputation and honesty of the person concerned.

41. An officer shall not be deemed to be a person of good repute, if his/her personal conduct or implemented business creates reasonable doubts as to the ability of a person to ensure sound and prudent governance of an institution.

42. An officer shall be deemed to be a person of good repute if there is no evidence to suggest otherwise, and there are no grounds for reasonable doubts as to the good repute of a person.

43. When assessing the reputation, honesty, as well as the conformity of the officer to the corporate values and standards of professional conduct and ethics of an institution (integrity), all relevant information available for performance of the assessment shall be considered, without prejudice to the restrictions prescribed by the applicable legal framework, and irrespective of the country where the relevant events have occurred.

44. Without prejudice to the fundamental rights of a person, criminal records of a person shall be taken into account for the assessment of reputation and honesty of a person, incl., the essence of the case or indictment and the set penalty, level of involvement, the phase of proceedings, if the case is under proceedings (investigation, indictment, judgment, decision, appeal, etc.), and the effect of any rehabilitating measures. Any surrounding circumstances of the relevant offence or imposed penalty (sanction), including mitigating and aggravating factors, the time elapsed since committing the offence and conduct of the officer concerned during this time period, as well as the relevance of such offence or imposed penalty, considering the duties and role of the officer in the activities of an institution, shall also be considered in the assessment.

45. When performing the suitability assessment, the set of several minor incidents shall also be considered, which, taken individually, do not impact the reputation, honesty and conformity of the officer to the corporate values and standards of professional conduct and ethics of an institution (integrity), but can have a material impact as a whole (cumulative effects).

46. When assessing the reputation and honesty of the officer, the following aspects shall be specifically considered:

46.1. verdict of guilty in a criminal case or sentence in a material (i.e., affecting the reputation of person or institution, or materially affecting the financial soundness of an institution) civil case or administrative case (inter alia, verdict of guilty or sentence pending appeal) or initiated criminal case or material (i.e., affecting the reputation of person or institution, or materially affecting the financial soundness of an institution) civil case or administrative case (inter alia, official statement has been received on the commencement of an investigation or passing the case to court), in particular:

46.1.1. for offences in the financial market sector or with respect to such sector, *inter alia*, for violations of laws and regulations in the field of money laundering and financing of terrorism and proliferation, market manipulations or insider dealing, usury;

46.1.2. for offences relating to dishonesty, fraud or financial crime;

46.1.3. for tax offences;

46.1.4. for offences relating to commercial companies, bankruptcy, insolvency or consumer protection;

46.2. other past or current measures taken by any supervisory or professional body for non-compliance with the provisions governing credit institutions', financial or insurance activities;

46.3. commenced or past investigative actions or taken measures, implemented by any other law enforcement, supervisory or professional body (organisation) for non-compliance with binding regulations.

47. An officer of an institution should uphold high standards of honesty. The assessment of the reputation, honesty and conformity to the corporate values and standards of

professional conduct and ethics of an institution (integrity) shall additionally consider the following factors:

47.1. evidence that suggests that an officer has not been open and cooperative in his or her dealings with supervisory or regulatory authorities (for example, has not cooperated or has not provided true information, *inter alia*, has intentionally misled the supervisory authorities);

47.2. the fact of refusal, withdrawal or suspension for an officer of any registration, authorisation, membership, or licence in any professional or business activity field;

47.3. reasons, why an officer has been held disciplinarily liable, *inter alia*, recognised as unsuitable for the position of the director or head of the commercial company, dismissed from the responsible position, etc.;

47.4. an officer has been deprived of the rights to engage in certain business activity, *inter alia*, to hold the office of the executive or supervisory board member or the key function holder in a company other than an institution, within the meaning of Point 1 of this Regulation;

47.5. any other conduct of an officer that might suggest that the person concerned acts dishonestly or in a manner that is not in line with standards of professional conduct and ethics.

