

Manual on the assessment of suitability (fit & proper)

20 December 2022

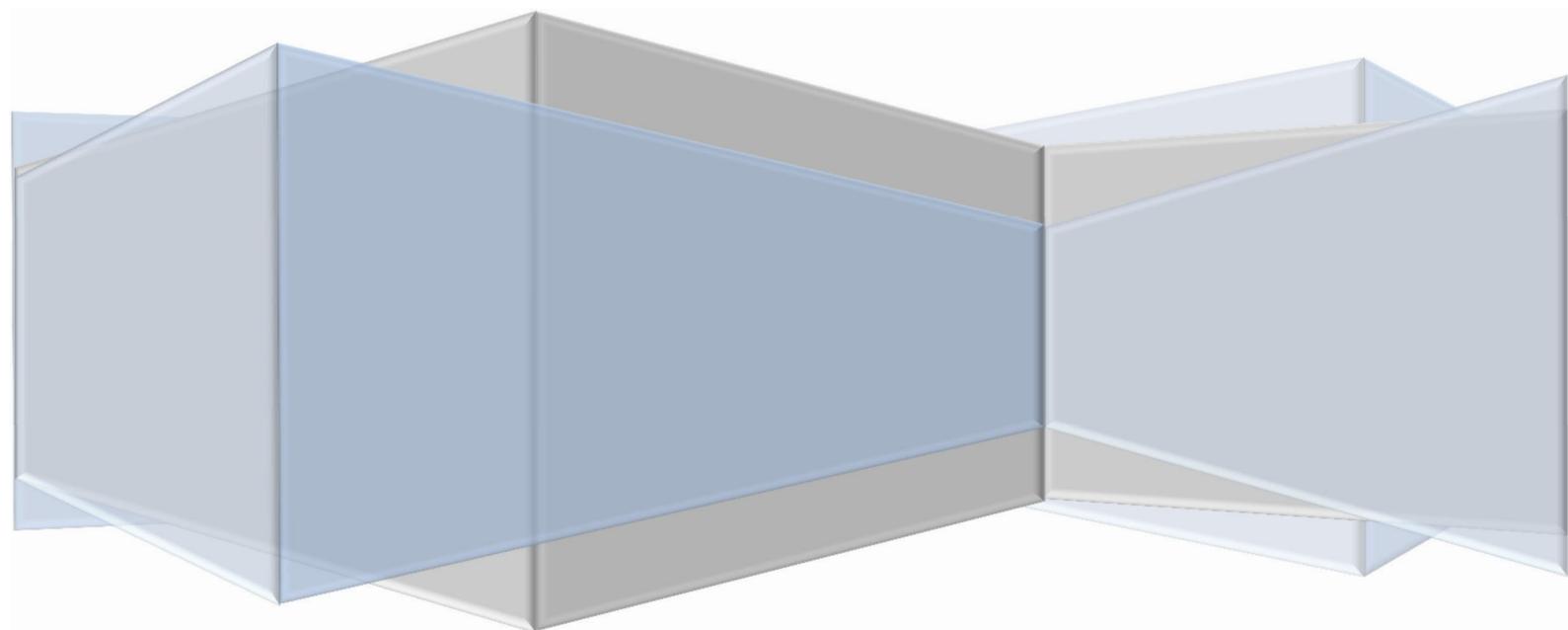


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0. Overview of changes

Main changes of September 2022:

- Integration of Guidelines EBA/GL/2021/06 of 2 July 2021, the SSM Guide of December 2021, the Regulation of the NBB of 9 November 2021 on external functions and other recent circulars/communications of the NBB related to suitability assessment;
- Restructuring of the suitability assessment criteria into 5 categories: (i) expertise, (ii) professional integrity, (iii) independence of mind, (iv) time commitment and (v) collective suitability;
- Further elaboration of prudential expectations on independence of mind (definition of this concept and distinction from the term “independent director” as defined in the supervisory laws);
- Further elaboration of prudential expectations on time commitment (basic assumptions and factors to be considered in the quantitative and qualitative assessment);
- Further elaboration of prudential expectations on collective suitability (expertise on IT, environmental and climate risks, prevention of money laundering and terrorist financing, and diversity);
- Clarification of the relationship between suitability assessment and prevention of money laundering and terrorist financing;
- Clarification of organisational expectations related to suitability assessment (suitability policy, diversity policy, procedures and processes for the selection and succession planning of managers, and procedures for the induction and training of managers);
- Clarification of expectations related to ongoing suitability assessment (list of events requiring reassessment of the individual and collective suitability of persons subject to suitability assessment);
- Addition of a point on the individual accountability of directors; and
- Addition of a point on suitability assessment in the context of resolution.

1. Introduction

1.1 BACKGROUND

- 1:1 According to the various supervisory laws¹, directors, senior managers and persons responsible for independent control functions of financial institutions should have the expertise and professional integrity required for their positions. The assessment of these persons' suitability is often referred to as the assessment of their fit & proper character.
- 1:2 Although it is primarily the responsibility of financial institutions to select and appoint suitable persons, the suitability assessment is part of the prudential supervision exercised by the National Bank of Belgium (hereinafter the "NBB") and, where applicable, the European Central Bank (hereinafter the "ECB").
- 1:3 The subject of fit & proper has become very topical in recent years, in particular because of the severe financial crisis in 2008, which highlighted the need to ensure optimal management of financial institutions. To guarantee their integrity and smooth functioning, it is indeed essential that financial institutions have the right people in the right places and that such people have the expertise and professional integrity required for their positions. A process of reflection has been launched on this subject and various actions have been undertaken at the international, European and national levels.
- 1:4 Several of these initiatives have meanwhile led to the adoption of legal and regulatory provisions and policies to be implemented in the national framework. Some form of codification is therefore needed to have a clear overview of the entire applicable framework.
- 1:5 In this context, the NBB decided in 2013 to create a better framework for its suitability policy, in the form of a circular. This 2013 circular was transformed in 2018 into a manual containing the different policy documents concerning suitability assessment. This Manual was revised in 2022 to incorporate the latest national and international developments in this area.

1.2 GENERAL PRINCIPLES OF SUITABILITY ASSESSMENT

- 1:6 In the context of prudential supervision, the concept of suitability covers two aspects. It may refer both to the requirement of "adequate organisation and internal control system" for the institution as a whole ("collective suitability"), and to the individual assessments of specific persons ("individual suitability").
- 1:7 This Manual focuses on five assessment criteria: (i) expertise, which covers knowledge, experience, and skills; (ii) professional integrity; (iii) independence of mind; (iv) time commitment; and (v) collective suitability. These standards are referred to by the generic terms "suitability" or "expertise and integrity"² (fitness and propriety).
- 1:8 A person is considered "suitable" or "fit and proper" for a specific function if he/she meets the following conditions:
- a) he/she has the necessary knowledge, experience and skills (expertise);
 - b) he/she acts with professional integrity, i.e. there is no evidence to the contrary and no reason to reasonably question his/her good reputation;
 - c) he/she is able to devote sufficient time to the performance of his/her duties (time commitment);

¹ Law of 25 April 2014 on the legal status and supervision of credit institutions, Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies, Law of 20 July 2022 on the legal status and supervision of stockbroking firms, Law of 11 March 2018 on the legal status and supervision of payment institutions and electronic money institutions, access to the activity of payment service provider and the activity of issuing electronic money, and access to payment systems, Royal Decree of 26 September 2005 on the legal status of settlement institutions and equivalent institutions and Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories.

² The concept of "expertise and professional integrity" (fit & proper) should be understood in a broad sense in order to examine whether a person has the qualities required for a specific position. This is only the case if he/she has the necessary qualities and characteristics to fulfil all the tasks and obligations associated with that position with satisfaction.

- d) he/she is able to make his/her own decisions in a reasoned, objective and independent manner and is free from conflicts of interest that could affect his/her conduct (independence of mind); and
- e) where the position involves membership of a multi-person management body, he/she contributes to the collective understanding and management of the institution's activities and risks (collective suitability).

1:9 From a legal perspective, it should be noted that the supervisory laws only use the terms "professional integrity" and "expertise". The concept of expertise as used in the supervisory laws should be understood *sensu lato*, as it covers not only expertise in the strict sense (knowledge, experience and skills) but also (i) "professional conduct"³, from which the criteria of independence of mind and time commitment are derived and (ii) the criterion of collective suitability, which refers to the knowledge, experience and skills collectively present within a body. For the sake of clarity, this Manual uses five assessment criteria instead of two. The concept of expertise should therefore be understood *sensu stricto*, except when used in the context of the expression "fit & proper".

1:10 The suitability assessment is based on the following principles:

- There should be a structured framework within the institution for assessing the suitability of directors, senior managers and persons responsible for independent control functions. This framework should be applied in a consistent manner;
- The NBB or, where applicable, the ECB (hereinafter, the supervisor), in its capacity as prudential supervisor, exercises its discretion to assess the suitability of candidates. This power should be exercised on the basis of verified and complete factual data and of an assessment that takes into account, in particular, the principles of proportionality, impartiality and legal certainty, in order to reach an informed decision;
- Both the institution and the supervisor should continuously monitor the individual and collective suitability of the persons concerned.

1.3 OBJECTIVES OF THIS MANUAL AND METHODOLOGY

1:11 With this Manual, the NBB wishes, inter alia, to:

- clarify what it understands by "adequate expertise" and "professional integrity", as defined in legislation. On this basis, institutions can further frame their own suitability assessments;
- clearly state what it expects from institutions with regard to individual and collective suitability assessments;
- communicate transparently about its suitability policy in order to provide legal certainty as far as possible about both the content and the procedure of suitability assessments;
- where appropriate, provide details of how other relevant European and international regulations and policy documents should be integrated into suitability assessments. In this context, the role of the ECB is also further clarified, where appropriate.

1:12 Finally, this Manual also aims to make the persons subject to suitability assessment aware of the fact that they have an extremely important role to play and should help ensure that the institutions fulfil their obligations. They should be aware of their duties and social responsibilities, and should reflect this awareness in their professional performance.

1:13 The Manual aims to bring together⁴ all applicable policy documents relating to suitability (European regulations, Belgian legislation, preparatory parliamentary work, regulations, circulars, international standards, etc.) and, where useful, provide additional explanations. In addition, the Manual also

³ "Professional conduct" refers to observable behaviour that reflects the standards and values of professional practice (professional ethics) in day-to-day activities. In particular, it refers to the behaviour required to ensure compliance with financial sector regulations and, more broadly, to protect the interests of both the institution and its customers, counterparts, counterparties and other stakeholders, as well as the community at large.

⁴ See the box at the beginning of Chapters 2, 3 and 4.

provides details on topics that are not as such covered by specific policy documents. Furthermore, it goes without saying that policy documents that are not covered by this Manual remain applicable, and that this Manual is without prejudice to the competences of other supervisors (e.g. the FSMA) as regards suitability.

1:14 The Manual does not replace the underlying policy documents. If the latter are amended, the Manual will be amended accordingly. As in principle the Manual is an online publication, it is a living document. Its reference and title will not be changed every time it is amended, as is the case with circulars, for example. Any amendments made will, however, always be notified to the institutions and explained in a separate section, indicating the date of amendment.

1:15 This Manual is structured in 5 chapters based on its scope *ratione personae*:

- Chapter 1 contains the basic principles of suitability assessments and common elements for all sectors;
- Chapter 2 explains the suitability requirements for significant credit institutions subject to direct supervision by the ECB and the (mixed) financial holding companies that head such institutions;
- Chapter 3 concerns the suitability requirements for less significant credit institutions (“LSIs”) subject to direct supervision by the NBB, stockbroking firms, payment institutions, electronic money institutions, custodian banks, central securities depositories, institutions providing support to a central securities depository, central counterparties, certain (mixed) financial holding companies and certain branches;
- Chapter 4 covers the suitability requirements for insurance and reinsurance companies, insurance holding companies and mixed financial holding companies;
- Chapter 5 explains how to use the fit & proper forms currently in place.

1:16 Chapters 2, 3 and 4 of the Manual each address the following topics: (i) scope; (ii) delineation of responsibilities in the suitability assessment; (iii) guidelines on suitability criteria; (iv) organisational requirements for the suitability assessment, (v) suitability assessment by the financial institution; (vi) suitability assessment by the supervisor, (vii) individual accountability of directors and (viii) suitability assessment in the context of resolution.

1.4 DEFINITIONS

1:17 The terms used in this Manual shall have the same meaning as in the respective sectoral regulations. For the sake of clarity, the most frequently used terms in this Manual are defined below⁵:

1:18 **Supervisor:** the National Bank of Belgium (NBB) or the European Central Bank (ECB), according to the division of competences with regard to the supervision of credit institutions established by or pursuant to the Single Supervisory Mechanism Regulation.

1:19 **Financial institution (or institution for short):** generic term for any company subject to supervision by the NBB (or, where applicable, the ECB) which falls within the scope of this Manual.

1:20 **Independent control functions:** the internal audit function, the compliance function, the risk management function and - for insurance companies - the actuarial function.

1:21 **Directors:** all members of the statutory governing body of a financial institution, both executive and non-executive directors, who together determine the overall policy and strategy of the institution (strategy function).

1:22 **Executive directors:** members of the statutory governing body who participate in the senior management of the institution (management function). In particular, the members of the statutory governing body who are also members of the management committee or to whom day-to-day management is assigned are executive directors.

1:23 **Non-executive directors:** members of the statutory governing body who exercise control over senior management (supervisory function).

⁵ It is also noted that any references to “risks” in this Manual should include also money laundering and terrorist financing risks and environmental, social and governance risk factors.

- 1:24 **Senior managers:** persons who participate in the senior management of the institution⁶, namely:
- a) where a management committee has been established, members of the management committee and any other persons at a hierarchical level immediately below that of the management committee, insofar as these persons can exercise a direct and decisive influence over the management of all or part of the institution's activities, including managers of branches abroad;
 - b) where no such committee has been established, persons who can exercise a direct and decisive influence over the management of all or part of the institution's activities.
- 1:25 **Diversity:** the situation whereby the characteristics of the members of the statutory governing body, including their age, gender, geographical provenance⁷ and educational and professional background, are different to an extent that allows a variety of views within the statutory governing body.
- 1:26 **Small institution:** institution that employs no more than 25 persons at the time of the suitability assessment.

1.5 PRINCIPLE OF PROPORTIONALITY

- 1:27 The proportionality principle aims to ensure that governance arrangements are consistently tailored to the nature of each institution's activities, size, risk profile and business model, taking into account the individual position for which the assessment is carried out, so that the objectives of the regulatory requirements are effectively achieved.
- 1:28 In the context of suitability assessments, the principle of proportionality may be taken into account for the assessment of the suitability criteria on the one hand and the organisational expectations with regard to suitability assessments on the other.

1.5.1 VARIABLES IN THE ASSESSMENT OF SUITABILITY CRITERIA

- 1:29 The proportionality principle should be applied when assessing three of the five suitability criteria, namely: (i) expertise (knowledge, experience and skills); (ii) time commitment and (iii) collective suitability.
- 1:30 The proportionality principle should never be considered when assessing (i) professional integrity and (ii) independence of mind. In any case, all members of the statutory governing body and persons responsible for independent control functions should be of sufficiently good repute and demonstrate honesty and integrity. Furthermore, all members of the statutory governing body should be independent in mind, regardless of the institution's size and internal organisation and the nature, scope and complexity of its activities, and the duties and responsibilities of the specific position, including positions in committees of the statutory governing body.
- 1:31 As regards the three assessment criteria to which the proportionality principle does apply, this principle implies taking into account variables that allow for an assessment adapted to the situation and context in each specific case. This also means that a person who is deemed suitable for a specific position in a specific institution will not automatically be suitable for a similar position in another institution.
- 1:32 In any case, a distinction should be made based on the following two variables:
- a. *The characteristics of the institution concerned*

- 1:33 With regard to the characteristics of the institution, the following should be taken into account in particular:
- a) the institution's size in terms of balance sheet total, client assets held or managed, and/or the volume of transactions processed by the institution, the amount of technical provisions (for insurance companies) or the number of employees;
 - b) the institution's legal form, including whether it belongs to a group;
 - c) whether the institution is listed or not;

⁶ See the definition of "senior management" in the NBB Regulation of 9 November 2021 on external functions.

⁷ Geographical provenance means the region where a person has gained a cultural, educational or professional background. This dimension should be taken into account in particular for institutions operating at international level.

- d) the type of activities and services exercised or provided by the institution;
- e) the institution's geographical location and the extent of its activities in each jurisdiction;
- f) the institution's business model and strategy, the nature and complexity of its business activities, and its organisational structure;
- g) the institution's risk strategy, risk appetite and actual risk profile, also taking into account the outcome of the annual capital adequacy assessment;
- h) the authorisation for institutions to use internal models to measure capital requirements, where relevant;
- i) the type of customers; and
- j) the nature and complexity of the products, contracts or instruments offered by the institution.

b. The (intended) position to be held by the person concerned

1:34 The institution first assesses the knowledge, experience and skills required for a particular position within the institution. The institution is expected to carry out this assessment meticulously, analysing as precisely as possible which responsibilities a particular position entails and which knowledge, experience and skills are required for it. To this end, the institution should identify the specific activities the position entails, without attaching importance to the formal job title. In certain cases, legislation imposes further requirements (e.g. for members of the audit committee or the member of the statutory governing body appointed as the senior officer responsible for combating money laundering and terrorist financing).

1.5.2 ADJUSTMENT FACTORS FOR ORGANISATIONAL EXPECTATIONS

1:35 The proportionality principle also applies with regard to the organisational requirements for suitability assessments. As mentioned in Guidelines EBA/GL/2021/06 and in the EIOPA Guidelines on System of Governance, small institutions and institutions considered "less significant" under the applicable supervisory law may apply simpler and less sophisticated policies, procedures and processes than institutions considered "significant".

1:36 For more information on the organisational implications of applying the proportionality principle in suitability assessments, please refer to the sector-specific governance manuals.