48. When performing the suitability assessment, an institution shall also consider the past and current business activity and financial well-being of an officer, as well as the potential impact of such circumstances on the reputation, honesty and conformity to the corporate values and standards of professional conduct and ethics of an institution (integrity), incl.:

48.1. information about the inclusion of a person in the list of debtors (for example, tax debtors' register) or negative records in the credit register;

48.2. financial performance of commercial companies owned or directed by the person concerned or in which the person concerned has or had significant shareholding with special consideration to any winding-up and bankruptcy proceedings and whether or not and how the officer has contributed to the situation that led to such proceedings;

48.3. declaration of personal insolvency;

48.4. civil lawsuits, administrative or criminal proceedings, large investments or liabilities, in so far as they can have a significant impact on the financial soundness of the person or commercial company owned or directed by him or her, or in which the person concerned has a significant shareholding.

3.2. Independence of mind and being independent

49. Ability of the supervisory and executive board members to act with independence of mind shall mean the set of certain activities and personal qualities entailing not only the ability to actively and independently implement their official duties, but also the ability to make their own reasonable, sound and objective decisions and judgements in their everyday activities.

50. "Being independent" as regards the supervisory board member shall mean a person who does not have any actual present or recent past relationships or links of any nature with the institution under Regulation No. 575/2013 or its supervisory or executive board members that could influence the adoption of objective and balanced decisions of the supervisory board member concerned, as well as reduce his or her ability to take decisions independently. The requirements of this Point shall apply to institutions under Regulation No. 575/2013. The

supervisory board member who has been recognised as being independent in accordance with the criteria set out in Annex 1 to this Regulation, shall not be concurrently considered as being able to act with independence of mind, where such person does not meet the criteria referred to in Point 51 of this Regulation.

51. When assessing the ability of each supervisory and executive board member to act with independence of mind, an institution shall assess the conformity to the following criteria:

51.1. a person possesses the characteristic features (behavioural skills) necessary for the fulfilment of the official duties, including:

51.1.1. conviction and ability to effectively assess and, where necessary, challenge the decisions proposed by other supervisory or executive board members;

51.1.2. ability to ask questions and promote discussion within the supervisory or executive bodies of an institution;

51.1.3. ability to resist 'group-think';

51.2. a person is not in a conflict of interest situation or, if such is nevertheless detected, it is duly and effectively governed in accordance with the policy for the governance of conflict of interest situations established by an institution and such situation does not affect the ability of a person concerned to implement the duties set for the position objectively and independently.

52. When performing the assessment of the characteristic features (behavioural skills) referred to in Point 51.1 of this Regulation required for the fulfilment of the official duties, an institution shall consider the ongoing or past work performance of the supervisory or executive board member concerned, in particular within an institution itself.

53. When assessing the actual or potential conflicts of interest of the supervisory or executive board member concerned referred to in Point 51.2 of this Regulation, an institution shall assess their materiality in accordance with the procedure prescribed by the institution's policy for the governance of conflict of interest situations.

54. An institution shall communicate any identified actual or potential conflict of interest situation of the supervisory or executive board member that may impact the independence of mind of a person concerned to the Commission, as well as the corresponding management measures intended for governing or preventing such situation.

55. Where the supervisory or executive board member of an institution is concurrently the shareholder, owner or holds any other position in (employee) in an institution or is the client of an institution or any other company belonging to the same consolidating group as an institution, such status shall not be considered by itself as non-conformity to the ability to act with independence of mind, insofar as it does not contradict the criteria referred to in Point 51 of this Regulation and corresponds to the requirements referred to in the Regulation on Establishment of the Internal Control System, institution's policy for governance of conflict of interests' situations with respect to the officers of an institution, as well as other relevant laws and regulations.

56. An institution under Regulation No. 575/2013 shall consider that the appointment of independent supervisory board members in its supervisory board shall be deemed as good governance practice.

57. Where the supervisory board member of an institution under Regulation No. 575/2013 is concurrently the shareholder or the client and the shareholding of a person concerned in the capital or the sum total of the relevant transactions concluded with him or her as the client does not exceed the amount giving rise to a material conflict of interest, such status shall not be considered by itself as non-conformity to the criteria for being independent, insofar as it does not contradict the criteria referred to in Annex 1 to this Regulation. The policy of governance of conflict of interest situations of an institution under Regulation No. 575/2013 with respect to the officers of the institution shall consider the situations specified in this Point.

3.3. Knowledge, skills and experience

58. When assessing the knowledge, skills and experience of officers of an institution, the nature, essence, scale and complexity of the activities of an institution, as well as the relevant official duties shall be considered. The scope and requirements for knowledge, skills and experience assessed with respect to the executive board member may differ from those assessed with respect to the supervisory board member.

59. Supervisory and executive board members of an institution should possess adequate knowledge, skills and experience, entailing clear understanding of an institution's operational and risk strategies, not only in accordance with their own official duties, but also in line with ensuring the collective suitability of the supervisory and executive board.

60. Supervisory and executive board members of an institution shall be familiar with the institution's internal control system, their respective role and responsibilities therein, as well as the structure of the consolidating group an institution belongs to and possible conflicts of interest at the level of both an institution and consolidating group, and shall ensure that the Supervisory and executive board members of an institution are engaged in ensuring the observance of corporate values and standards of professional conduct and ethics of an institution both within an institution and within the supervisory and executive board.

61. When assessing the knowledge, skills and experience of officers, their role, responsibilities and the qualification required for the relevant position, academic knowledge attained through the training process, as well as the practical professional experience gained in previous positions shall be considered. The assessment shall consider skills and knowledge obtained by officers and applied by them in practice within their professional activities.

62. When assessing the skills of officers, an institution may use the list set out in Annex II to the Guidelines, taking into account the role and functions of the position of each individual supervisory or executive board member.

63. When assessing the academic knowledge of officers, special consideration shall be given to the level and profile of education obtained, as well whether or not it relates to the credit institutions' and financial services or other relevant areas related to the specificity and nature of activities of the particular institution. Education in the area of credit institutions and finance, economics, law, accounting and auditing, administration, financial sector supervision, information technology, and quantitative methods (for example, creation of

statistical, econometric, quantitative models), can be considered to be relevant for the credit institutions and financial services.

64. The assessment of experience of officers shall not only be limited to the education (scientific degree) and proof of a certain period of service in a credit institution, another financial institution or commercial company, however, the institution shall also take into account the requirements specified in Point 65 to 67 of this Regulation during the assessment.

65. When assessing the knowledge, skills and experience of the supervisory or executive board member, special consideration shall be given to theoretical and practical experience relating to:

- 65.1. financial markets;
- 65.2. legal framework of and regulatory requirements for institutions referred to in Point 1 of this Regulation;
- 65.3. strategic planning and understanding of an institution's operational strategy or economic rationale (business plan) and the accomplishment thereof;
- 65.4. risk management (identifying, assessing, monitoring, controlling and mitigating the main types of risks, including the intended duties of the supervisory or executive board member);
- 65.5. accounting and auditing;
- 65.6. the measures taken for the assessment of the effectiveness of the activities, effective governance, setting up of oversight and control of a credit institution or another financial institution;
- 65.7. analysis of financial information of a credit institution or another financial institution, the identification of key issues based on this information and the implementation of appropriate control and measures.

66. To assess whether or not the executive board member possesses sufficient practical and professional experience in the management position, short-term and temporary positions may be considered as part of the assessment, but such positions alone shall not be considered as sufficient experience. Practical and professional experience gained from previous positions should be assessed, giving particular consideration to:

- 66.1. the nature of the management position held and its level in the company's structure;
- 66.2. the length of service;
- 66.3. the nature and complexity of the business where the position was held, including its organisational structure;
- 66.4. the scope of competencies, decision-making powers, and responsibilities;
- 66.5. the technical knowledge regarding the activities and risks of the company where the position was held;
- 66.6. the number of subordinates.

67. The supervisory board member shall possess sufficient experience if it enables one to ensure the constructive conformity assessment of decisions, as well as, where necessary, challenging such decisions and effective oversight of the executive board, internal control functions and other governance structural units of an institution. Such experience may have been gained through academic, administrative or other positions or through the implementation of the management, supervision or control of financial institutions or other commercial companies.