1.6 WEIGHTING FACTORS TO BE USED IN THE SUITABILITY ASSESSMENT PROCESS

1:37 The information available to support a suitability file is always used and weighted by the supervisor according to its relevance and materiality with respect to the current or future responsibilities of the person concerned. As weighting factors are used, the same importance does not need to be given to all elements of the dossier. Without prejudice to more specific weighing factors, the supervisor (NBB/ECB) always takes into account the following general weighting factors:

1.6.1 THE SERIOUSNESS OF THE FACTS IN LIGHT OF THE OBJECTIVES OF PRUDENTIAL SUPERVISION

1:38 The facts should be assessed in light of the public interest pursued by the supervisor as part of its supervisory task. To measure the impact of a fact, the concrete circumstances surrounding it should be taken into account, as well as the intrinsic seriousness of the facts, any proof of rehabilitation, etc.

1.6.2 LAPSE OF TIME SINCE THE FACTS

1:39 Passage of time may reduce the importance of the facts. Taking into account the lapse of time between the occurrence of the facts and the time when the suitability assessment is made, and depending on whether facts have occurred in the meantime that indicate a change in the suitability of the person concerned, less or little importance should in principle be given to facts that have since become obsolete.

1:40 According to Article 20, § 2 of the Banking Law, professional disqualifications apply for a period of 20 years in case of imprisonment of more than 12 months and for a period of 10 years in case of other prison sentences or fines, as well as in case of a suspended sentence.

1:41 However, the information to be provided to the supervisor on criminal, administrative and civil proceedings should always include all proceedings relevant to the suitability assessment, even if they are more than 10 or 20 years old or if the person concerned has been rehabilitated. It is up to the supervisor to assess the relevance of the facts and information received in light of the purpose of its supervisory task and to decide whether or not to take these elements into account in its assessment.

1.6.3 ATTITUDE AND/OR MOTIVATION OF THE PERSON CONCERNED WITH REGARD TO THE FACTS

1:42 A proper attitude and a plausible, credible and substantiated motivation of the institution and the person concerned should be considered as pluses when weighing the information. From the person's attitude, motivation and explanations, it is possible to determine how he/she evaluates the facts, how he/she assesses the impact of his/her conduct on the suitability criteria and whether he/she has learned any lessons. If the information relates to facts that are not inherently linked to the person himself/herself (but, for example, to a company in which the person was previously employed), he/she should be able to properly explain his/her involvement in the facts concerned.

1.6.4 COMBINATION OF AVAILABLE INFORMATION

1:43 If several pieces of information about the same person are available, they should be weighted in the light of their combination with each other and/or the pattern of actions they reveal.

1:44 A full overview of a person's background and the available information helps to provide an accurate and less static picture of how the person concerned operates. Combining the information provides an insight into a person's pattern of actions and/or omissions and may lead to the conclusion that the person concerned is not (or is no longer) considered to be suitable or needs to improve his/her expertise in a specific area.

2. Suitability requirements for significant institutions subject to direct supervision by the ECB under the SSM Regulation

Regulatory framework:

1. Articles 4 and 6 of the SSM Regulation⁸
2. Articles 93 and 94 of the SSM Framework Regulation⁹
3. Articles 3, 83°, 11, 19, 20, 21, 27-31, 60, 61, 62, 62/1, 72, 86, 168 and 212 of the Banking Law¹⁰
4. Royal Decree of 8 February 2022 approving the Regulation of the National Bank of Belgium of 9 November 2021 on the exercise of external functions by managers and persons responsible for independent control functions of regulated companies
5. Royal Decree of 15 April 2018 approving the Regulation of the National Bank of Belgium of 6 February 2018 on expertise of heads of the compliance function
6. Communication NBB_2022_19 of 12 July 2022 on the exercise of external functions by managers and persons responsible for independent control functions of regulated companies
7. Circular NBB_2021_27 of 16 November 2021 transposing the EBA Guidelines of 2 July 2021 on the assessment of the suitability of members of the management body and key function holders (EBA/GL/2021/06)
8. Communication NBB_2021_04 of 19 January 2021 on the HIVE project and the digitalisation of the fit and proper process
9. Circular NBB_2018_25 of 18 September 2018 on the suitability of directors, members of the management committee, responsible persons of independent control functions and senior managers of financial institutions (the circular introducing this Manual)
10. Circular NBB_2017_21 of 7 July 2017 on loans, credits and guarantees to managers, shareholders and related persons
11. Governance Manual for the banking sector (new version of 2022)
12. EBA Guidelines of 2 July 2021 on the assessment of the suitability of members of the management body and key function holders (EBA/GL/2021/06)
13. EBA Guidelines of 2 July 2021 on internal governance (EBA/GL/2021/05)
14. SSM Guide to fit and proper assessments of December 2021
15. Basel Committee on Banking Supervision (BCBS) Principles: Principles 2 and 4

⁸ Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions.

⁹ Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities.

¹⁰ Law of 25 April 2014 on the legal status and supervision of credit institutions.

- 2:1 Directives 2013/36/EU¹¹ (CRD) and 2014/65/EU (MIFID II)¹² lay down various provisions that empower the European Banking Authority (EBA) to issue guidelines on individual and collective suitability requirements for members of the statutory governing body, senior managers and key function holders within credit institutions, investment firms, financial holding companies and mixed financial holding companies.
- 2:2 In this context, the EBA on 2 July 2021 issued Guidelines EBA/GL/2021/06, which must be applied as of 31 December 2021. The NBB relies on these guidelines in monitoring the suitability requirements. Unless expressly provided otherwise, institutions should therefore apply and comply with these guidelines as a complement to and clarification of the legal provisions on suitability requirements. This aspect is further explained in Circular NBB_2021_27 of 16 November 2021 transposing these guidelines.
- 2:3 Furthermore, in December 2021, the ECB published a new version of its Guide to fit and proper assessments (“SSM Guide”), which aims to harmonise the application of suitability assessment criteria with a view to establishing common prudential practices among participating Member States. The NBB and the ECB also rely on this SSM Guide, as part of the Single Supervisory Mechanism, and recommend that relevant institutions take it into account.

2.1 SCOPE

2.1.1 INSTITUTIONS COVERED BY THIS CHAPTER AND SSM SUPERVISION

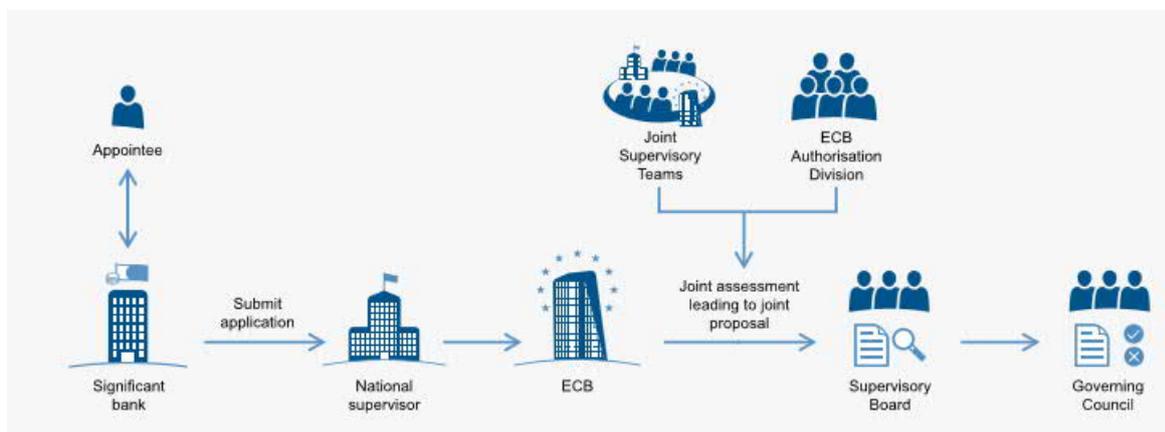
- 2:4 This chapter applies to significant credit institutions¹³ and other institutions (i.e. (mixed) financial holding companies¹⁴) that are subject to direct supervision by the ECB pursuant to Article 6(4) and (5)(b) of the SSM Regulation. It serves as a reference for suitability assessments conducted for the appointment of directors, senior managers and persons responsible for independent control functions, as well as for changes in qualifying holdings.
- 2:5 The suitability requirements apply to these institutions in accordance with the rules of the Single Supervisory Mechanism (hereinafter “SSM”). Specifically, this means that, although the ECB has competence for significant institutions, it is the task of the national competent authorities to assist the ECB in its supervisory activities. In this context, the services of the NBB participate in Joint Supervisory Teams and are, in certain cases, the first point of contact for the institutions. Considering this approach, the term “supervisor” in this Manual refers to the ECB in its capacity as the authority responsible for the direct supervision of the institution concerned and/or, as appropriate, to the NBB where it assists the ECB in the context of the SSM.
- 2:6 The main steps of the suitability procedure for significant institutions and the cooperation between the supervisors involved are summarised in the diagram below, which is taken from the ECB’s website and provides a - non-exhaustive - overview of the fit & proper process:

¹¹ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

¹² Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.

¹³ In this context, significant institutions are institutions meeting at least one of the significance criteria set out in the SSM Regulation. The list of institutions subject to direct supervision by the ECB can be found at <https://www.bankingsupervision.europa.eu/banking/list/who/html/index.en.html>. Please note that this term should not be confused with the Belgian notion of “significant credit institution” as defined in Article 3, 30° of the Banking Law.

¹⁴ More specifically, pursuant to Article 212 of the Banking Law, the rules on suitability set out herein apply to (mixed) financial holding companies governed by Belgian law. The said Article 212 of the Banking Law declares Article 60 of the same law, which concerns fit & proper assessments, applicable to all (mixed) financial holding companies. In addition, Article 168, § 1 declares certain other governance aspects as explained in the NBB’s Governance Manual applicable to approved or designated financial holding companies heading a group or subgroup.



2:7 The final decision is taken by the ECB, and the decision-making process usually takes several weeks (see point 2.6.2. Assessment procedure). For more information on the division of powers between the NBB and the ECB, see the following link:
<https://www.bankingsupervision.europa.eu/banking/tasks/authorisation/html/index.en.html>.

2.1.2 PERSONS COVERED BY THIS CHAPTER

2:8 This chapter covers the scope and assessment of the individual and, where applicable, collective suitability of persons who hold or wish to hold the following positions:

- director;
- senior manager¹⁵; and
- person responsible for an independent control function¹⁶.

2:9 Senior managers at “N-1” level (managers who exercise a direct and decisive influence on the management of the institution but who are not members of the management committee), with the exception of branch managers, do not have to be approved by the supervisor. Of course, this does not mean that these persons should not have the fitness and propriety required for their position. The principles of this chapter also apply to them but, as they are not assessed by the supervisor, institutions are not required to submit the notification forms covered in Chapter 5 of this Manual. For further clarification, please refer to the provisions on assessing the suitability of key function holders in Guidelines EBA/GL/2021/06.

2.1.3 CROSS-BORDER CONTEXT

2:10 For the application of this chapter within a cross-border context, a distinction must be made between the following three situations:

a) Institutions established in the European Economic Area operating in Belgium through a branch or under the freedom to provide services => This chapter does not apply to the managers of institutions established in the European Economic Area operating in Belgium through a branch or under the freedom to provide services.

b) Belgian institutions operating abroad through a branch => This chapter applies to the managers and persons responsible for independent control functions of branches of institutions authorised in Belgium operating abroad through a branch (Article 86 of the Banking Law).

¹⁵ Members of the management committee are subject to the provisions of this chapter, whether or not they are directors. As a reminder, in certain types of holding companies, the management committee may be composed of directors and managers who are not members of the statutory governing body (see Article 212 of the Banking Law). Pursuant to Article 26, second paragraph, 2° of the Banking Law, a similar derogation may be requested for credit institutions, depending on their size and risk profile.

¹⁶ The assessment must pertain to the most senior person responsible for the independent control function.

c) Institutions governed by the law of a non-Member State of the European Economic Area operating in Belgium through a branch => This chapter applies to the managers and the person responsible for the compliance function of branches established in Belgium of institutions governed by the law of a non-Member State of the European Economic Area (Article 335 of the Banking Law).

2.1.4 GROUP CONTEXT

- 2:11 Pursuant to Article 109(2) and (3) of CRD IV, as transposed in Article 168 of the Banking Law, the consolidating institution must ensure the implementation of (and compliance with) a consistent and integrated group policy for assessing the suitability of all subsidiaries included in the prudential consolidation. Effective implementation of these obligations is further clarified in Guidelines EBA/GL/2021/06 (paragraphs 117 to 122).
- 2:12 The persons concerned must be suitable to hold their positions and thus meet the suitability assessment standards, at the level of both the Belgian parent company and all regulated Belgian subsidiaries. If a person holds a position requiring a suitability assessment at both parent and subsidiary level, two separate assessments need to be carried out.

2.2 DELINEATION OF RESPONSIBILITIES IN THE SUITABILITY ASSESSMENT

2.2.1 RESPONSIBILITY OF THE INSTITUTION AND OF THE PERSON SUBJECT TO SUITABILITY ASSESSMENT

- 2:13 It is primarily incumbent on the institution to assess the suitability of persons who hold positions requiring a suitability assessment. The institution should inform the supervisor of the outcome of its suitability assessment, including the assessment of suitability of the collective composition of the statutory governing body. In this respect, please also refer to the information and documentation provided in Annex III to Guidelines EBA/GL/2021/06.
- 2:14 The statutory governing body is responsible for the recruitment policy, the selection process and the induction and training policies, which inter alia govern suitability assessments. In accordance with Article 31 of the Banking Law, the nomination committee should actively contribute to the institution's accountability in this respect and draw up appropriate suitability and diversity policies and adequate internal rules for the assessment of individual and collective suitability. Furthermore, it is among the duties of the institution's compliance function to ensure compliance with legal and regulatory suitability and diversity requirements.
- 2:15 Both the institution and the person subject to suitability assessment must ensure that the information provided to the supervisor is complete and accurate.

2.2.2 RESPONSIBILITY OF THE SUPERVISOR

- 2:16 When a new person is deemed suitable by the institution, the supervisor examines the necessary information and carries out an assessment on the basis of which it decides on the final approval of this person's appointment. For its own assessment, the supervisor primarily relies on the information supplied by the institution and the person concerned. This information is mainly collected using standard forms designed specifically for this purpose (see Chapter 5 of this Manual). Of course, the supervisor is free to request additional information and, where appropriate, to interview the person concerned.

2.2.3 RESPONSIBILITY FOR THE ONGOING ASSESSMENT OF SUITABILITY

- 2:17 The legal requirement to ensure that the positions requiring a suitability assessment are at all times held by persons who are suited to do so constitutes an ongoing obligation on the part of the institutions. The persons concerned must be fit and proper at all times. The specific details of ongoing suitability monitoring are discussed in more detail later in this chapter.
- 2:18 However, as regards the respective responsibilities of the parties involved for ensuring ongoing suitability, the following applies:

The person concerned

- 2:19 On the standard forms to be completed by the person concerned and the institution, the former is expected to declare that he/she has made every effort to comply continuously with the suitability standards for the purposes of the position which he/she already holds or plans to hold.
- 2:20 Persons already in office must immediately inform the institution of any event that is likely to influence their suitability (see Chapter 5).

The institution

- 2:21 Where an institution considers that doubts might arise as to the fitness and propriety of a person in office or as to the collective suitability of a body of the institution, it should take measures as soon as possible to seek a solution. In accordance with Article 94(1) of the SSM Framework Regulation and Article 60, § 4 of the Banking Law, the institution must also immediately inform the supervisor.
- 2:22 In order to ensure the ongoing suitability of the persons concerned, the supervisor recommends the following:
- When a person takes up a position, it is recommended for the institution to request a written declaration in which this person confirms that he/she will unreservedly abide by the current suitability standards for this position and that he/she will immediately communicate any information that could affect the assessment of his/her suitability.
 - The person concerned should be reminded of this declaration every year. For instance, the institution can, on an annual basis, explicitly ask the persons concerned whether they are aware of any relevant changes that could affect the assessment of their suitability.
- 2:23 As the financial sector is constantly evolving, ongoing training is a necessary but not a priori sufficient condition for meeting the fitness requirement on an ongoing basis. The institution is expected to take the necessary steps to provide adequate and relevant ongoing training.

The supervisor

- 2:24 The supervisor continuously monitors the fitness and propriety of the persons subject to suitability assessment. Whenever it becomes aware of any information which raises doubts about the suitability of a person in office, it immediately carries out a more in-depth examination and, where necessary, reassesses this person's suitability.

2.3 GUIDELINES ON SUITABILITY CRITERIA

- 2:25 This point sets out (non-exhaustive) guidelines on how to apply the suitability criteria in concrete terms. The basic principle is that suitability assessments require an in-depth examination of the information collected in order to obtain as complete and accurate a picture as possible of a person's suitability for a particular position.
- 2:26 The following criteria should be considered: (i) expertise (fitness) in terms of knowledge, experience and skills; (ii) professional integrity (propriety); (iii) independence of mind; (iv) time commitment; and (v) collective suitability.

2.3.1 EXPERTISE

- 2:27 In the context of suitability assessments, the notion of expertise *sensu stricto*¹⁷ encompasses several elements, i.e. knowledge, experience and skills. These three elements are complementary, and analysing each of them provides an overall picture of a particular person's expertise. For instance, a

¹⁷ As mentioned in the introduction, from a legal point of view, the concept of expertise in a broad sense includes the concept of professional conduct, and thus the assessment criteria related to independence of mind, time commitment and collective suitability. However, for the sake of clarity, it was decided to address these assessment criteria separately.

person who has the knowledge required for a given position but who is unable to transfer and apply it within the institution does not have the required expertise.