3.4. Time commitment

68. An institution shall assess and monitor the ability of each supervisory and executive board member to commit sufficient time to perform their official duties (time commitment), including, where established, within the scope of the committees, when performing the ensuring and monitoring of risk management, as well as implementing the operational and risk strategy of an institution, but, where an institution is significant, in terms of its organisational structure, scale, nature, complexity and specificity of its activities, it shall additionally assess and monitor whether the limitation of the maximum number of directorships of the supervisory or executive board member concerned is being complied with in accordance with the requirements of Section 26.¹ of the Credit Institutions Law and Section 106.¹ of the Financial Instrument Market Law, considering the limitations of the maximum number of directorships of the supervisory and executive board member referred to in Annex 2 to this Regulation.

69. Supervisory and executive board member of an institution should be able to commit sufficient time to also perform their duties in periods of increased activity, for example, in cases of restructuring or merger.

70. When assessing the sufficient time commitment of the supervisory and executive board member to perform their duties, an institution shall at least consider the following:

70.1. the number of actual directorships in financial and non-financial companies, taking into account possible synergies of such directorships, for example, when they are held within the same consolidating group;

70.2. the scope, nature, complexity and specificity of the activities of the relevant company where the supervisory or executive board member holds a management position, in particular, where the company is a non-EU company;

70.3. the time necessary to perform the official duties, as well as the travel time, in order to ensure the fulfilment of official duties on site;

70.4. the number of meetings of the supervisory or executive board scheduled by an institution;

70.5. the directorships in associations, foundations and other organisations, which do not pursue profit-gaining activities, for example, non-profit or charitable organisations, trade associations, etc.;

70.6. any other meetings scheduled for the relevant supervisory or executive board member with other internal or external stakeholders outside the regular meeting schedule;

70.7. specificity and duties of the position of the supervisory or executive board member concerned, for example, the status of executive director or chairperson, and whether or not the specificity of the position provides for a person concerned to hold other positions in the companies referred to in Point 70.1 in addition to his or her position in an institution;

70.8. other external professional or political activities of the supervisory or executive board member concerned, including any other functions and relevant activities, both within and outside the financial sector and both within and outside the EU;

70.9. the necessary training and other type of measures, upon appointment (induction), or the nomination of the supervisory or executive board member concerned for additional work in another position;

70.10. any other activities and situations to be recognised as relevant, when assessing the sufficient time commitment of the supervisory or executive board member concerned to perform his or her official duties.

71. Where an institution is significant, in terms of its organisational structure, scale, nature, complexity and specificity of its activities, it shall document not only the role, duties and the required professional qualification (for example, knowledge, skills and experience) of each supervisory and executive board member, but also the time commitment required to perform the duties.

72. Where an institution is not significant, in terms of its organisational structure, scale, nature, complexity and specificity of its activities, it may document the time commitment required to only perform the duties between the supervisory and executive board bodies.

73. An institution shall ensure that each supervisory and executive board member is made aware of the expected time commitment required to spend on his or her duties.

74. An institution shall keep records obtained, when performing the assessment of the sufficient time commitment of each supervisory and executive board member to perform his or her duties for the entire period, during which the person concerned is appointed for the position of the supervisory or executive board member. An institution shall ensure that the relevant records are updated whenever any changes are detected, as well as shall perform the re-assessment of the supervisory or executive board member, where the detected changes are likely to create or create grounds to doubt the ability of the supervisory or executive board member concerned to respect the required time commitment for his or her position.

3.5. Assessment of collective suitability of the supervisory and executive board members

75. Supervisory and executive board members of an institution should collectively be able to take appropriate decisions considering the specificity, nature of the activities, risk strategy, incl., risk appetite of an institution.

76. Collective suitability of the supervisory board members of an institution shall be assessed separately from the collective suitability of the executive board members.

77. Supervisory board members of an institution should collectively possess sufficient experience to ensure appropriate and constructive assessment of the decisions taken, as well as, where necessary, the challenging thereof and effective oversight of the executive board, internal control functions and other governance structural units of an institution.

78. Executive board members of an institution should collectively possess sufficient practical experience, knowledge and skills in the governance of an institution.

79. Supervisory and executive board members of an institution should collectively possess adequate knowledge in all areas relating to the activities of an institution. Each supervisory and executive board member of an institution should be able to present their views in a well-reasoned manner, as well as be able to effectively influence the decision-making process within the relevant supervisory or executive board body.