2.3.1.1 Knowledge

- 2:28 “Knowledge” refers to everything that a person knows and any insight he/she has acquired. In principle, knowledge can be learned, e.g. through education, training or on the job.
- 2:29 Irrespective of the specific knowledge and experience required for a given position, all persons subject to suitability assessment must in principle possess basic theoretical knowledge in the following areas:
1. banking and financial markets;
 2. regulatory framework and legal requirements applicable to the institution concerned;
 3. strategic planning and understanding of an institution’s business strategy;
 4. risk management (identifying, assessing, monitoring, controlling and mitigating the main types of risk of an institution);
 5. accounting and auditing;
 6. governance and internal control; and
 7. the interpretation of financial information and, on this basis, the identification of key issues and appropriate controls and measures.
- 2:30 Possession of appropriate knowledge and experience may be demonstrated by the successful completion of relevant training and the presence of relevant professional experience. “Relevant training” should be interpreted broadly. In addition to acquired (university and equivalent) degrees, in-company training courses should also be considered.
- 2:31 Special attention should be paid to the level and nature of education completed and its relevance to the financial sector. Generally speaking, education in the financial sector (banking, finance and insurance), economics, law, business management, general management, IT, marketing and quantitative methods can be considered relevant.
- 2:32 For the appointment of the senior manager who will be designated as the senior officer responsible for the prevention of money laundering and terrorist financing¹⁸, this person is expected to demonstrate specific knowledge in anti-money laundering and countering the financing of terrorism (AML/CFT) and in AML/CFT policies, controls and procedures. He/she should have a good understanding of the money laundering and terrorist financing risk to which the institution is exposed as a result of its business model.

2.3.1.2 Experience

- 2:33 “Relevant professional experience” refers to experience gained in a work environment that is substantively similar or tangential to the type of institution and/or the type of position in which the person concerned is or wishes to be employed.
- 2:34 In order to determine the extent to which previously held positions constitute “relevant professional experience” or not, the following factors should be considered:
- the nature and hierarchical level of the position(s) held;
 - whether the position(s) was/were held within the same institution or group;
 - the length of time over which experience was acquired (how long the position(s) was/were held);

¹⁸ As a reminder, pursuant to Article 9, § 1 of the Law of 18 September 2017 on the prevention of money laundering and terrorist financing and on the restriction of the use of cash, the senior officer responsible for the prevention of money laundering and terrorist financing has the specific task of ensuring that organisational anti-money laundering measures are adopted and implemented. This designation is part of the division of tasks within the management committee and in no way diminishes the responsibility of this committee.

- the nature, complexity and organisational structure of the institution at which the position(s) was/were held;
- the knowledge acquired in the position(s); and
- the number of subordinates of the position(s).

2:35 The relevant professional experience of directors and senior managers is assessed by the supervisor based on the various thresholds set out in the SSM Guide, which vary according to the position concerned:

- CEO (chair of the management committee): 10 years of recent¹⁹ practical experience in areas related to banking or financial services. A significant part of this experience must consist of high-level management positions²⁰;
- Senior manager: 5 years of recent practical experience in areas related to banking or financial services. This experience must have been acquired in high-level management positions;
- Chair of the statutory governing body: 10 years of recent and relevant practical experience²¹. A significant part of this experience must consist of high-level management positions;
- Non-executive director: 3 years of recent and relevant practical experience in management positions²². Practical experience gained in the public or academic sector may also be considered relevant.

2:36 If the above thresholds are met, the person concerned is deemed to have sufficient experience, unless there is evidence to the contrary. If the thresholds are not met, the person concerned may still be considered suitable, provided such suitability is sufficiently substantiated and justified by the institution. In this respect, please refer to the SSM Guide, which provides for an assessment of experience in two steps and which includes examples of acceptable reasons for deviating from the above thresholds.

2:37 In this regard, it should be noted that a member of the statutory governing body in its supervisory function who does not meet the required thresholds may still be considered suitable if (i) the member has experience or expertise that meets the specific needs of the institution (e.g. experience in IT or in climate or environmental risks); (ii) the member and the institution commit to the necessary training being undertaken to overcome the identified lack of experience; and (iii) the member fulfils all other suitability requirements.

2:38 Persons responsible for independent control functions should in principle have at least five years of recent and relevant practical experience, taking into account the nature and complexity of the activities and the size, risk profile and organisational structure of the institution.

2:39 There is a specific arrangement for the person responsible for the compliance function²³.

¹⁹ According to the SSM Guide, the practical experience should not be older than two years. It should be noted that holding several short-term positions (e.g. temporarily replacing a person) is not automatically considered sufficiently long relevant professional experience.

²⁰ In principle, positions held at "N-1" level relative to the management committee.

²¹ The concept of "relevant experience" is broader for a non-executive director than for a senior manager.

²² "N-1" or "N-2" level.

²³ Without prejudice to the principles laid down in this Manual, persons responsible for the compliance function are subject to the specific requirements on appropriate knowledge and experience set out in the Regulation of the NBB of 6 February 2018 on the expertise of the persons responsible for the compliance function (Article 2). In particular, these persons must:

- have at least three years of relevant experience;
- hold a master's degree (unless they are exempted from this requirement on the basis of their practical experience and knowledge);
- have passed an examination conducted by a company whose examinations are recognised by the NBB and the FSMA and, upon passing the examination, participate every three years in a training programme with a minimum duration of 20 hours at a training company recognised by the FSMA, on the advice of the NBB.

In order to comply with the knowledge requirement on an ongoing basis, the persons responsible for the compliance function must, from their appointment, participate every three years in a training programme with a minimum duration of 40 hours. The requirements for permanent training are further explained in the explanatory note annexed to the aforementioned regulation and Communication FSMA_2018_05 of 8 May 2018 on permanent training for compliance officers.

2.3.1.3 Skills

- 2:40 “Skills” refer to the actions a person is competent in. They enable the person concerned to behave in a specific way in certain situations (for instance in negotiation processes or when making a decision). Like knowledge, skills can be learned.
- 2:41 It is primarily up to the institution to determine what skills are needed for a particular position. In doing so, it should take into account the variables set out in the point on proportionality in the introduction to this Manual.
- 2:42 Examples of these variables include:
- when assessing the skills of an applicant for the position of person responsible for the risk management function (Chief Risk Officer - CRO), particular attention must be paid to his/her independent judgement and his/her ability to resist/oppose in the context of the decision-making process;
 - when assessing the skills of an applicant for the position of chair of the board of directors, the primary focus should be on the applicant’s ability to chair meetings and develop a strategy;
 - when assessing the skills of a non-executive director, particular attention should be paid to his/her ability to challenge executive directors.
- 2:43 Annex II to Guidelines EBA/GL/2021/06 contains a non-exhaustive list of relevant skills that institutions should take into account in the suitability assessment. The supervisor does not assess individual skills, but rather evaluates how the institution has taken the overall “skills” component into account in its internal assessment of the applicant (e.g. by organising assessments). This component can also be discussed during an interview.

2.3.2 PROFESSIONAL INTEGRITY

- 2:44 A person’s professional integrity relates to his/her reliability and honesty. This characteristic can be analysed more concretely on the basis of a person’s past actions. More specifically, a person’s background can be used to assess whether it is reasonable to assume that he/she will carry out the task entrusted to him/her honestly, faithfully, ethically and with integrity.
- 2:45 A distinction should be made between professional disqualification, which is imposed automatically without the supervisor exercising its discretion, and the broader assessment of professional integrity, where the supervisor does have to exercise its discretion. However, there is a link between the two, in the sense that, in specific situations that do not fall under professional disqualification, the supervisor can use its discretion in such a strict manner that it results in a situation similar to a professional disqualification (“quasi-automatic” refusal).

2.3.2.1 Professional disqualification

- 2:46 Article 20 of the Banking Law contains a list of convictions that result in the offender being disqualified from serving as a director, senior manager or person responsible for an independent control function for a specified period of time. The supervisor cannot grant any derogations or exceptions in this respect.

2.3.2.2 The supervisor’s discretion

- 2:47 However, the assessment of a person’s professional integrity should not be limited solely to verifying the absence of professional disqualifications. The concept of integrity must be understood broadly, in the sense that any relevant details in the person’s background may affect his/her professional integrity. Criminal proceedings and the intervention of the supervisor as an administrative authority are independent of one another in that they pursue separate objectives and may thus lead to a different appraisal of the facts. The assessment of professional integrity is not necessarily linked to the criminal classification of acts or actions or to the outcome of criminal proceedings. Indeed, this assessment is not based on the concept of “guilt” in the criminal sense of the word, but rather on an appraisal of facts

and actions, the aim being to determine whether persons subject to suitability assessment actually have the qualities required to perform their duties and bear the corresponding responsibilities.

2:48 On the basis of the standard form covered in Chapter 5 of this Manual and the relevant clarifications provided in the SSM Guide, institutions can determine which details should be given special attention as part of an assessment of professional integrity.

a. Events in a person's background considered as offences for professional disqualification

2:49 An admission of guilt without a formal conviction by the competent body should be treated in the same way as a conviction, as the person concerned cannot be deemed to have the required professional integrity. In practice, this means, for example, that a suspended sentence (with admission of guilt) is treated in the same way as a conviction.

2:50 Where any criminal, administrative or disciplinary proceedings are in progress or pending against a person to be assessed, the supervisor uses its discretionary power in a strict manner by deeming that person to not have the required professional integrity if:

- the person concerned has acknowledged the underlying facts; or
- the person concerned has already incurred a conviction in this respect, even if this conviction is still subject to appeal.

b. Past offences relating to money laundering and terrorist financing

2:51 The utmost attention should be paid to facts relating to money laundering and terrorist financing. In this respect, a distinction should be made between (i) breaches of legislation on the prevention of money laundering and terrorist financing (repressive aspects) and (ii) breaches of obligations to combat money laundering and terrorist financing (preventive aspects).

2:52 The supervisor has no investigative powers for breaches of legislation on the prevention of money laundering and terrorist financing. In this regard, it relies on the information provided by the competent authorities in this field and the judicial authorities (criminal law). The findings of these authorities are considered essential information for establishing the professional integrity of the person concerned.

2:53 Conversely, the supervisor is competent to monitor the compliance of Belgian financial institutions with their European and national obligations to combat money laundering and terrorist financing, as well as their organisational obligations regarding assets freezing and transfers of funds. If a person has previously held a position at an institution where a breach of these obligations has been identified, the institution where this person applies for a new position must conduct a thorough examination of the facts to assess their impact on his/her professional integrity²⁴. The supervisor also carries out its own assessment based on the information available to it.

c. Financial background

2:54 A person's financial conduct is relevant to an assessment of his/her professional integrity as it may have an impact on his/her reputation. Persons who hold positions requiring a suitability assessment are expected to manage their affairs in a sound and prudent manner. They must be able to prove that the performance of their duties is not adversely affected by their financial background.

2:55 However, it should be emphasised that having limited financial resources should not negatively impact a person's suitability for a position.

2:56 Taking into account the above weighting factors, attention should be paid to both personal and professional financial background. Examples include the following situations:

- the person concerned has had major personal financial problems (e.g. recurrent gambling issues, pattern of over-indebtedness, etc.) which have led to legal, recovery or debt collection proceedings;

²⁴ Institutions can obtain background information relating to money laundering and terrorist financing through various means, including a statement by the person concerned, consultation of the criminal record, administrative sanctions published by the supervisors, the list of financial sanctions published by the Treasury, the press, etc.

- suspension of payments, insolvency, bankruptcy, debt restructuring or arrangement with creditors has been requested or ordered with regard to the person concerned;
- the person concerned has been or is likely to be involved in tax proceedings;
- the person concerned has been ordered to pay outstanding debts on grounds of liability for the bankruptcy of a company or legal person;
- cessation of payments or bankruptcy has been requested or ordered for a company, institution or any other body in which the person concerned holds or has held a position as a director or as a person responsible for an independent control function, or in which this person otherwise significantly influences or has influenced policy, or in which he/she holds or has held a significant interest.

d. Other background

2:57 Taking into account the above weighting factors, consideration should also be given to the following events in a person's background:

- other criminal, disciplinary, civil and administrative convictions (e.g. violations of anti-money laundering legislation, consumer protection legislation, tax legislation, etc.);
- ongoing cases in these areas, especially a person's involvement in sanction investigations or proceedings carried out by the supervisor concerned or other supervisors;
- amicable settlements (termination of criminal proceedings on payment of a sum of money) or settlements concluded in relation to breaches of financial or other legislation;
- other facts which, irrespective of their legal classification, are likely to cast doubt on a person's professional integrity (see in this context also paragraphs 72 to 77 of Guidelines EBA/GL/2021/06), such as:
 - o any evidence that the person concerned has not been transparent, open, and cooperative in his/her dealings with the competent authorities;
 - o refusal, revocation, withdrawal or expulsion of any registration, authorisation, membership, or licence to carry out a trade, business, or regulated profession;
 - o the reasons for any dismissal or removal from a position of trust, fiduciary relationship or similar situation, and for any request to resign from such a position;
 - o disqualification by any relevant competent authority from serving as a member of the statutory governing body, particularly persons who effectively direct an entity's business; and
 - o any other evidence or serious allegation based on relevant, credible and reliable information which suggests that the person concerned is acting in a manner contrary to high standards of conduct.

2:58 This list must be considered both directly (with regard to the person concerned) and indirectly (with regard to a company, institution or any other body in which the person holds or has held a position requiring a suitability assessment, or in which he/she otherwise significantly influences or has influenced policy, or in which he/she holds or has held a significant interest). When considering the latter, the person's degree of involvement should certainly be taken into account.

2.3.3 INDEPENDENCE OF MIND

2:59 A distinction should be made between (i) independence of mind and (ii) "formal" independence within the meaning of the definition of "independent director" in Article 3, 83° of the Banking Law.

2:60 With regard to the first concept (independence of mind), any person who acts as a director, senior manager or person responsible for an independent control function must be able to make conscientious, objective and independent decisions in the interest of the institution and its

stakeholders, after having carefully weighed all available information and opinions, and independently of any external influence.

2:61 With regard to formal independence, please refer to the criteria set out in Article 3, 83° of the Banking Law. This qualification is granted to certain non-executive directors whose task is to represent all of the institution's stakeholders and to supervise management, in particular by participating in certain specialised committees of the statutory governing body.

2.3.3.1 Independence of mind and conflicts of interest

2:62 Directors, senior managers and persons responsible for independent control functions must be able to make their own decisions in a sound, objective and independent manner. Independence of mind is demonstrated by the character and conduct of the person concerned and may be affected by conflicts of interest.

2:63 Thus, the institution must assess whether or not the person subject to the suitability assessment:

- a. has the necessary behavioural skills, including:
 - i. courage, conviction and strength to effectively assess and challenge the proposed decisions submitted to him/her;
 - ii. the ability to ask questions and express divergent opinions; and
 - iii. the ability to resist groupthink;
- b. is likely to face conflicts of interest that could impede his/her ability to perform his/her duties with the necessary independence and objectivity.

2:64 Given the risk of conflicts of interest, the Banking Law stipulates that the statutory governing body should establish governance mechanisms to prevent such conflicts. In this regard, please see Article 62, § 2 et seq. of the Banking Law, which relates to the exercise of external functions²⁵, and Article 72 of the same Law, which relates to loans, credits and guarantees to managers, shareholders and related persons²⁶.

2:65 Guidelines EBA/GL/2021/06 provide that consideration should be given to at least the following factors that could create actual or potential conflicts of interest:

- a. economic interests (e.g. shares, other ownership rights, holdings and other economic interests in the institution's counterparties, intellectual property rights, loans granted by the institution to a company owned or controlled by members of the statutory governing body);
- b. personal or professional relationships with the owners of qualifying holdings in the institution;
- c. personal or professional relationships with staff of the institution or entities included within the scope of prudential consolidation (e.g. close family relationships);
- d. other employments and previous employments in the recent past (e.g. within the past five years);
- e. personal or professional relationships with relevant external stakeholders (e.g. being associated with material suppliers, consultants or other service providers);
- f. membership in a body or ownership of an entity with conflicting interests; and
- g. political influence or political relationships.

2:66 In the same vein, the SSM Guide distinguishes 4 types of conflicts of interest: (i) personal, (ii) professional, (iii) financial and (iv) political conflicts of interest.

²⁵ See also the Royal Decree of 8 February 2022 approving the Regulation of the National Bank of Belgium of 9 November 2021 on the exercise of external functions by managers and persons responsible for independent control functions of regulated companies, as well as Communication NBB_2022_19 on the same subject.

²⁶ See also Circular NBB_2017_21.

- 2:67 Institutions should identify the actual or potential conflicts of interest of the person concerned, in accordance with their conflict of interest policy, and assess whether or not these conflicts are material.
- 2:68 With regard to the materiality of a conflict of interest, the SSM Guide contains a list of situations and thresholds for which there is a presumption of a material conflict of interest²⁷.
- 2:69 All actual and potential conflicts of interest, whether material or not, on the part of the statutory governing body, senior management or a person responsible for an independent control function must be adequately discussed, documented, decided on and duly managed by the competent body²⁸ (i.e. the necessary measures should be taken). The persons concerned should abstain from voting or taking decisions on any matter which places them in a situation of conflict of interest.
- 2:70 If a material conflict of interest has been identified, the institution should (i) perform a detailed assessment of the situation; (ii) decide which mitigating measures it will take based on its internal conflicts of interest policy; and (iii) decide which measures it will take to prevent the conflict of interest, if it cannot adequately mitigate or manage it.
- 2:71 The institution should inform the supervisor of any actual or potential conflict of interest, whether material or not, that may impact the independence of mind of a member of the statutory governing body, of a senior manager or of a person responsible for an independent control function, and communicate the mitigating or preventive measures taken (“conflict of interests statement”):
- If the conflict of interest has been deemed non-material, the institution should explain why, as part of the suitability assessment;
 - If the conflict of interest has been deemed material, the institution must provide the supervisor with at least the following information: (i) a description of the conflict of interest identified, (ii) a description of the assessment performed within the institution, (iii) the institution’s conclusion as to the mitigating or preventive measures taken, and (iv) the reasons for the adequacy of those measures.
- 2:72 For further information on conflicts of interest, please refer to Guidelines EBA/GL/2021/06 (paragraphs 78 to 91) and the SSM Guide (Section 3.3).

2.3.3.2 Independence of mind versus formal independence within the meaning of Article 3, 83° of the Banking Law

- 2:73 As mentioned above, independence of mind should not be confused with the notion of formal independence within the meaning of Article 3, 83° of the Banking Law. An independent director as defined in that article is a non-executive director who has no link with the shareholder and who represents the interests of all the institution’s stakeholders. In accordance with Article 28 of the Banking Law, the presence of one or more independent directors is required in the specialised committees of the statutory governing body²⁹.
- 2:74 The concept of independence is defined in Article 3, 83° of the Banking Law, which sets out a list of 9 criteria and refers to the criteria in Guidelines EBA/GL/2021/06. However, the institution has the possibility to demonstrate to the supervisor that, although not all criteria are met, the independence of the person concerned is not compromised (in accordance with the “comply or explain” principle)³⁰.
- 2:75 In practice, the supervisor’s decisions on the suitability of the person concerned and its decisions relating to compliance or justification of non-compliance with the independence criteria set out in Article 3, 83° of the Banking Law are usually taken simultaneously. However, it cannot be excluded that these

²⁷ With regard to conflicts of interest that may arise from loans, credits and guarantees referred to in Article 72 of the Banking Law, only loans, credits and guarantees exceeding EUR 500,000 are to be considered as material.

²⁸ The body competent to manage conflicts of interest is (i) the management committee (or, in the absence of a management committee, the statutory governing body) for conflicts of interest of senior managers, and (ii) the statutory governing body for conflicts of interest of non-executive directors and persons responsible for independent control functions.

²⁹ Article 28 of the Banking Law stipulates that credit institutions which are required to set up an audit committee, a risk committee, a remuneration committee and a nomination committee must ensure that at least one independent director sits on each of these committees. Furthermore, the majority of the members of the audit committee must be independent.

³⁰ In this case, the institution must submit a request for derogation together with the fit & proper form of the director concerned, in which it justifies the validity of this request. The supervisor decides whether or not to grant this derogation as part of its governance supervision.

two decisions are taken separately when the issue of independence also concerns the ongoing monitoring of governance.

2.3.4 TIME COMMITMENT

- 2:76 Pursuant to Article 61, § 1 of the Banking Law, all directors, senior managers and persons responsible for independent control functions must devote sufficient time to the performance of their duties in the institution. This also applies in periods of particularly increased activity, such as a restructuring, crisis situation, merger, etc.
- 2:77 Time commitment should be assessed on a case-by-case basis, taking into account the situation of the person concerned and the nature, complexity of the activities, size, risk profile and organisational structure of the institution.
- 2:78 The SSM Guide explains in more detail how time commitment should be assessed. The overall assessment of time commitment should be guided by basic assumptions, a quantitative assessment of the number of external functions performed by the person concerned and a qualitative assessment of the time required for the intended position.

2.3.4.1 Basic assumptions

- 2:79 In accordance with the SSM Guide, the following basic assumptions should be used in any assessment of time commitment:
- Executive directors must effectively manage the business of the institution. The persons responsible for independent control functions must monitor the institution's operations. As a general rule, these positions are assumed to be full-time. There may be exceptions to this rule, particularly within groups³¹. In such cases, the relevant synergies should be explained and assessed.
 - Non-executive directors must review and effectively challenge decisions submitted by the management committee and effectively supervise and control the management of the institution. Consequently, non-executive directors should participate in meetings of the statutory governing body and its committees (if any) and take sufficient time to prepare by examining the files and to attend these meetings. In addition, these members should devote sufficient time to training to keep abreast of information and regulations relevant to the institution.
 - All directors must have a good understanding of the institution's business. This includes understanding the risks associated with the business and the resulting risk exposure, as well as the risk management strategy. They should have an appropriate understanding of the institution's business areas. This requires a good understanding of the institution's governance arrangements and structure, which may require the member to spend time on ongoing training and developing a network of contacts.
 - All directors must be able to perform their duties in times of particularly increased activity, such as a restructuring, relocation of the institution, acquisition, merger, takeover or crisis situation.

2.3.4.2 Quantitative assessment: number of mandates

- 2:80 The simultaneous exercise of multiple mandates is an important factor that can affect a person's time commitment. Article 62, §§ 5 and 6, second sentence of the Banking Law provides inter alia for the maximum number of mandates that an executive or non-executive director may hold simultaneously.
- 2:81 For the purposes of the quantitative limits on the number of mandates held simultaneously, the exercise of multiple mandates, whether or not involving participation in daily management, in companies belonging to the group to which the institution belongs is considered a single mandate (Article 62, § 9, first paragraph of the Banking Law).
- 2:82 For further information on this subject, please refer to Communication NBB_2022_19 on the exercise of external functions by managers and persons responsible for independent control functions of

³¹ See Article 62, § 6 of the Banking Law.

regulated companies. Please also refer to the explanation of the quantitative assessment in the SSM Guide.

2.3.4.3 Qualitative assessment

2:83 In addition to the quantitative assessment, institutions should assess qualitatively whether the person concerned has sufficient time to perform the intended position.

2:84 In making this qualitative assessment, institutions should - in accordance with Guidelines EBA/GL/2021/06 - take into account at least the following factors:

- a) the number of positions held by the person concerned in decision-making bodies of financial and non-financial companies relevant to the position in question, taking into account possible synergies when these positions are held within the same group;
- b) the size of the institution and the nature, scope and complexity of its activities;
- c) the person's place of residence and the travel time required to be physically present at the institution;
- d) the number of meetings scheduled for the body on which the person will serve;
- e) the number of meetings scheduled with the competent authorities or the institution's other internal or external stakeholders;
- f) the nature of the position concerned and the resulting obligations (particularly in terms of representation) and responsibilities (including the positions referred to in point a));
- g) other external professional or political activities of the person concerned, and any other positions or activities that are considered relevant, both within and outside the financial sector and both within and outside the EU;
- h) the necessary induction and training; and
- i) available relevant benchmarking on time commitment, including the benchmarking provided by the EBA.

2.3.4.4 Outcome

2:85 Institutions should inform the supervisor through the fit & proper form "New appointment" of the outcome of their overall assessment of time commitment, distinguishing between the quantitative and qualitative assessment³². This overall assessment should take into account the above factors and include at least an estimate of the number of days per year devoted to the position in question and, where appropriate, to the other professional activities of the person concerned.

2:86 For more information on the assessment of time commitment, please refer to paragraphs 39 to 46 of Guidelines EBA/GL/2021/06 and the SSM Guide.

2.3.5 COLLECTIVE SUITABILITY

2:87 In principle, an assessment of expertise always relates to an individual. However, when the assessment relates to a position in a multi-member body, account must also be taken of the composition and operation of this body as a whole. This means that it must be checked whether the expertise within the body is sufficiently guaranteed with the person concerned, in view of his/her knowledge, experience and skills. The same applies to the senior management in cases where the institution does not have a management committee.

2.3.5.1 Areas of collective suitability

2:88 The statutory governing body and the management committee should collectively be able to understand the institution's business, including the main risks to which it is exposed.

³² In accordance with Communication NBB_2022_19 on external functions, the institution must notify the NBB via the eManex platform of all external functions performed by the persons concerned. Any material changes to existing external functions must also be communicated to the NBB via the fit & proper form "New Elements" (see also Chapter 5 of this Manual).

2:89 The collective knowledge, skills and experience that must be present in the relevant body depend on the characteristics of the institution. In determining the areas of collective suitability to be present in the statutory governing body and the management committee, account should be taken of the institution's business model, strategy, risk appetite and risk profile and of the nature, complexity and location of its activities.

2:90 In general, collective suitability covers the following areas:

- a) the business of the institution and main risks related to it;
- b) each of the material activities of the institution;
- c) the governance of the institution;
- d) relevant areas of sectoral and financial competence, including financial and capital markets, solvency and internal models;
- e) managerial skills and experience;
- f) financial accounting and reporting;
- g) the ability to plan strategically;
- h) risk management, compliance and internal audit;
- i) information technology and security;
- j) climate and environmental risk;
- k) local, regional and global markets, where applicable;
- l) the legal and regulatory environment;
- m) money laundering and terrorist financing risk;
- n) the management of (inter)national groups and risks related to group structures, where applicable.

2:91 It should be noted that the supervisor pays particular attention to the following components of the assessment of collective suitability:

- Information technology and security: to ensure effective management, policy/strategy and oversight, it is essential that the management committee and the statutory governing body in its policy/strategy and supervisory function have sufficient understanding of the risks associated with information technology and security. Therefore, it is recommended that at least one executive and one non-executive director have knowledge, skills and specific experience in this area;
- Environmental and climate risk: the institution's statutory governing body is best placed to ensure that climate and environmental risks are taken into account in the development of the institution's overall business strategy, business objectives and risk management framework, and to exercise effective oversight of climate and environmental risks. In this particular area, sound and effective management of the risks to which the institution is or may be exposed requires executive and non-executive directors to have adequate collective knowledge, skills and experience.
- Money laundering and terrorist financing (ML/FT) risk: the statutory governing body in its policy/strategy and supervisory function and the management committee should have a good understanding of ML/FT risks. As mentioned in paragraph 152 of Guidelines EBA/GL/2021/06, when assessing collective suitability, institutions should also assess whether the statutory governing body and senior management have, through their decisions, demonstrated a sufficient understanding of ML/FT risks and how these affect the institution's business, and have demonstrated appropriate management of these risks, including by taking corrective measures where necessary.

2.3.5.2 Diversity

2:92 The decision-making process for strategies and risk-taking within an institution can be positively supported by a range of backgrounds, experiences, values, opinions and views in the institution's decision-making bodies (statutory governing body and management committee). Diversity in all its facets bolsters institutions' decision-making bodies.

2:93 The promotion of diversity in decision-making bodies is enshrined in Article 31 of the Banking Law. The Banking Law requires institutions to use diversity as one of the criteria for the composition of their statutory governing body and management committee, in order to improve their risk monitoring and resilience. The Banking Law also requires them to develop a diversity policy (see the point on organisational requirements), including a quantitative target for the representation of the under-represented gender in the statutory governing body.

2:94 For further information on diversity, please refer to the Governance Manual for the banking sector.

2.3.5.3 Assessment

2:95 When assessing collective suitability, institutions should assess the composition of the management committee and that of the statutory governing body in its policy/strategy and supervisory function separately.

2:96 While the management committee should collectively have a high level of managerial skills, the statutory governing body in its policy/strategy and supervisory function should collectively have sufficient management skills to organise its tasks effectively and to be able to understand and challenge the management practices applied and decisions taken by the management committee.

2:97 The collective suitability of the statutory governing body and the management committee should be assessed using a matrix. Institutions should use either:

- a) the suitability matrix template included in Annex I to Guidelines EBA/GL/2021/06. Institutions may adapt this template taking into account the above criteria; or
- b) their own appropriate methodology in line with the criteria set out in this Manual.

2:98 Regarding diversity, institutions should specify in the fit & proper form whether the new appointment in question aligns with the established gender diversity target and their other internal diversity rules.

2:99 Both the SSM Guide and Guidelines EBA/GL/2021/06 provide further clarification on the information and motivation (in particular the self-assessment to be carried out and statement to be prepared in this context) to be provided by the institution to the supervisor regarding the assessment of collective suitability. Guidelines EBA/GL/2021/06 also clarify the cases in which the institution should (re)assess the collective suitability of the statutory governing body, as well as the focus points in this respect. Paragraphs 123 to 127 of these Guidelines also specify the specific role of the nomination committee with regard to collective suitability.

2:100 Finally, it should be noted that, pursuant to Article 60 of the Banking Law, institutions are required to inform the supervisor of any distribution of tasks between members of the statutory governing body and of any significant changes thereto.

2.4 ORGANISATIONAL REQUIREMENTS FOR THE SUITABILITY ASSESSMENT

2:101 As stated above, the primary responsibility for suitability assessment lies with the institution. To carry out this assessment, it must have policies, procedures and processes in place.

2.4.1. SUITABILITY POLICY

2:102 The institution should develop a suitability policy that takes into account applicable regulations and is aligned with its overall governance framework, corporate culture and risk appetite. In this context, the institution's statutory governing body should adopt and update a policy for suitability assessment that covers (executive and non-executive) directors, senior managers and persons responsible for independent control functions.

2:103 The nomination committee should actively contribute to the establishment of this policy and may be supported in this respect by the HR, Legal and Compliance departments.

2:104 The policy should include at least the following:

- a. the process for the selection, appointment, reappointment and succession planning of members of the statutory governing body, senior managers and persons responsible for independent control functions, and the applicable internal procedure for the assessment of the suitability of these persons;

- b. the criteria to be used in the suitability assessment, which should include at least the 5 suitability criteria set out in this Manual;
- c. how the diversity policy and, in particular, the quantitative target for the representation of the under-represented gender in the statutory governing body are taken into account as part of the selection process;
- d. how the assessment is documented.

2:105 For more information on this subject, please refer to the Governance Manual for the banking sector and Guidelines EBA/GL/2021/06.

2.4.2. DIVERSITY POLICY

2:106 In accordance with Article 31 of the Banking Law, all institutions covered by this chapter are required to establish a policy to promote diversity within the statutory governing body, so that it is composed of a diverse group of members and that a variety of views are represented on it.

2:107 This policy should cover at least the following aspects of diversity: age, gender, educational background, professional background and, for institutions that are active internationally, geographical provenance. This policy may be part of the suitability policy or separate from it, provided that it is explicitly mentioned in the suitability policy.

2:108 In accordance with Article 31 of the Banking Law, the diversity policy should include a quantitative target for the representation of the under-represented gender in the statutory governing body. Institutions should thus quantify the targeted participation of the under-represented gender and specify an appropriate timeframe within which the target should be met and how it will be met. The target should be set for the statutory governing body as a whole, but in the case of a sufficiently large management committee, it may be split between the management function and the supervisory function.

2:109 For more information on this subject, please refer to the Governance Manual for the banking sector and Guidelines EBA/GL/2021/06.

2.4.3. SELECTION PROCESS AND SUCCESSION PLANS

2:110 Without prejudice to the shareholders' rights to appoint members of the statutory governing body, the institution's nomination committee should actively contribute to the selection of applicants for vacant positions as member of the statutory governing body, senior manager (with the exception of senior managers at "N-1" level) and person responsible for an independent control function, in cooperation with the HR, Legal and Compliance departments.

2:111 More specifically, the nomination committee should:

- a) prepare a description of the roles of and capabilities for a particular appointment (job profile);
- b) evaluate the adequate balance of knowledge, skills and experience of the statutory governing body;
- c) assess the time commitment; and
- d) consider the objectives of the diversity policy.

2:112 The recruitment decision should, where possible, take into account a preselection of suitable applicants which takes into account the diversity objectives set out in the institution's diversity policy.

2:113 Without prejudice to the shareholders' rights to appoint and replace all members of the statutory governing body simultaneously, the nomination committee should establish succession plans for members of the statutory governing body, senior managers (with the exception of senior managers at "N-1" level) and persons responsible for independent control functions. These succession plans should ensure the continuity of decision-making and prevent, where possible, too many managers having to be replaced simultaneously. They should also include processes for dealing with sudden or unexpected absences or departures of managers, including any relevant interim arrangements.

2:114 For more information on this subject, please refer to the Governance Manual for the banking sector and Guidelines EBA/GL/2021/06.

2.4.4. INDUCTION AND TRAINING POLICY AND PROCEDURE

2:115 Institutions should establish and implement a policy for the induction and training of members of the statutory governing body. This policy may be part of the suitability policy.

2:116 The human and financial resources provided for induction and training should be sufficient to achieve the objectives of induction and training and to ensure members' ongoing suitability. Directors should receive key information no later than one month after taking up their position, and their induction should be completed within six months.

2:117 The induction and training policy and procedures should at least set out:

- a. the induction and training objectives for the persons concerned, according to their position;
- b. the responsibilities for the development of a detailed training programme;
- c. the financial and human resources made available by the institution for induction and training, taking into account the number of induction and training sessions, their cost and any related administrative tasks, in order to ensure that induction and training can be provided in line with the policy;
- d. a clear process under which any person concerned can request induction or training.

2:118 Institutions should have in place a process to identify the areas in which training is required, both for the statutory governing body collectively and for its individual members.

2:119 For more information on this subject, please refer to the Governance Manual for the banking sector and Guidelines EBA/GL/2021/06.

2.5 SUITABILITY ASSESSMENT BY THE INSTITUTION

2:120 The assessment of individual and collective suitability must take place before the position is taken up and, subsequently, on a regular basis in the course of the position.

2.5.1 ASSESSMENT BEFORE TAKING UP THE POSITION

2:121 Before appointing an applicant, the institution must conduct a due diligence investigation, the specific level of which should depend on the intended position. This Manual, Guidelines EBA/GL/2021/06 and the SSM Guide contain concrete recommendations and guidelines for the institution to use when assessing a person's suitability.

2:122 Where the institution has completed the investigation and wishes to consider the person's application for the particular position, it is recommended to record this internal selection decision in writing. The decision should contain not only the selection decision itself but also any considerations upon which it is based (reasons for individual and, if applicable, collective suitability). Where appropriate, it should also mention any agreements that have been made to improve the expertise of the person concerned on certain points.

2:123 A well-documented suitability policy, carefully written job profiles and reasoned selection decisions on the part of the institution are necessary for the subsequent suitability assessment by the supervisor.

2.5.2 REASSESSMENT IN THE COURSE OF THE POSITION

2:124 The suitability requirement is ongoing: in accordance with Article 19 of the Banking Law, the persons concerned must possess the appropriate expertise and act with the required professional integrity at all times.

1) Periodic reassessment

2:125 The institution must periodically assess the individual and collective suitability of the persons subject to suitability assessment. More specifically, Article 31 of the Banking Law provides that the nomination committee should at least annually evaluate the structure, size, composition and performance of the statutory governing body, as well as the knowledge, skills, experience and degree of involvement (including regular attendance) of both the individual members of the statutory governing body and the statutory governing body as a whole.

2) Reassessment based on specific events

2:126 Whenever the institution is informed of an event that may affect the assessment of the individual suitability of a person subject to suitability assessment or the assessment of the collective suitability of a decision-making body³³, it should consider whether a formal reassessment is necessary in view of the impact of this event on the suitability of the person concerned, and document the underlying considerations in writing. If the institution concludes that an ad hoc reassessment is necessary, it must notify the supervisor immediately.