80. Supervisory and executive board of an institution should be appropriately structured to ensure the due fulfilment of the duties, meaning that these bodies collectively have the necessary understanding regarding the relevant areas of accountability, as well as possess the necessary skills to effectively manage and oversee the situation in an institution, including the following aspects:

80.1. the business of the institution and main risks related to it, which an institution is exposed to;

80.2. each of the material activities of an institution;

80.3. relevant competences in the financial sector, including financial and capital markets, solvency aspects, internal models applied within the business of an institution, etc.;

80.4. financial accounting and reporting;

80.5. risk management, compliance and internal audit;

80.6. information technology and security;

80.7. local, regional and global markets, where applicable to the specificity of the business of an institution;

80.8. national regulatory environment;

80.9. administrative skills and experience;

80.10. the ability to carry out strategic planning;

80.11. governance framework implemented within the consolidating and sub-consolidating group an institution belongs to and the risks the group structure is exposed to.

4. Diversity policy

81. An institution shall develop, document and implement a policy for implementing diversity in the composition of the supervisory and executive board to ensure that, when appointing the supervisory and executive board members of an institution, the variety of views, experiences and competences is promoted in the day-to-day activities of the supervisory and executive board of an institution.

82. An institution shall, as far as possible, ensure that the diversity of the supervisory and executive board members is implemented at least with respect to the following aspects:

82.1. educational and professional background;

82.2. gender;

82.3. age;

82.4. geographical provenance of separate supervisory and executive board members, where an institution is an internationally active company and such criteria does not contradict the other legal framework.

83. Where an institution is significant, in terms of its organisational structure, scale, nature, complexity and specificity of its activities, it shall, as far as possible, ensure the introduction of a quantitative target in its diversity policy with respect to the representation of the underrepresented gender in the composition of the supervisory and executive board. Nomination committee of an institution shall resolve upon policies and procedures covering the planned conduct and measures of an institution to ensure the achievement of a quantitative target with respect to the representation of the underrepresented gender in the supervisory and executive board bodies, as well as upon additional measures, where the nomination committee of an institution detects that the previously set targets have not been achieved within the planned timeframe.

84. The diversity policy of an institution may include employee representation within the supervisory and executive board bodies, ensuring additional practical knowledge and experience exchange in the day-to-day governance of an institution.

85. An institution shall ensure that the targets set in the diversity policy are observed, when appointing new supervisory or executive board member, as well as when promoting another employee of an institution to the position of supervisory or executive board member of an institution, providing for essentially equal and non-discriminating conditions and possibilities for all new candidates.

5. Induction and the necessary training of the supervisory and executive board members

86. An institution shall develop the policy for organising the induction and training process of the supervisory and executive board members and the corresponding procedures, for the purposes of promoting the understanding of the newly elected officers regarding the operational and risk strategy, nature and organisation of the activities, governance arrangements of an institution, as well as the role of persons to be appointed within an institution.

87. An institution shall ensure sufficient resources for the implementation of induction process and ensure the necessary training of the supervisory and executive board members, for example, in the field of human resources management and the field of ensuring the necessary training.

88. An institution shall ensure that the appointed supervisory and executive board members are made aware of all key information necessary for the performance of their duties within one month after the commencement of the employment legal relationship at the latest, but the necessary induction and training shall be completed within six months after the commencement of the employment legal relationship at the latest.

89. The training policies and procedures necessary for the supervisory and executive board members of an institution shall set out at least the following:

89.1. the objectives for the necessary induction and training objectives, separately for the supervisory and executive board body, as well as considering the set of individual knowledge, experience and skills required to perform the duties of each position and the planned involvement in committees of an institution;

89.2. role and responsibilities of the employees involved in ensuring the necessary training, considering the planned financial and human resources made available by an institution for the referred to processes, the planned training, as well as, where possible, organisation of the induction process of the supervisory and executive board members planned within the period of the coming year (or longer) in the future;

89.3. clearly understandable training, which is freely available to the supervisory and executive board members, inter alia, provide for the possibility to receive, where necessary, appropriate internal or external training or advice.

90. Institution's supervisory board or, where established, the nomination committee, when developing the policies and procedures for the induction process and the necessary

training, shall consider the view of the institution's human resources management structural unit and information provided by it as well as the views of other structural units of an institution relevant for the development of the corresponding policies and procedures.

91. An institution shall ensure the possibility to identify the areas in which training is required, both for the supervisory and executive board members individually and collectively, considering the opinions provided by the business functions and control functions of an institution regarding the specificity, nature and complexity of the activities of an institution.

92. An institution shall ensure that the policy of the induction process and training of the supervisory and executive board members and the corresponding procedures are documented, as well as updated, at least on an annual basis, considering the material changes in the business of an institution at least with respect to the governance arrangements, strategic objectives, new products introduced or material changes performed in the existing products of an institution. An institution shall, at least on an annual basis, review the quality of the implemented measures and activities and the compliance thereof with that which is set out in the policy and procedures.

6. Governance requirements for the assessment of the supervisory and executive board members and formation of the collective body

93. An institution shall ensure that the supervisory and executive board bodies thereof consist of an adequate number of the supervisory and executive board members corresponding to the organisational structure of an institution, the scope, nature, complexity and specificity of the activities thereof in accordance with the requirements of the Commercial Law or equivalent legal framework regulating the governance arrangements. An institution shall ensure that the number of supervisory board members is well-balanced with the number of the executive board members.

94. An institution shall ensure an adequate succession planning procedure for the position of the supervisory and executive board members in a situation where it is necessary to simultaneously dismiss all or several supervisory or executive board members from their positions, including ensuring the continuity of the decision-making process of an institution via a range of different types of solutions, concurrently considering the basic principles for ensuring the suitability of the supervisory and executive board members referred to in this Regulation.

95. Supervisory board and, where established, the nomination committee of an institution, shall provide support and actively contribute to the election of candidates for supervisory and executive board member positions in cooperation with a person or structural unit in charge of the performance of the suitability assessment, ensuring:

95.1. description of the role of each separate appointment and the skills necessary thereto;

95.2. assessment of adequate knowledge, skills and experience require for each supervisory and executive board member position;

95.3. assessment regarding the time commitment expected from each supervisory and executive board member to perform their duties;

95.4. assessment of collective conformity of supervisory and executive board members to the objectives set out in the diversity policy.

96. Where necessary, the supervisory board and, where established, the nomination committee of an institution, shall ensure timely communication to the shareholders of the results of the suitability assessment of the potential candidates for the position before the relevant shareholders' meeting, where it is scheduled to appoint or re-elect the supervisory or executive board member. Information communicated to the shareholders shall be sufficient to adopt the relevant decision.

97. An institution shall ensure that all information obtained during the individual and collective suitability assessment of the supervisory and executive board members and the results of the assessment performed are freely available to the shareholders.

7. Ensuring individual and collective suitability of the supervisory and executive board members

98. An institution shall ensure the monitoring of the individual and collective suitability of the supervisory and executive board members, focusing on, via internal or external resources, the assessment of the effectiveness of the individual and collective performance of the supervisory and executive board members, considering all events which caused a re-assessment of suitability.

99. When assessing individual or collective performance of the supervisory and executive board members, the supervisory board or, where established, the nomination committee of an institution, shall themselves or via external resources at least consider:

99.1. the efficiency of the working processes of the supervisory and executive board members, assessing, for instance, the efficiency of reporting lines and information exchange;

99.2. the effective and prudent functioning of the governance arrangement of an institution, providing, for example, that the supervisory and executive board members shall act in the long-term interests of an institution;

99.3. the ability of the supervisory and executive board members to focus on strategically important matters for an institution in their day-to-day activities;

99.4. the frequency of the supervisory and executive board meetings, the degree of attendance, as well as the time commitment of separate supervisory and executive board members for the issues on the agenda of the meetings;

99.5. any changes to the composition of the supervisory and executive board bodies, incl., impact thereof on potential weaknesses in the individual and collective suitability, taking into account the specificity of the activities of an institution;

99.6. pre-defined objectives for the performance of the supervisory and executive board of an institution;

99.7. independence of mind of the supervisory and executive board members, as well as compliance with the requirements of the Regulation on Establishment of the Internal Control System with respect to limiting the dominance of any one individual or small group of individuals within the supervisory and executive board body and the decision-making process;

99.8. compliance of the supervisory and executive board bodies with the objectives set in an institution's diversity policy;

99.9. any other events or circumstances that have or may potentially have a material impact on the individual or collective suitability of the supervisory and executive board members.