§ 1. Specific events requiring a reassessment of individual suitability

2:127 In accordance with Guidelines EBA/GL/2021/06, a reassessment of the individual suitability of a director, senior manager or person responsible for a control function should be carried out at least in the following cases:

- a) when there are concerns regarding the suitability of members of the statutory governing body, senior managers or persons responsible for independent control functions;
- b) in the event of new elements that have a material impact on the reputation of the person concerned;
- c) where there are reasonable grounds to suspect that money laundering or terrorist financing has been or is being committed or attempted or there is an increased risk thereof in connection with that institution and in particular in situations where the institution:
 - i. has not implemented appropriate internal controls or oversight mechanisms to monitor and mitigate ML/FT risks (e.g. risks identified by supervisory findings from on-site or off-site inspections);
 - ii. has been found to be in breach of its AML/CFT obligations at home or abroad; or
 - iii. has materially changed its business activity or business model in a manner that suggests that its exposure to ML/FT risk has significantly increased;
- d) in any event that can otherwise materially affect the suitability of the person concerned.

2:128 The SSM Guide also contains a non-exhaustive list of “new elements” that require a reassessment of individual suitability.

§ 2. Specific events requiring a reassessment of collective suitability

2:129 In accordance with Guidelines EBA/GL/2021/06, institutions should reassess the collective suitability of decision-making bodies at least in the following cases:

- a. when there is a material change to the institution’s business model, risk appetite or strategy or structure at individual or group level;
- b. when there are material changes to the composition of the body (e.g. when new members are appointed as a result of a direct or indirect acquisition or increase of a qualifying holding in the institution, or when members are reappointed, if the requirements of the position have changed or if members are appointed to a different position within the body);

³³ See Article 60, § 4 of the Banking Law.

- c. as part of the review of the internal governance arrangements by the statutory governing body;
- d. where there are reasonable grounds to suspect that money laundering or terrorist financing has been or is being committed or attempted or there is an increased risk thereof in connection with that institution and in particular in situations where information available suggests that the institution:
 - i. has not implemented appropriate internal controls or oversight mechanisms to monitor and mitigate ML/FT risks (e.g. risks identified by supervisory findings from on-site or off-site inspections, supervisory dialogue or in the context of sanctions);
 - ii. has been found to be in breach of its AML/CFT obligations in the home or host Member State or in a third country; or
 - iii. has materially changed its business activity or business model in a manner that suggests that its exposure to ML/FT risk has significantly increased;
- e. in any event that can otherwise materially affect the collective suitability of the statutory governing body.

3) Procedures and processes for suitability reassessment

2:130 Procedures and processes should be in place to review the individual and collective suitability of persons covered by this Manual periodically and in response to specific events.

2:131 Periodic reassessments, the review of whether an ad hoc reassessment is necessary in case of specific events and the reassessments triggered by those specific events themselves should be documented in writing. This written document should include both the final assessment and the underlying considerations, including any weaknesses identified and the arrangements made to remedy them.

2:132 The outcome of the reassessment, the reason for the reassessment and any recommendations with regard to identified weaknesses should be documented and submitted to the statutory governing body.

2:133 Institutions must immediately inform the supervisor of any significant shortcomings identified during periodic reassessments or reassessments triggered by specific events. To that end, they should submit the fit & proper form "New elements".

2.5.3 CONCLUSION OF THE ASSESSMENT OR REASSESSMENT

2:134 If an institution's assessment or reassessment concludes that a person is not suitable for the intended position, that person should not be appointed or, if he/she has already been appointed, this appointment should be revoked. If an institution's assessment or reassessment identifies easily remediable shortcomings in the knowledge, skills or experience of the person concerned, with the exception of shortcomings related to the criteria relevant to the assessment of professional integrity, the institution should take appropriate corrective measures to overcome those shortcomings in a timely manner. Examples of such corrective measures are set out in paragraph 169 of Guidelines EBA/GL/2021/06.

2:135 In any event, the supervisor should be notified without delay of any significant shortcoming identified³⁴. This notification should include the measures taken or envisaged to remedy those shortcomings and the timeline for their implementation³⁵.

³⁴ Article 60, § 4 of the Banking Law.

³⁵ See in particular the explanatory memorandum to the Law of 5 December 2017 containing various financial provisions, Parliamentary Documents, Chamber, 2017-2018, Doc. 54 - 2682/001, p. 24, which provides that it is the primary responsibility of the person concerned and of the institution to immediately report to the supervisor any relevant new fact that may affect the suitability of the person concerned: they must provide the supervisor with accurate and complete information at all times to enable the latter to form an accurate opinion of the person's suitability. Failure to do so may, where appropriate, result in the supervisor disqualifying the person concerned, with the implication that he/she is no longer considered suitable.

2.6 SUITABILITY ASSESSMENT BY THE SUPERVISOR

2.6.1 TIMING OF THE ASSESSMENT

2:136 The supervisor assesses the suitability of persons who wish to hold a position which requires a suitability assessment before they actually take up the position. The supervisor also carries out an assessment when warranted by facts and/or circumstances. The concrete scope and method of the assessment differ depending on when it takes place.

2.6.1.1 Before taking up the position

2:137 This assessment takes place either when an institution applies for authorisation³⁶ or when an already authorised institution intends to appoint a person to a position which requires a suitability assessment (including appointments that are subject to the approval procedure for qualified holdings - see the SSM Guide). In the latter case, the assessment can relate to either a person already working in the institution concerned or an external person.

2.6.1.2 While holding the position

2:138 As part of the supervisor's ongoing prudential supervision, the suitability of the persons concerned is also reassessed if there are new facts and/or circumstances that provide reasonable grounds for such a reassessment. It is for the supervisor to determine what constitutes new facts and/or circumstances.

1) Reassessment based on specific signals

2:139 In practice, the supervisor relies on signals that cast doubt on a person's suitability and thus may justify the need to review whether the person concerned is sufficiently suitable for the position he/she holds. These signals can be very diverse³⁷.

2:140 When a person in office is subject to criminal, administrative, civil or disciplinary proceedings that are likely to call into question the expertise and professional integrity of that person, the supervisor may ask the statutory governing body of the institution concerned whether - in the light of the facts with which the person concerned is charged - it considers that it can maintain confidence in that person. The institution must obtain full transparency from the person concerned with regard to the charges against him/her. In any case, the supervisor carries out its own assessment, taking into account the reasoning of the statutory governing body and the nature of the charges.

2:141 Where the supervisor carries out a reassessment, it focuses on the actions and performance of the person concerned in practice. In particular, the supervisor examines how the person concerned has applied his/her knowledge and skills, and whether or not the person's decision-making and business management demonstrate professional conduct.

2:142 A reassessment may be carried out for one or more persons at the same time, depending on the reason for the reassessment. For instance, if the reassessment was triggered by concerns about the company culture, it is possible that several persons will be reassessed. Conversely, if the reassessment is motivated by concerns about specific activities of the institution (a specific product or market, or a particular internal control line) that fall under a specific person's duties, it will likely focus on that particular person, without prejudice to the possibility that other persons may subsequently be held liable for failing to perform their supervisory duties.

³⁶ For appointments considered in the context of an authorisation application, the same suitability assessment criteria should be applied and the assessment procedure should be applied in broadly the same way, taking into account the specificities of the authorisation context. However, the supervisor makes its decision according to an ad hoc schedule, so that the taking up of the position coincides with the authorisation decision.

³⁷ For example the opening of or developments in criminal, civil, administrative or disciplinary proceedings, the existence of reasonable grounds to suspect that money laundering or terrorist financing has been or is being committed or attempted or there is an increased risk thereof in connection with the institution concerned, an unexpected change in the institution's results, concerns about the business model applied, concerns about the integrity and control of the institution's management, expansion of the institution's activities abroad, outsourcing of (core) tasks, systematic lack of response or late response to requests for information made by the supervisor, failure to comply with certain conditions or obligations imposed by the supervisor, high staff turnover, poor administration and (repeated) violations of laws and regulations. In certain cases, it is a combination of signals that leads the supervisor to doubt a person's suitability.

2:143 The appointment of a new director does not automatically trigger a reassessment of the collective suitability of the members of the institution's statutory governing body that are already in office. However, a change in the composition of the statutory governing body, whether or not due to the entry into office of a new person, may constitute reasonable grounds for a reassessment of collective suitability. This may be the case inter alia if a person with a certain expertise resigns and no (temporary) replacement is sought or found, or if members of the statutory governing body change positions (e.g. from non-executive to executive director).

2) *Reassessment in the absence of specific signals*

2:144 The supervisor may also reassess the individual and collective suitability of persons subject to suitability assessment on an ongoing basis - in the absence of specific signals - as part of its general risk-based supervision.

2.6.2 ASSESSMENT PROCEDURE

2:145 As indicated above, the suitability requirements for institutions subject to direct supervision by the ECB are applied in accordance with the rules of the SSM. Therefore, for more information on the concrete steps of the assessment process, please refer to the SSM Guide. As already mentioned in this Manual, the national competent authorities, in this case the NBB, act as the entry point for initiating the procedure and assist the ECB in the actual assessment process. The final decision on a person's suitability rests with the ECB.

2.6.2.1 Before taking up the position

2:146 Pursuant to Article 60 of the Banking Law, institutions must inform the supervisor in advance of any proposed appointment, reappointment or non-reappointment, dismissal or resignation of the persons concerned. When a person changes position, including when a significant new division of tasks is established within the statutory governing body, this must be considered as a new appointment.

2:147 In accordance with the principles of sound governance, the supervisor endeavours to reach its decision within a reasonable timeframe, preferably within 2 to 3 months or, for time-consuming or complex cases, within 4 months, as set out in paragraph 179 of Guidelines EBA/GL/2021/06.

2:148 These indicative time limits start from the moment the duly completed forms and all necessary information have been submitted to the supervisor (complete file). If the supervisor requests additional information from the institution, the deadlines are suspended until the relevant information is provided. Institutions are requested to take into account these indicative time limits for timely transmission of the written file through the standard forms.

2:149 The appointment cannot take place before the supervisor has made a decision. The institution may contact the supervisor through the usual channels shortly after sending the duly completed forms in order to find out whether or not the supervisor considers the case as time-consuming or complex. If the case is considered time-consuming or complex, the appointment may, exceptionally, take place under a condition precedent and be made public with mention of this condition.

2:150 When a proposed appointment relates to a person who is being proposed for the first time for a position which requires a suitability assessment, the NBB consults the FSMA³⁸. The FSMA sends any relevant factual information to the NBB within one week from receipt of the request for advice.

2.6.2.2 While holding the position

2:151 It is for the supervisor to decide whether the suitability of a person in office should be reassessed. For instance, pursuant to Articles 45, 134 and 135 of the Banking Law, the supervisor may decide to reassess the suitability of the persons concerned as a result of findings or analyses in the context of its supervision of a specific institution. This decision may be based, for example, on reports or findings showing a negative or dismissive attitude towards generally accepted best practice (e.g. regarding transparent and complete information flow to the statutory governing body), the emergence of concrete doubts as to whether the institution, members of its statutory governing body, its senior managers or the persons responsible for its independent control functions in the past or present complied with anti-

³⁸ Article 60, § 2 of the Banking Law.

money laundering and counter-terrorist financing requirements, repeated or deliberate non-compliance with the supervisor's recommendations, an established lack of availability to attend meetings, disclosure of incomplete or incorrect information to the supervisor or shareholders, an uncooperative attitude towards the supervisor, etc.³⁹

2:152 In the event of a reassessment of a person, the supervisor will specify to the institution what information it wishes to receive. The supervisor may request any information necessary for its assessment (including periodic assessments carried out by the institution) or interview the persons concerned.

2:153 When carrying out a reassessment, the supervisor may ask the person concerned to cooperate. If the person refuses to do so, the supervisor may inform the institution in order to obtain the necessary information. If the result is not satisfactory, the supervisor may take administrative measures (in particular the replacement of the person concerned) and/or impose administrative sanctions.

2.6.3 INFORMATION FOR THE SUPERVISOR'S ASSESSMENT

2.6.3.1 Sources of information for the supervisor

2:154 In order to obtain as complete a picture as possible of a person's suitability, the supervisor uses a wide range of information sources, such as:

- the current standard form, duly filled in and signed by the institution and the person concerned (see Chapter 5 of this Manual), including any information which the supervisor may, if necessary, obtain from the references listed therein;
- the suitability assessments carried out by the institution, including the assessment of collective expertise by the statutory governing body. This also includes the information and documentation listed in Annex III to Guidelines EBA/GL/2021/06, and the information to be provided on conflicts of interest and time commitment as stipulated in the SSM Guide;
- the supervisory information and background available to the supervisor as prudential authority;
- the institution's documented policy (processes and procedures) that forms the basis for the recruitment of the person and the job profile that the institution has drawn up for the position in question;
- opinions of the FSMA;
- opinions of other authorities supervising the institution (such as authorities in charge of anti-money laundering and counter-terrorist financing supervision, financial intelligence units and competent law enforcement authorities, tax authorities, etc.) or authorities that have carried out a suitability assessment of the person concerned in the past;
- information obtained from judicial authorities;
- information obtained from EBA databases (e.g. on administrative sanctions or suitability);
- where applicable, the periodic reassessment of the person concerned carried out by the institution (and recorded in writing) on the basis of the applicable job profile, including the considerations that led to this reassessment;
- where applicable, in accordance with paragraph 185 of Guidelines EBA/GL/2021/06, information obtained by the supervisor by participating - as an observer - in meetings of the statutory governing body in order to assess its effective functioning;
- any other information available to the institution that may be relevant for the suitability assessment;
- public information.

³⁹ Explanatory memorandum to the Law of 5 December 2017 containing various financial provisions, Parliamentary Documents, Chamber, 2017-2018, Doc. 54 - 2682/001, p. 24.

2:155 The supervisor is authorised to request any information it considers necessary to assess the suitability of a person⁴⁰. It is important that institutions spontaneously and systematically inform the supervisor of any changes to their suitability and periodic assessment policies, for example in an annex to their internal governance memorandum. However, such policy changes do not automatically trigger a reassessment.

2.6.3.2 Deliberate withholding of information or transmission of incorrect information

2:156 The institution and the person to be assessed must provide the supervisor with accurate and complete information through the standard forms and upon its request. If there is doubt as to the relevance or importance of any information, the institution should nevertheless transmit the information or contact the supervisor through the usual channels to verify whether it is necessary to do so. Convictions of any kind must always be mentioned on the forms. Only the supervisor is authorised to judge to what extent they are relevant or important to the suitability assessment.

2:157 A finding of non-compliance in this respect will have a negative impact on the supervisor's assessment. The supervisor considers any failure to transmit relevant and important information as supervisory background information. The supervisor may detect such non-compliance through any source of information.

2:158 Any deliberate withholding of information will immediately lead to a refusal, as this shows a lack of transparency towards the supervisor.

2.6.4 INTERVIEW TECHNIQUE

2:159 As part of a suitability assessment, the supervisor may choose to interview the person concerned. It will do so in particular if it considers that a discussion with the person concerned is desirable or necessary to obtain a complete and clear picture of that person's expertise and/or professional integrity. In this respect, the supervisor will apply a risk-based approach and take into account the institution's nature, size and risk profile, the position envisaged and any other details which might raise questions about the information provided by the institution and the person concerned. As a rule, in the case of significant institutions, an interview is always conducted for new appointments to the position of CEO (or equivalent position) or chair of the statutory governing body. In all other cases, depending on specific needs, interviews can also be used as a tool for assessing skills and integrity. If concerns remain after the initial interview, a second, specific interview may be held to address them.

2:160 The interview panel consists of at least two members. For applicants for the position of Compliance Officer, the interview may be conducted jointly with the FSMA.

2:161 During this interview, the supervisor verifies whether the image that the institution has created of a person's suitability matches the way in which that person presents himself/herself during the interview, possibly taking into account other supervisory information and background relating to the institution or the person concerned. The interview also allows the supervisor to ensure that the person concerned is well informed of its own expectations and those of the institution. Where applicable, the supervisor will draw the institution's attention to areas where further efforts are needed (e.g. a lack of knowledge about a specific subject).

2:162 In principle, the interview takes place without the institution being present, although the supervisor may decide otherwise.

2:163 When a person leaves a position, it can be particularly useful for the supervisor to conduct an exit interview to obtain further details about the circumstances in which the person is leaving the position or about the governance of the institution in general.

2.6.5 OUTCOME AND CONSEQUENCES OF THE ASSESSMENT

2:164 Upon completion of the suitability assessment (as the case may be before or during the performance of a specific position), the supervisor immediately informs the institution and the person concerned of the outcome of the assessment and, where appropriate, of some underlying findings.

⁴⁰ Article 36/19 of the Law of 22 February 1998 establishing the organic statute of the NBB.

- 2:165 Where appropriate, the supervisor may accompany its approval decision with ancillary provisions to remedy any minor shortcomings found. Such ancillary provisions may not concern aspects related to professional integrity. They may take the form of recommendations⁴¹, but also of conditions⁴² or obligations⁴³. In the latter case, as indicated in the SSM Guide, the supervisor clearly defines the conditions or obligations and sets a relatively short deadline for their fulfilment. As suitability is permanent, the supervisor at all times has the possibility to monitor compliance with such conditions or obligations, and, if necessary, to carry out a reassessment. For further information on the consequences of a positive decision to which a condition or obligation is attached, see the SSM Guide (Sections 7.3. to 7.5.) and paragraphs 191 to 193 of Guidelines EBA/GL/2021/06.
- 2:166 Where an institution fails to provide the supervisor with sufficient information regarding the suitability of a person to be assessed, the supervisor either informs the institution that the appointment of the person concerned cannot be approved because his/her suitability has not been sufficiently demonstrated, and requests the institution to withdraw the file, or takes a negative decision.
- 2:167 Any negative decisions by the supervisor as to a person's suitability are always thoroughly justified, as stated in the SSM Guide. As indicated in the SSM Guide, negative decisions can be appealed against before the Administrative Board of Review or before the Court of Justice of the European Union. The effective possibilities of appeal are specified in the notification letter.
- 2:168 Finally, it should be noted that the supervisor may also - irrespective of any formal positive, negative or conditional suitability decision - contact the institution to provide feedback on a submitted application. For example, if the institution withdraws its application in the course of the supervisor's examination of the file, the latter may provide feedback on the issues identified, as part of the institution's responsibility for assessing suitability on the one hand, and/or the broader governance perspective on the other. Where necessary, the supervisor may also impose appropriate prudential measures to remedy certain deficiencies in the institution's suitability policy or governance.

2.7 INDIVIDUAL ACCOUNTABILITY OF DIRECTORS

- 2:169 Members of the statutory governing body of an institution (whether in its management, policy/strategy or supervisory function) must have an appropriate understanding of, and contribute to, areas of the business for which they are collectively accountable with the other members of the statutory governing body, even if an individual member is given sole responsibility for specific areas.
- 2:170 Not having have a specific role or sole responsibility for a particular area does not exempt members of the management body from the need to have this understanding and hence to prepare for and participate in the discussions and decisions of the statutory governing body in an informed and active manner.
- 2: 171 In accordance with the SSM Guide and depending on the applicable law, a member of the statutory governing body who holds or held a position in the institution at the time when the facts giving rise to certain findings occur (red) (e.g. cases of money laundering, fraud or other findings arising from on-site inspections or legal proceedings) may be held responsible for those findings, even if there is no

⁴¹ Recommendations are intended to encourage best practices within institutions and to highlight desirable improvements. The supervisor can formulate recommendations not only in the context of suitability assessments, but in all areas of prudential supervision.

⁴² A condition is a requirement imposed on the institution subject to prudential supervision (and which may also have direct implications for the appointee) without which a negative decision would be issued. The most common conditions include: (i) a commitment to undergo specific training; (ii) relinquishment of a management position, mandate or other position outside the institution; (iii) for persons responsible for independent control functions (who are just below management committee level), a probationary period at the end of which the supervisor may decide whether or not to validate its initial positive decision.

⁴³ The supervisor's decision may also include an obligation to provide specific information for the purposes of the ongoing fit and proper assessment or to adopt a specific measure relating to fitness and propriety which does not affect the appointee but the entire supervised institution. Unlike a condition, non-compliance with an obligation does not automatically affect the fitness and propriety of the appointee. The most common obligations are: (i) reporting ongoing legal proceedings; (ii) responding to requests for improvement of written policies on conflicts of interest; (iii) responding to requests for improvement in the area of collective suitability or diversity.

connection between his/her individual roles and responsibilities within the statutory governing body and the findings in question.

2:172 Without prejudice to any other specific circumstances that may be relevant in a particular case, facts indicating that a person in office may be held individually accountable for not complying with his/her collective responsibility to properly address the issues that gave rise to the findings could impact his/her suitability for the position. The timing, relevance and severity of the findings will be taken into account in assessing accountability.

2.7.1 SCOPE

2:173 In accordance with the SSM Guide, an assessment of individual accountability is carried out within the scope of a suitability assessment when the respective entities where the person concerned leaves and enters office are regulated financial institutions.

2.7.2 FINDINGS

2:174 Only sufficiently established facts that have been determined by a supervisor to be recent, relevant and severe are taken into account when considering the individual accountability of the person concerned. The findings may be supervisory, regulatory or judicial in nature and refer to legal or regulatory breaches or deficiencies in the institution's activity. Findings of the following authorities are generally considered: a financial supervisor (e.g. a prudential authority or an authority in charge of anti-money laundering and counter-terrorist financing supervision), a judicial authority, a tax, competition or data protection authority, etc. For further information on the concept of "sufficiently established facts" and examples of findings that qualify as (i) recent, (ii) relevant and (iii) severe, please refer to the SSM Guide.

2.7.3 ASSESSMENT

2:175 The findings are assessed to determine whether the person concerned can be held individually accountable. The outcome of this assessment may impact the suitability of the person concerned, based on one or more of the suitability criteria set out above (professional integrity, independence of mind and/or expertise).

2:176 A detailed assessment of all the relevant facts and circumstances surrounding the concept of accountability is conducted, inter alia by considering what the following were, at the relevant times: (a) the level of awareness of the person concerned (e.g. not aware, partially aware or fully aware); (b) the nature of the roles and responsibilities of the person concerned (e.g. first line, second line or third line of defence); (c) the type of behaviour shown by the person concerned (e.g. neglectful, passive or active); (d) other aggravating or mitigating circumstances.

2:177 To assess whether the appointee can be held individually accountable for issues in the entity where he/she left office, factual information is obtained from this entity, the person concerned and/or the competent authority of the entity to which the facts underlying the findings refer. An interview with the person concerned is usually conducted.

2.7.4 OUTCOME OF THE ASSESSMENT

2:178 The detailed assessment of individual accountability results in one of the following outcomes:

- a positive decision (with no ancillary provisions⁴⁴), where suitability can be confirmed despite the concerns;
- a positive decision with ancillary provisions (condition or obligation), or a positive decision outlining supervisory expectations with regard to the supervised entity and/or supervisory expectations as to future behaviour of the appointee; or
- a negative outcome, where suitability cannot be confirmed owing to the severity of the individual accountability and the lack of sufficient mitigating factors.

⁴⁴ The notion of "ancillary provisions" is detailed in the point "Outcome and consequences of the assessment".

2:179 These possible outcomes do not preclude the competent authorities from closely monitoring the appointee's suitability and taking further measures as part of the ongoing governance supervision of the institution where the person concerned takes up office.

2.8 SUITABILITY ASSESSMENT IN THE CONTEXT OF RESOLUTION

2:180 The suitability of persons newly appointed to the statutory governing body of an institution in the context of resolution in accordance with Articles 27 and 28 and 34(1)(c) of BRRD⁴⁵ should be assessed by the supervisor of the institution in accordance with the assessment criteria set out in this chapter.

2:181 Resolution authorities must promptly notify the supervisor of any new appointment of one or more members to the institution's statutory governing body. When appointing members of the statutory governing body in accordance with Article 34(1)(c) under the resolution powers referred to in Article 63(1)(l) of BRRD, resolution authorities must provide the supervisor as soon as possible with the necessary documents to enable it to carry out a suitability assessment.

2:182 Given the urgency of the situation, the supervisor carries out the suitability assessment after the member of the statutory governing body has taken office and without undue delay, if possible within one month from the date on which it was notified of the appointment. The supervisor informs the resolution authority of the outcome of the assessment.

2:183 Where a special manager is appointed by the resolution authority in the context of a resolution procedure and entrusted with tasks exclusively related to the implementation of resolution measures according to Article 35 of BRRD, for a temporary mandate that does not exceed the duration of the resolution procedure, this person is not subject to the suitability assessment.

⁴⁵ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms.

3. Suitability requirements for credit institutions subject to direct supervision by the NBB, stockbroking firms, payment institutions, electronic money institutions, custodian banks, central securities depositories, institutions providing support to a central securities depository, central counterparties, certain (mixed) financial holding companies and certain branches

Regulatory framework:

1. Articles 3, 83°, 11, 19, 20, 21, 27-31, 60, 61, 62, 62/1, 72, 86, 168, 212, 333, 335, 494, 501, 502, 504-508, 524, 525, 535, 544 and 573-576 of the Banking Law
2. Articles 3, 64°, 15, 16, 17, 19, 20, 24-30, 31, 38, 56, 61-65, 83-85, 98, 159-201 and 202-208 of the Law on stockbroking firms⁴⁶
3. Articles 10, 20, 21, 34, 37, 59, 144, 167, 175, 176, 179, 181, 186 and 228 of the Law on payment institutions and electronic money institutions⁴⁷
4. Articles 36/2, 36/25 and 36/26/1 of the Organic Law⁴⁸
5. Articles 9, 10, 10bis, 12, 15, 17, 21 and 36 of the Royal Decree on institutions equivalent to settlement institutions⁴⁹
6. Articles 26 and 27 of Regulation 909/2014 on central securities depositories (CSDR)⁵⁰
7. Articles 26 and 27 of Regulation 648/2012 on OTC derivatives, central counterparties and trade repositories
8. Royal Decree of 8 February 2022 approving the Regulation of the National Bank of Belgium of 9 November 2021 on the exercise of external functions by managers and persons responsible for independent control functions of regulated companies
9. Royal Decree of 15 April 2018 approving the Regulation of the National Bank of Belgium of 6 February 2018 on expertise of heads of the compliance function
10. Communication NBB_2022_19 of 12 July 2022 on the exercise of external functions by managers and persons responsible for independent control functions of regulated companies
11. Circular NBB_2021_27 of 16 November 2021 transposing the EBA Guidelines of 2 July 2021 on the assessment of the suitability of members of the management body and key function holders (EBA/GL/2021/06)

⁴⁶ Law of 20 July 2022 on the legal status and supervision of stockbroking firms and containing various provisions.

⁴⁷ Law of 11 March 2018 on the legal status and the supervision of payment institutions and electronic money institutions, access to the activity of payment service provider, access to the activity of issuing electronic money, and access to payment systems.

⁴⁸ Law of 22 February 1998 establishing the organic statute of the National Bank of Belgium.

⁴⁹ Royal Decree of 26 September 2005 on the legal status of settlement institutions and equivalent institutions. It should be noted that the concept of "settlement institutions" has become irrelevant in the sense that these institutions are now called central securities depositories and are governed by Regulation (EU) No 909/2014 (CSDR). However, the Royal Decree of 26 September 2005 remains applicable to (i) institutions providing support to central securities depositories and (ii) custodian banks as defined in the Law of 22 February 1998 establishing the organic statute of the National Bank of Belgium.

⁵⁰ Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012.

12. Communication NBB_2021_04 of 19 January 2021 on the HIVE project and the digitalisation of the fit and proper process
13. Circular NBB_2018_25 of 18 September 2018 on the suitability of directors, members of the management committee, responsible persons of independent control functions and senior managers of financial institutions (the circular introducing this Manual)
14. Circular NBB_2017_21 of 7 July 2017 on loans, credits and guarantees to managers, shareholders and related persons
15. Governance Manual for the banking sector (new version of 2022)
16. EBA Guidelines of 2 July 2021 on the assessment of the suitability of members of the management body and key function holders (EBA/GL/2021/06)
17. EBA Guidelines on internal governance of 2 July 2021 for credit institutions (EBA/GL/2021/05) and of 22 November 2021 for investment firms (EBA/GL/2021/14)
18. SSM Guide to fit and proper assessments of December 2021
19. BCBS Principles: Principles 2 and 4

3.1 SCOPE

3.1.1 INSTITUTIONS COVERED BY THIS CHAPTER

- 3:1 This chapter applies to the following institutions subject to direct supervision by the NBB:
- credit institutions, stockbroking firms, payment institutions and electronic money institutions governed by Belgian law, and the branches abroad of these institutions,
 - branches established in Belgium of credit institutions, stockbroking firms, payment institutions and electronic money institutions governed by the law of a State that is not a member of the European Economic Area,
 - central securities depositories and central counterparties governed by Belgian law, as well as their branches abroad,
 - institutions providing support to a central securities depository and custodian banks governed by Belgian law, as well as their branches abroad,
 - branches established in Belgium that are authorised in Belgium as an institution providing support to a central securities depository or as a custodian bank,
 - (mixed) financial holding companies⁵¹.
- 3:2 For the sake of consistency and to ensure a level playing field, a cross-sectoral approach to suitability requirements has been adopted to the extent possible. Therefore, the guidelines set out in this chapter apply to all of the above institutions, but only insofar as they are consistent with the national or European legal framework applicable to them. However, for each suitability assessment, the NBB takes into account inter alia the nature, size, complexity, risk profile and organisational structure of the institution in which the person concerned holds a position (see the point on the proportionality principle in the introduction). As supervisor, the NBB considers that there are no compelling reasons for the interpretation of the assessment criteria for the different institutions covered by this chapter to differ even more than on the basis of the above-mentioned parameters.

⁵¹ More specifically, pursuant to Article 212 of the Banking Law, the rules on suitability set out herein apply to (mixed) financial holding companies governed by Belgian law. The said Article 212 of the Banking Law declares Article 60 of the same law, which concerns fit & proper assessments, applicable to all (mixed) financial holding companies. In addition, Article 168, § 1 declares certain governance aspects as explained in the NBB's Governance Manual applicable to approved or designated (mixed) financial holding companies heading a group or subgroup.

3:3 In line with the cross-sectoral approach referred to above, it should be noted that some international guidelines and policy documents, although explicitly addressed to credit institutions or stockbroking firms, contain best practices that should be widely implemented. Therefore, the NBB also recommends that the other institutions covered by this chapter apply - within the limits of their respective supervisory laws and taking into account the proportionality principle - mutatis mutandis, to the extent possible, the best practices set out in (i) Guidelines EBA/GL/2021/06 of 2 July 2022 and (ii) the Guide to fit and proper assessments (“SSM Guide”) of December 2021. The NBB draws on Guidelines EBA/GL/2021/06 in its concrete monitoring of compliance with the suitability requirements.

3.1.2 PERSONS COVERED BY THIS CHAPTER

3:4 This chapter covers the scope and assessment of the individual and, where applicable, collective suitability of persons who hold or wish to hold the following positions:

- director;
- senior manager⁵²; and
- person responsible for an independent control function⁵³.

3:5 Senior managers at “N-1” level (managers who exercise a direct and decisive influence on the management of the institution but who are not members of the management committee), with the exception of branch managers, do not have to be approved by the NBB. Of course, this does not mean that these persons should not have the fitness and propriety required for their position. The principles of this chapter also apply to them but, as they are not assessed by the NBB, institutions are not required to submit the notification forms covered in Chapter 5 of this Manual. For further clarification, please refer to the provisions on assessing the suitability of key function holders in Guidelines EBA/GL/2021/06.

3.1.3 CROSS-BORDER CONTEXT

3:6 For the application of this chapter within a cross-border context, a distinction must be made between the following three situations:

a) Institutions established in the European Economic Area operating in Belgium through a branch or under the freedom to provide services => This chapter does not apply to the managers of institutions established in the European Economic Area operating in Belgium through a branch or under the freedom to provide services.

b) Belgian institutions operating abroad through a branch => This chapter applies to the managers and persons responsible for independent control functions of branches of institutions authorised in Belgium operating abroad through a branch.

c) Institutions governed by the law of a non-Member State of the European Economic Area operating in Belgium through a branch => This chapter applies to the managers and the person responsible for the compliance function of branches established in Belgium of institutions governed by the law of a non-Member State of the European Economic Area.

3.1.4 GROUP CONTEXT

3:7 Pursuant to the supervisory laws, the consolidating institution must ensure the implementation of (and compliance with) a consistent and integrated group policy for assessing the suitability of all subsidiaries included in the prudential consolidation. Effective implementation of these obligations is further clarified in Guidelines EBA/GL/2021/06 (paragraphs 117 to 122).

⁵² Members of the management committee are subject to the provisions of this chapter, whether or not they are directors. As a reminder, in certain types of holding companies, the management committee may be composed of directors and managers who are not members of the statutory governing body (see Article 212 of the Banking Law). Pursuant to Article 26, second paragraph, 2° of the Banking Law, a similar derogation may be requested for credit institutions, depending on their size and risk profile.

⁵³ The assessment must pertain to the most senior person responsible for the independent control function.

- 3:8 The persons concerned must be suitable to hold their positions and thus meet the suitability assessment standards, at the level of both the Belgian parent company and all regulated Belgian subsidiaries. If a person holds a position requiring a suitability assessment at both parent and subsidiary level, two separate assessments need to be carried out.

3.2 DELINEATION OF RESPONSIBILITIES IN THE SUITABILITY ASSESSMENT

3.2.1 RESPONSIBILITY OF THE INSTITUTION AND OF THE PERSON SUBJECT TO SUITABILITY ASSESSMENT

- 3:9 It is primarily incumbent on the institution to assess the suitability of persons who hold positions requiring a suitability assessment. The institution should inform the supervisor of the outcome of its suitability assessment, including the assessment of suitability of the collective composition of the statutory governing body. In this respect, please also refer to the information and documentation provided in Annex III to Guidelines EBA/GL/2021/06.
- 3:10 The statutory governing body is responsible for the recruitment policy, the selection process and the induction and training policies, which inter alia govern suitability assessments. In accordance with Article 31 of the Banking Law, if the institution has a nomination committee, the latter should actively contribute to the institution's accountability in this respect and draw up appropriate suitability and diversity policies and adequate internal rules for the assessment of individual and collective suitability. Furthermore, it is among the duties of the institution's compliance function to ensure compliance with legal and regulatory suitability and diversity requirements.
- 3:11 Both the institution and the person subject to suitability assessment must ensure that the information provided to the NBB is complete and accurate.

3.2.2 RESPONSIBILITY OF THE NBB

- 3:12 When a new person is deemed suitable by the institution, the NBB examines the necessary information and carries out an assessment on the basis of which it decides on the final approval of this person's appointment. For its own assessment, the NBB primarily relies on the information supplied by the institution and the person concerned. This information is mainly collected using standard forms designed specifically for this purpose (see Chapter 5 of this Manual). Of course, the NBB is free to request additional information and, where appropriate, to interview the person concerned.

3.2.3 RESPONSIBILITY FOR THE ONGOING ASSESSMENT OF SUITABILITY

- 3:13 The legal requirement to ensure that the positions requiring a suitability assessment are at all times held by persons who are suited to do so constitutes an ongoing obligation on the part of the institutions. The persons concerned must be fit and proper at all times. The specific details of ongoing suitability monitoring are discussed in more detail later in this chapter.
- 3:14 However, as regards the respective responsibilities of the parties involved for ensuring ongoing suitability, the following applies:

The person concerned

- 3:15 On the standard forms to be completed by the person concerned and the institution, the former is expected to declare that he/she has made every effort to comply continuously with the suitability standards for the purposes of the position which he/she already holds or plans to hold.
- 3:16 Persons already in office must immediately inform the institution of any event that is likely to influence their suitability (see Chapter 5).

The institution

- 3:17 Where an institution considers that doubts might arise as to the fitness and propriety of a person in office or as to the collective suitability of a body of the institution, it should take measures as soon as possible to seek a solution. The institution must also immediately inform the NBB.