100. An institution shall ensure that the performed individual and collective assessment of the supervisory and executive board members regarding conformity to the suitability criteria and basic principles and all weaknesses or recommendations recorded as a result of the assessment are documented on a regular basis, however at least annually. Where the suitability assessment is performed more than once per year, an institution shall document the causes for the performance of such assessment.

101. An institution shall ensure the performance of a periodic (at least annual) assessment of the individual and collective knowledge, skills and experience of the supervisory and executive board members and the communication of the results thereof to the supervisory board, as well as, where necessary, to the executive board, but only in the part relating to the executive board.

102. An institution shall ensure the performance of a periodic (at least annual) assessment of the organisational structure, scale, composition and efficiency of performance of the supervisory and executive board members and the communication of the results thereof to the supervisory board, as well as, where necessary, to the executive board, but only in the part relating to the executive board.

103. Executive board of an institution shall consider information regarding the results of its assessment, as well as shall ensure the implementation of the provided recommendations. Should such recommendations not be implemented, the executive board shall document it, *inter alia*, shall explain the circumstances and reasons for failure to implement the relevant recommendations.

104. An institution, upon request, shall inform the Commission regarding the results of the annual individual and collective assessment of the supervisory and executive board members. An institution shall, in any case, inform the Commission regarding the results of any other related assessment performed, in light of occurrence of certain material circumstances or events.

8. Corrective measures

105. If an institution's initial suitability assessment concludes that a person is not suitable to be elected (appointed) as the supervisory or executive board member, an institution shall ensure that the person concerned is not elected (appointed) to the relevant position. If such person has already been elected (appointed) to the position or the fact that a person is not suitable has been discovered during the re-assessment of suitability, an institution shall inform the Commission to this effect and take appropriate measures to timely ensure the suitability of the supervisory or executive board member, or appropriate measures for the replacement of him/her with another person.

106. An institution, in accordance with that which is stated in Point 105 of this Regulation shall, within a period of five days at the latest, inform the Commission about any identified individual or collective non-suitability of the supervisory or executive board members discovered as a result of the assessment, as well as any corrective measures taken or planned to be taken for the prevention of the non-suitability concerned.

107. Non-suitability of the supervisory or executive board member to the criteria referred to in Chapter 3.1 of this Regulation shall not be considered as subject to prevention or any other correction.

108. An institution, when taking the measures referred to in Point 105 of this Regulation, shall consider the particular situation and the reasons for the non-suitability of the supervisory or executive board member. Appropriate corrective measures an institution may take with respect to the knowledge, skills and experience, sufficient time commitment to perform duties and independence of a person concerned, insofar as it does not contradict the criteria and principles referred to in this Regulation, shall mean adjusting or reallocating the duties between the supervisory and executive board members, replacing certain persons, appointing additional supervisory or executive board members, conduct for an institution for preventing or managing conflict of interest situations and training separate or all supervisory and executive board members, to ensure sufficient collective qualification and experience of the supervisory and executive board.

109. An institution shall ensure that any shortcomings in the individual or collective suitability of the supervisory or executive board members detected during initial assessment are prevented before submitting the application on receipt of the licence for the operation of an institution to the Commission, as well as before submitting the application for the receipt of approval for the appointment or re-election of the supervisory or executive board member in accordance with the requirements of the Licensing Regulation.

9. Final provision

110. Upon the coming into effect of this Regulation, Commission Regulation No. 186 of 27 November 2019 "Regulation on the Assessment of the Suitability of the Executive and Supervisory Board Members and Key Function Holders" shall become null and void.

Informative reference to the directives of the European Union Directives and other international documents

The Regulation contains provisions arising from the joint guidelines of the European Securities and Markets Authority (ESMA) and the European Banking Authority (EBA) "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).

Chairperson of the Financial and Capital
Market Commission

S. Purgaile