- 3:18 In order to ensure the ongoing suitability of the persons concerned, the NBB recommends the following:
- When a person takes up a position, it is recommended for the institution to request a written declaration in which this person confirms that he/she will unreservedly abide by the current suitability standards for this position and that he/she will immediately communicate any information that could affect the assessment of his/her suitability.
 - The person concerned should be reminded of this declaration every year. For instance, the institution can, on an annual basis, explicitly ask the persons concerned whether they are aware of any relevant changes that could affect the assessment of their suitability.
- 3:19 As the financial sector is constantly evolving, ongoing training is a necessary but not a priori sufficient condition for meeting the fitness requirement on an ongoing basis. The institution is expected to take the necessary steps to provide adequate and relevant ongoing training.

The supervisor

- 3:20 The NBB continuously monitors the fitness and propriety of the persons subject to the suitability assessment. Whenever it becomes aware of any information which raises doubts about the suitability of a person in office, it immediately carries out a more in-depth examination and, where necessary, reassesses this person's suitability.

3.3 GUIDELINES ON SUITABILITY CRITERIA

- 3:21 This point sets out (non-exhaustive) guidelines on how to apply the suitability criteria in concrete terms. The basic principle is that suitability assessments require an in-depth examination of the information collected in order to obtain as complete and accurate a picture as possible of a person's suitability for a particular position.
- 3:22 The following 5 criteria should be considered: (i) expertise (fitness) in terms of knowledge, experience and skills; (ii) professional integrity (propriety); (iii) independence of mind; (iv) time commitment; and (v) collective suitability.

3.3.1 EXPERTISE

- 3:23 In the context of suitability assessments, the notion of expertise *sensu stricto*⁵⁴ encompasses several elements, i.e. knowledge, experience and skills. These three elements are complementary, and analysing each of them provides an overall picture of a particular person's expertise. For instance, a person who has the knowledge required for a given position but who is unable to transfer and apply it within the institution does not have the required expertise.

3.3.1.1 Knowledge

- 3:24 "Knowledge" refers to everything that a person knows and any insight he/she has acquired. In principle, knowledge can be learned, e.g. through education, training or on the job.
- 3:25 Irrespective of the specific knowledge and experience required for a given position, all persons subject to suitability assessment must in principle possess basic theoretical knowledge in the following areas:
1. financial markets and the institution's business;
 2. regulatory framework and legal requirements applicable to the institution concerned;
 3. strategic planning and understanding of an institution's business strategy;
 4. risk management (identifying, assessing, monitoring, controlling and mitigating the main types of risk of an institution);

⁵⁴ As mentioned in the introduction, from a legal point of view, the concept of expertise in a broad sense includes the concept of professional conduct, and thus the assessment criteria related to independence of mind, time commitment and collective suitability. However, for the sake of clarity, it was decided to address these assessment criteria separately.

5. accounting and auditing;
6. governance and internal control; and
7. the interpretation of financial information and, on this basis, the identification of key issues and appropriate controls and measures.

3:26 Possession of appropriate knowledge and experience may be demonstrated by the successful completion of relevant training and the presence of relevant professional experience. “Relevant training” should be interpreted broadly. In addition to acquired (university and equivalent) degrees, in-company training courses should also be considered.

3:27 Special attention should be paid to the level and nature of education completed and its relevance to the financial sector. Generally speaking, education in the financial sector (banking, finance and insurance), economics, law, business management, general management, IT, marketing and quantitative methods can be considered relevant.

03:28 For the appointment of the senior manager who will be designated as the senior officer responsible for the prevention of money laundering and terrorist financing⁵⁵, this person is expected to demonstrate specific knowledge in anti-money laundering and countering the financing of terrorism (AML/CFT) and in AML/CFT policies, controls and procedures. He/she should have a good understanding of the money laundering and terrorist financing risk to which the institution is exposed as a result of its business model.

3.3.1.2 Experience

3:29 “Relevant professional experience” refers to experience gained in a work environment that is substantively similar or tangential to the type of institution and/or the type of position in which the person concerned is or wishes to be employed.

3:30 In order to determine the extent to which previously held positions constitute “relevant professional experience” or not, the following factors should be considered:

- the nature and hierarchical level of the position(s) held;
- whether the position(s) was/were held within the same institution or group;
- the length of time over which experience was acquired (how long the position(s) was/were held);
- the nature, complexity and organisational structure of the institution at which the position(s) was/were held;
- the knowledge acquired in the position(s); and
- the number of subordinates of the position(s).

3:31 The relevant professional experience of directors and senior managers is assessed by the NBB in principle based on the various thresholds set out in the SSM Guide, which vary according to the position concerned:

- CEO (chair of the management committee): 10 years of recent⁵⁶ practical experience in areas related to banking or financial services. A significant part of this experience must consist of high-level management positions⁵⁷;
- Senior manager: 5 years of recent practical experience in areas related to banking or financial services. This experience must have been acquired in high-level management positions;

⁵⁵ As a reminder, pursuant to Article 9, § 1 of the Law of 18 September 2017 on the prevention of money laundering and terrorist financing and on the restriction of the use of cash, the senior officer responsible for the prevention of money laundering and terrorist financing has the specific task of ensuring that organisational anti-money laundering measures are adopted. This designation is part of the division of tasks within the management committee and in no way diminishes the responsibility of this committee for the day-to-day management and overall business of the institution.

⁵⁶ According to the SSM Guide, the practical experience should not be older than two years. It should be noted that holding several short-term positions (e.g. temporarily replacing a person) is not automatically considered sufficiently long relevant professional experience.

⁵⁷ In principle, positions held at “N-1” level relative to the management committee.

- Chair of the statutory governing body: 10 years of recent and relevant practical experience⁵⁸. A significant part of this experience must consist of high-level management positions;
- Non-executive director: 3 years of recent and relevant practical experience in management positions⁵⁹. Practical experience gained in the public or academic sector may also be considered relevant.

3:32 For small institutions and - on an ad hoc basis - for other institutions depending on their nature, size, complexity, risk profile and organisational structure, the NBB may lower these thresholds as follows:

- CEO: 5 years;
- Senior manager: 3 years;
- Chair of the statutory governing body: 5 years;
- Non-executive director: 2 years.

3:33 If the above thresholds are met, the person concerned is deemed to have sufficient experience, unless there is evidence to the contrary. If the thresholds are not met, the person concerned may still be considered suitable, provided such suitability is sufficiently substantiated and justified by the institution.

3:34 In this regard, it should be noted that a member of the statutory governing body in its supervisory function who does not meet the required thresholds may still be considered suitable if (i) the member has experience or expertise that meets the specific needs of the institution (e.g. experience in IT or in climate or environmental risks); (ii) the member and the institution commit to the necessary training being undertaken to overcome the identified lack of experience; and (iii) the member fulfils all other suitability requirements.

3:35 Persons responsible for independent control functions should in principle have at least three to five years of recent and relevant practical experience, taking into account the nature and complexity of the activities and the size, risk profile and organisational structure of the institution.

3:36 Without prejudice to these principles, there is a specific arrangement for the person responsible for the compliance function⁶⁰.

3.3.1.3 Skills

3:37 "Skills" refer to the actions a person is competent in. They enable the person concerned to behave in a specific way in certain situations (for instance in negotiation processes or when making a decision). Like knowledge, skills can be learned.

3:38 It is primarily up to the institution to determine what skills are needed for a particular position. In doing so, it should take into account the variables set out in the point on proportionality in the introduction to this Manual.

⁵⁸ The concept of "relevant experience" is broader for a non-executive director than for a senior manager.

⁵⁹ "N-1" or "N-2" level.

⁶⁰ Without prejudice to the principles laid down in this Manual, persons responsible for the compliance function are subject to the specific requirements on appropriate knowledge and experience set out in the Regulation of the NBB of 6 February 2018 on the expertise of the persons responsible for the compliance function (Article 2). In particular, these persons must:

- have at least three years of relevant experience;
- hold a master's degree (unless they are exempted from this requirement on the basis of their practical experience and knowledge);
- have passed an examination conducted by a company whose examinations are recognised by the NBB and the FSMA and, upon passing the examination, participate every three years in a training programme with a minimum duration of 20 hours at a training company recognised by the FSMA, on the advice of the NBB.

In order to comply with the knowledge requirement on an ongoing basis, the persons responsible for the compliance function must, from their appointment, participate every three years in a training programme with a minimum duration of 40 hours. The requirements for permanent training are further explained in the explanatory note annexed to the aforementioned regulation and Communication FSMA_2018_05 of 8 May 2018 on permanent training for compliance officers. It is recommended that the same rules be applied by analogy to central securities depositories.

3:39 Examples of these variables include:

- when assessing the skills of an applicant for the position of person responsible for the risk management function (Chief Risk Officer - CRO), particular attention must be paid to his/her independent judgement and his/her ability to resist/oppose in the context of the decision-making process;
- when assessing the skills of an applicant for the position of chair of the board of directors, the primary focus should be on the applicant's ability to chair meetings and develop a strategy;
- when assessing the skills of a non-executive director, particular attention should be paid to his/her ability to challenge members of the management committee.

3:40 Annex II to Guidelines EBA/GL/2021/06 contains a non-exhaustive list of relevant skills that institutions should take into account in the suitability assessment. The NBB does not assess individual skills, but rather evaluates how the institution has taken the overall "skills" component into account in its internal assessment of the applicant (e.g. by organising assessments). For small institutions, the NBB does not assess this component separately unless there are facts or circumstances that justify it.

3.3.2 PROFESSIONAL INTEGRITY

3:41 A person's professional integrity relates to his/her reliability and honesty. This characteristic can be analysed more concretely on the basis of a person's past actions. More specifically, a person's background can be used to assess whether it is reasonable to assume that he/she will carry out the task entrusted to him/her honestly, faithfully, independently, ethically and with integrity.

3:42 A distinction should be made between professional disqualification, which is imposed automatically without the NBB exercising its discretion, and the broader assessment of professional integrity, where the NBB does have to exercise its discretion. However, there is a link between the two, in the sense that, in specific situations that do not fall under professional disqualification, the NBB can use its discretion in such a strict manner that it results in a situation similar to a professional disqualification ("quasi-automatic" refusal).

3.3.2.1 Professional disqualification

3:43 The supervisory laws relevant to this chapter contain a list of convictions that result in the offender being disqualified from serving as a director, senior manager or person responsible for an independent control function for a specified period of time. As supervisor, the NBB cannot grant any derogations or exceptions in this respect.

3.3.2.2 The NBB's discretion

3:44 However, the assessment of a person's professional integrity should not be limited solely to verifying the absence of professional disqualifications. The concept of integrity must be understood broadly, in the sense that any relevant details in the person's background may affect his/her professional integrity. Criminal proceedings and the intervention of the Bank as an administrative authority are independent of one another in that they pursue separate objectives and may thus lead to a different appraisal of the facts. The assessment of professional integrity is not necessarily linked to the criminal classification of acts or actions or to the outcome of criminal proceedings. Indeed, this assessment is not based on the concept of "guilt" in the criminal sense of the word, but rather on an appraisal of facts and actions, the aim being to determine whether persons subject to suitability assessment actually have the qualities required to perform their duties and bear the corresponding responsibilities.

3:45 On the basis of the standard form covered in Chapter 5 of this Manual and the relevant clarifications provided in the SSM Guide, institutions can determine which details should be given special attention as part of an assessment of integrity.

a. Events in a person's background considered as offences for professional disqualification

3:46 An admission of guilt without a formal conviction by the competent body should be treated in the same way as a conviction, as the person concerned cannot be deemed to have the required professional integrity. In practice, this means, for example, that a suspended sentence (with admission of guilt) is treated in the same way as a conviction.

3:47 Where any criminal, administrative or disciplinary proceedings are in progress or pending against a person to be assessed, the NBB uses its discretionary power in a strict manner by deeming that person to not have the required professional integrity if:

- the person concerned has acknowledged the underlying facts; or
- the person concerned has already incurred a conviction in this respect, even if this conviction is still subject to appeal.

b. Past offences relating to money laundering and terrorist financing

3:48 The utmost attention should be paid to facts relating to money laundering and terrorist financing. In this respect, a distinction should be made between (i) breaches of legislation on the prevention of money laundering and terrorist financing (repressive aspects) and (ii) breaches of obligations to combat money laundering and terrorist financing (preventive aspects).

3:49 The NBB has no investigative powers for breaches of legislation on the prevention of money laundering and terrorist financing. In this regard, it relies on the information provided by the competent authorities in this field and the judicial authorities (criminal law). The findings of these authorities are considered essential information for establishing the professional integrity of the person concerned.

3:50 Conversely, the NBB is competent to monitor the compliance of Belgian financial institutions with their European and national obligations to combat money laundering and terrorist financing, as well as their organisational obligations regarding assets freezing and transfers of funds. If a person has previously held a position at an institution where a breach of these obligations has been identified, the institution where this person applies for a new position must conduct a thorough examination of the facts to assess their impact on his/her professional integrity⁶¹. The NBB also carries out its own assessment based on the information available to it.

c. Financial background

3:51 A person's financial conduct is relevant to an assessment of his/her professional integrity as it may have an impact on his/her reputation. Persons who hold positions requiring a suitability assessment are expected to manage their affairs in a sound and prudent manner. They must be able to prove that the performance of their duties is not adversely affected by their financial background.

3:52 However, it should be emphasised that having limited financial resources should not negatively impact a person's suitability for a position.

3:53 Taking into account the above weighting factors, attention should be paid to both personal and professional financial background. Examples include the following situations:

- the person concerned has had major personal financial problems (e.g. recurrent gambling issues, pattern of over-indebtedness, etc.) which have led to legal, recovery or debt collection proceedings;
- suspension of payments, insolvency, bankruptcy, debt restructuring or arrangement with creditors has been requested or ordered with regard to the person concerned;
- the person concerned has been or is likely to be involved in tax proceedings;
- the person concerned has been ordered to pay outstanding debts on grounds of liability for the bankruptcy of a company or legal person;
- cessation of payments or bankruptcy has been requested or ordered for a company, institution or any other body in which the person concerned holds or has held a position as a director or as a person responsible for an independent control function, or in which this person otherwise significantly influences or has influenced policy, or in which he/she holds or has held a significant interest.

d. Other background

⁶¹ Institutions can obtain background information relating to money laundering and terrorist financing through various means, including a statement by the person concerned, consultation of the criminal record, administrative sanctions published by the supervisors, the list of financial sanctions published by the Treasury, the press, etc.

3:54 Taking into account the above weighting factors, consideration should also be given to the following events in a person's background:

- other criminal, disciplinary, civil and administrative convictions (e.g. violations of anti-money laundering legislation, consumer protection legislation, tax legislation, etc.);
- ongoing cases in these areas, especially a person's involvement in sanction investigations or proceedings carried out by the NBB or other supervisors;
- amicable settlements (termination of criminal proceedings on payment of a sum of money) or settlements concluded in relation to breaches of financial or other legislation;
- other facts which, irrespective of their legal classification, are likely to cast doubt on a person's professional integrity (see in this context also paragraphs 72 to 77 of Guidelines EBA/GL/2021/06), such as:
 - o any evidence that the person concerned has not been transparent, open, and cooperative in his/her dealings with the competent authorities;
 - o refusal, revocation, withdrawal or expulsion of any registration, authorisation, membership, or licence to carry out a trade, business, or regulated profession;
 - o the reasons for any dismissal or removal from a position of trust, fiduciary relationship or similar situation, and for any request to resign from such a position;
 - o disqualification by any relevant competent authority from serving as a member of the statutory governing body, particularly persons who effectively direct an entity's business; and
 - o any other evidence or serious allegation based on relevant, credible and reliable information which suggests that the person concerned is acting in a manner contrary to high standards of conduct.

3:55 This list must be considered both directly (with regard to the person concerned) and indirectly (with regard to a company, institution or any other body in which the person holds or has held a position requiring a suitability assessment, or in which he/she otherwise significantly influences or has influenced policy, or in which he/she holds or has held a significant interest). When considering the latter, the person's degree of involvement should certainly be taken into account.

3.3.3 INDEPENDENCE OF MIND

3:56 A distinction should be made between (i) independence of mind and (ii) "formal" independence within the meaning of the definition of "independent director" in the supervisory laws relevant to this chapter.

3:57 With regard to the first concept (independence of mind), any person who acts as a director, senior manager or person responsible for an independent control function must be able to make conscientious, objective and independent decisions in the interest of the institution and its stakeholders, after having carefully weighed all available information and opinions, and independently of any external influence.

3:58 With regard to formal independence, please refer to the criteria set out in the supervisory laws (see for example Article 3, 83° of the Banking Law). These criteria refer to those in paragraph 89 of Guidelines EBA/GL/2021/06. This qualification is granted to certain non-executive directors whose task is to represent all of the institution's stakeholders and to supervise management, in particular by participating in specialised committees of the statutory governing body⁶².

3.3.3.1 Independence of mind and conflicts of interest

3:59 Directors, senior managers and persons responsible for independent control functions must be able to make their own decisions in a sound, objective and independent manner. Independence of mind is demonstrated by the character and conduct of the person concerned and may be affected by conflicts of interest.

⁶² Regulation (EU) No 909/2014 (CSDR) does not contain a specific rule on the formal independence of directors of central securities depositories, but it is recommended that these institutions take into account the information published by ESMA on this subject (including Q&As) and that they clarify in their governance memorandum how they apply these criteria concretely.

- 3:60 Thus, the institution must assess whether or not the person subject to the suitability assessment:
- a. has the necessary behavioural skills, including:
 - i. courage, conviction and strength to effectively assess and challenge the proposed decisions submitted to him/her;
 - ii. the ability to ask questions and express divergent opinions; and
 - iii. the ability to resist groupthink;
 - b. is likely to face conflicts of interest that could impede his/her ability to perform his/her duties with the necessary independence and objectivity.
- 3:61 Given the risk of conflicts of interest, the Banking Law stipulates that the statutory governing body should establish governance mechanisms to prevent such conflicts. In this regard, please see Article 62, § 2 et seq. of the Banking Law, which relates to the exercise of external functions⁶³, and Article 72 of the same Law, which relates to loans, credits and guarantees to managers, shareholders and related persons⁶⁴.
- 3:62 Guidelines EBA/GL/2021/06 provide that consideration should be given to at least the following factors that could create actual or potential conflicts of interest⁶⁵:
- a. economic interests (e.g. shares, other ownership rights, holdings and other economic interests in the institution's counterparties, intellectual property rights, loans granted by the institution to a company owned or controlled by members of the statutory governing body);
 - b. personal or professional relationships with the owners of qualifying holdings in the institution;
 - c. personal or professional relationships with staff of the institution or entities included within the scope of prudential consolidation (e.g. close family relationships);
 - d. other employments and previous employments in the recent past (e.g. within the past five years);
 - e. personal or professional relationships with relevant external stakeholders (e.g. being associated with material suppliers, consultants or other service providers);
 - f. membership in a body or ownership of an entity with conflicting interests; and
 - g. political influence or political relationships.
- 3:63 In the same vein, conflicts of interest can be classified into 4 types: (i) personal, (ii) professional, (iii) financial and (iv) political conflicts of interest.
- 3:64 The institution should identify the actual or potential conflicts of interest of the person concerned, in accordance with its conflict of interest policy, and assess whether or not these conflicts are material.
- 3:65 With regard to the materiality of a conflict of interest, please refer to Guidelines EBA/GL/2021/06 and Article 72 of the Banking Law for conflicts of interest that may arise from loans, credits and guarantees granted to members of the statutory governing body and persons associated with them⁶⁶.
- 3:66 All actual and potential conflicts of interest, whether material or not, on the part of the statutory governing body, senior management or a person responsible for an independent control function must

⁶³ See also the Royal Decree of 8 February 2022 approving the Regulation of the National Bank of Belgium of 9 November 2021 on the exercise of external functions by managers and persons responsible for independent control functions of regulated companies, as well as Communication NBB_2022_19 on the same subject.

⁶⁴ See also Circular NBB_2017_21 on this subject.

⁶⁵ Regulation (EU) No 909/2014 (CSDR) does not specifically define the concept of conflicts of interest for central securities depositories. In this respect, please refer to the requirements set out in the ESMA RTS 2017/392.

⁶⁶ Pursuant to Article 72 of the Banking Law, only loans, credits and guarantees exceeding EUR 500,000 are to be considered as material. For further information, please refer to Circular NBB_2017_21.

be adequately discussed, documented, decided on and duly managed by the competent body⁶⁷ (i.e. the necessary measures should be taken). The persons concerned should abstain from voting on any matter which places them in a situation of conflict of interest.

- 3:67 If a material conflict of interest has been identified, the institution should (i) perform a detailed assessment of the situation; (ii) decide which mitigating measures it will take based on its internal conflicts of interest policy; and (iii) decide which measures it will take to prevent the conflict of interest, if it cannot adequately mitigate or manage it.
- 3:68 The institution should inform the NBB of any actual or potential conflict of interest, whether material or not, that may impact the independence of mind of a member of the statutory governing body, of a senior manager or of a person responsible for an independent control function, and communicate the mitigating or preventive measures taken (“conflict of interests statement”):
- If the conflict of interest has been deemed non-material, the institution should explain why, as part of the suitability assessment;
 - If the conflict of interest has been deemed material, the institution must provide the NBB with at least the following information: (i) a description of the conflict of interest identified, (ii) a description of the assessment performed within the institution, (iii) the institution’s conclusion as to the mitigating or preventive measures taken, and (iv) the reasons for the adequacy of those measures.
- 3:69 For further information on conflicts of interest, please refer to Guidelines EBA/GL/2021/06.

3.3.3.2 Independence of mind versus formal independence

- 3:70 As mentioned above, independence of mind should not be confused with the notion of formal independence within the meaning of Article 3, 83° of the Banking Law and other supervisory laws. An independent director in the formal sense is a non-executive director who has no link with the shareholder and who represents the interests of all the institution's stakeholders. The supervisory laws generally require the presence of one or more independent directors in the specialised committees of the statutory governing body⁶⁸.
- 3:71 The concept of independence is defined in the supervisory laws (see for example Article 3, 83° of the Banking Law). These laws contain a list of criteria that must be met to be considered independent in the formal sense. However, the institution also has the possibility to demonstrate to the NBB that, although not all criteria are met, the independence of the person concerned is not compromised (in accordance with the “comply or explain” principle)⁶⁹.
- 3:72 In practice, the NBB’s decisions on the suitability of the person concerned and its decisions relating to compliance or justification of non-compliance with the independence criteria set out in the supervisory laws are usually taken simultaneously. However, it cannot be excluded that these two decisions are taken separately when the issue of independence also concerns the ongoing monitoring of governance.

⁶⁷ The competent body to manage conflicts of interests is (i) the management committee for senior managers (if there is no management committee, the statutory governing body) and (ii) the statutory governing body for non-executive directors and responsible persons for independent control functions.

⁶⁸ See in particular Article 28 of the Banking Law, which stipulates that credit institutions which are required to set up an audit committee, a risk committee, a remuneration committee and a nomination committee must ensure that at least one independent director sits on each of these committees. Furthermore, the majority of the members of the audit committee must be independent.

⁶⁹ In this case, the institution must submit a request for derogation together with the fit & proper form of the director concerned, in which it justifies the validity of this request. The NBB decides whether or not to grant this derogation as part of its governance supervision.

3.3.4 TIME COMMITMENT

- 3:73 All directors, senior managers and persons responsible for independent control functions must devote sufficient time to the performance of their duties in the institution⁷⁰. This also applies in periods of particularly increased activity, such as a restructuring, crisis situation, merger, etc.
- 3:74 Time commitment should be assessed on a case-by-case basis, taking into account the situation of the person concerned and the nature, complexity of the activities, size, risk profile and organisational structure of the institution.
- 3:75 The overall assessment of time commitment should be guided by basic assumptions, a quantitative assessment of the number of external functions performed by the person concerned and a qualitative assessment of the time required for the intended position.

3.3.4.1 Basic assumptions

- 3:76 The following basic assumptions should be used in any assessment of time commitment:
- Executive directors must effectively manage the business of the institution. The persons responsible for independent control functions must monitor the institution's operations. As a general rule and notwithstanding any provision to the contrary⁷¹, these positions are assumed to be full-time. There may be exceptions to this rule, particularly within groups⁷². In such cases, the relevant synergies should be explained and assessed.
 - Non-executive directors must effectively challenge decisions submitted by the management body and effectively supervise and control the management of the institution. Consequently, non-executive directors should participate in meetings of the statutory governing body and its committees (if any) and take sufficient time to prepare by examining the files and to attend these meetings. In addition, these members should devote sufficient time to training to keep abreast of information and regulations relevant to the institution.
 - All directors must have a good understanding of the institution's business. This includes understanding the risks associated with the business and the resulting risk exposure, as well as the risk management strategy. They should have an appropriate understanding of the institution's business areas. This requires a good understanding of the institution's governance arrangements and structure, which may require the member to spend time on ongoing training and developing a network of contacts.
 - All directors must be able to perform their duties in times of particularly increased activity, such as a restructuring, relocation of the institution, acquisition, merger, takeover or crisis situation.

3.3.4.2 Quantitative assessment

- 3:77 The simultaneous exercise of multiple mandates is an important factor that can affect a person's time commitment. While there is no maximum number of mandates for the institutions covered by this chapter, as is the case for credit institutions subject to ECB supervision, they should analyse the number of external functions performed by the person concerned and check whether this is consistent with their internal rules on external functions.

3.3.4.3 Qualitative assessment

- 3:78 In addition to the quantitative assessment, institutions should assess qualitatively whether the person concerned has sufficient time to perform the intended position.
- 3:79 In making this qualitative assessment, institutions should - in accordance with Guidelines EBA/GL/2021/06 - take into account at least the following factors:

⁷⁰ See in particular Article 62, § 1 of the Banking Law.

⁷¹ For example Article 49 of Regulation (EU) No 909/2014 (CSDR).

⁷² See in particular Article 62, § 6 of the Banking Law.

- a) the number of positions held by the person concerned in decision-making bodies of financial and non-financial companies relevant to the position in question, taking into account possible synergies when these positions are held within the same group;
- b) the size of the institution and the nature, scope and complexity of its activities;
- c) the person's place of residence and the travel time required to be physically present at the institution;
- d) the number of meetings scheduled for the body on which the person will serve;
- e) the number of meetings scheduled with the competent authorities or the institution's other internal or external stakeholders;
- f) the nature of the position concerned and the resulting obligations (particularly in terms of representation) and responsibilities (including the positions referred to in point a));
- g) other external professional or political activities of the person concerned, and any other positions or activities that are considered relevant, both within and outside the financial sector and both within and outside the EU;
- h) the necessary induction and training; and
- i) available relevant benchmarking on time commitment, including the benchmarking provided by the EBA.

3:80 Small institutions may conduct a less detailed analysis.

3.3.4.4 Outcome

3:81 Institutions should inform the NBB through the fit & proper form "New appointment" of the outcome of their overall assessment of time commitment, distinguishing between the quantitative and qualitative assessment⁷³. This overall assessment should take into account the above factors and include at least an estimate of the number of days per year devoted to the position in question and, where appropriate, to the other professional activities of the person concerned.

3:82 For more information on the assessment of time commitment, please refer to paragraphs 39 to 46 of Guidelines EBA/GL/2021/06.

3.3.5 COLLECTIVE SUITABILITY

3:83 In principle, an assessment of expertise always relates to an individual. However, when the assessment relates to a position in a multi-member body, account must also be taken of the composition and operation of this body as a whole. This means that it must be checked whether the expertise within the body is sufficiently guaranteed with the person concerned, in view of his/her knowledge, experience and skills. The same applies to the senior management in cases where the institution does not have a management committee.

3.3.5.1 Areas of collective suitability

3:84 The statutory governing body should collectively be able to understand the institution's business, including the main risks to which it is exposed.

3:85 The collective knowledge, skills and experience that must be present in the relevant body depend on the characteristics of the institution. In determining the areas of collective suitability to be present in the statutory governing body and the management committee, account should be taken of the institution's business model, strategy, risk appetite and risk profile and of the nature, complexity and location of its activities.

3:86 In general, collective suitability covers the following areas:

- a) the business of the institution and main risks related to it;
- b) each of the material activities of the institution;
- c) the governance of the institution;
- d) relevant areas of sectoral and financial competence, including financial and capital markets, solvency and internal models;

⁷³ In accordance with Communication NBB_2022_19 on external functions, the institution must notify the NBB via the eManex platform of all external functions performed by the persons concerned. Any material changes to existing external functions must also be communicated to the NBB via the fit & proper form "New Elements" (see also Chapter 5 of this Manual).

- e) managerial skills and experience;
- f) financial accounting and reporting;
- g) the ability to plan strategically;
- h) risk management, compliance and internal audit;
- i) information technology and security;
- j) climate and environmental risk;
- k) local, regional and global markets, where applicable;
- l) the legal and regulatory environment;
- m) money laundering and terrorist financing risk;
- n) the management of (inter)national groups and risks related to group structures, where applicable.

3:87 It should be noted that the NBB pays particular attention to the following components of the assessment of collective suitability:

- Information technology and security: to ensure effective management, policy/strategy and oversight, it is essential that the management committee and the statutory governing body in its policy/strategy and supervisory function have sufficient understanding of the risks associated with information technology and security. Taking into account the proportionality principle and in particular the characteristics of the institution concerned (see introduction), it is considered a best practice to have at least one executive and one non-executive director with knowledge, skills and specific experience in information technology and security;
- Environmental and climate risk: the institution's statutory governing body is best placed to ensure that climate and environmental risks are taken into account in the development of the institution's overall business strategy, business objectives and risk management framework, and to exercise effective oversight of climate and environmental risks. In this particular area, sound and effective management of the risks to which the institution is or may be exposed requires members of the management committee and the statutory governing body to have adequate collective knowledge, skills and experience.
- Money laundering and terrorist financing (ML/FT) risk: the statutory governing body in its policy/strategy and supervisory function and the management committee should have a good understanding of ML/FT risks. As mentioned in paragraph 152 of Guidelines EBA/GL/2021/06, when assessing collective suitability, institutions should also assess whether the statutory governing body and senior management have, through their decisions, demonstrated a sufficient understanding of ML/FT risks and how these affect the institution's business, and have demonstrated appropriate management of these risks, including by taking corrective measures where necessary.

3.3.5.2 Diversity

3:88 The decision-making process for strategies and risk-taking within an institution can be positively supported by a range of backgrounds, experiences, values, opinions and views in the institution's decision-making bodies (statutory governing body and management committee). Diversity in all its facets bolsters institutions' decision-making bodies.

3:89 For the credit institutions and stockbroking firms covered by this chapter, the promotion of diversity in decision-making bodies is enshrined in Article 31 of the Banking Law. The Banking Law requires these institutions to use diversity as one of the criteria for the composition of their statutory governing body and management committee, in order to improve their risk monitoring and resilience. The Banking Law also requires them to develop a diversity policy (see the point on organisational requirements), including a target for the representation of the under-represented gender in the statutory governing body.

3:90 For further information on diversity, please refer to the Governance Manual for the banking sector.

3.3.5.3 Assessment

3:91 When assessing collective suitability, institutions should assess the composition of the management committee (or of senior management if no management committee has been established) and that of the statutory governing body in its policy/strategy and supervisory function separately.

- 3:92 While the management committee should collectively have a high level of managerial skills, the statutory governing body in its policy/strategy and supervisory function should collectively have sufficient management skills to organise its tasks effectively and to be able to understand and challenge the management practices applied and decisions taken by the management committee.
- 3:93 The collective suitability of the statutory governing body and the management committee should be assessed using a matrix. Institutions should use either:
- a) the suitability matrix template included in Annex I to Guidelines EBA/GL/2021/06. Institutions may adapt this template taking into account the above criteria; or
 - b) their own appropriate methodology in line with the criteria set out in this Manual.
- 3:94 Based on the information provided by the institution in the annex to the fit & proper form, the NBB assesses the extent to which the applicant contributes to collective suitability.
- 3:95 Regarding diversity, institutions should specify in the fit & proper form whether the new appointment in question aligns with the established gender diversity target and their other internal diversity rules. The NBB assesses diversity as part of its analysis of the governance of the institution in question.
- 3:96 Guidelines EBA/GL/2021/06 provide further clarification on the information and motivation (in particular the self-assessment to be carried out and statement to be prepared in this context) to be provided by the institution to the NBB regarding the assessment of collective suitability. Guidelines EBA/GL/2021/06 also clarify the cases in which the institution should (re)assess the collective suitability of the statutory governing body, as well as the focus points in this respect. Paragraphs 123 to 127 of these Guidelines also specify the specific role of the nomination committee with regard to collective suitability.
- 3:97 Finally, it should be noted that institutions are required to inform the NBB of any distribution of tasks between members of the statutory governing body and of any significant changes thereto.

3.4 ORGANISATIONAL REQUIREMENTS FOR THE SUITABILITY ASSESSMENT

- 3:98 As stated above, the primary responsibility for suitability assessment lies with the institution. To carry out this assessment, it must have policies, procedures and processes in place.

3.4.1. SUITABILITY POLICY

- 3:99 The institution should develop and implement a suitability policy that takes into account applicable regulations and is aligned with its overall governance framework, corporate culture and risk appetite. In this context, the institution's statutory governing body should adopt and update a policy for suitability assessment that covers (executive and non-executive) directors, senior managers and persons responsible for independent control functions.
- 3:100 Where appropriate, the nomination committee should actively contribute to the establishment of this policy and may be supported in this respect by the HR, Legal and Compliance departments.
- 3:101 The policy should include at least the following:
- a. the process for the selection, appointment, reappointment and succession planning of members of the statutory governing body, senior managers and persons responsible for independent control functions, and the applicable internal procedure for the assessment of the suitability of these persons;
 - b. the criteria to be used in the suitability assessment, which should include at least the 5 suitability criteria set out in this Manual;
 - c. how the diversity policy and, in particular, the quantitative/qualitative target for the representation of the under-represented gender in the statutory governing body are taken into account as part of the selection process;

- d. the communication channel with the competent authorities; and
- e. how the assessment is documented.

3:102 For more information on this subject, please refer to the Governance Manual for the banking sector and Guidelines EBA/GL/2021/06.

3.4.2. DIVERSITY POLICY

3:103 All institutions covered by this chapter that have the legal status of credit institution or stockbroking firm⁷⁴ are required, and those that have another legal status⁷⁵ are recommended, to establish a policy to promote diversity within the statutory governing body, so that it is composed of a diverse group of members and that a variety of views are represented on it.

3:104 This policy should cover at least the following aspects of diversity: age, gender, educational background, professional background and, for institutions that are active internationally, geographical provenance. This policy may be part of the suitability policy or separate from it, provided that it is explicitly mentioned in the suitability policy.

3:105 Article 31 of the Banking Law provides, for the institutions covered by this chapter that have the legal status of credit institution or stockbroking firm, that their diversity policy should include a quantitative target for the representation of the under-represented gender in the statutory governing body (this target may be qualitative for small institutions). These institutions should thus quantify the targeted participation of the under-represented gender and specify an appropriate timeframe within which the target should be met and how it will be met. The target should be set for the statutory governing body as a whole, but in the case of a sufficiently large management committee, it may be split between the management function and the supervisory function.

3:106 For more information on this subject, please refer to the Governance Manual for the banking sector and Guidelines EBA/GL/2021/06.

3.4.3. SELECTION PROCESS AND SUCCESSION PLANS

3:107 Without prejudice to the shareholders' rights to appoint members of the statutory governing body, the institution's nomination committee should actively contribute to the selection of applicants for vacant positions as member of the statutory governing body, senior manager (with the exception of senior managers at "N-1" level) and person responsible for an independent control function, in cooperation with the HR, Legal and Compliance departments. More specifically, the nomination committee should:

- a) prepare a description of the roles of and capabilities for a particular appointment (job profile);
- b) evaluate the adequate balance of knowledge, skills and experience of the statutory governing body;
- c) assess the time commitment expected; and
- d) consider the objectives of the diversity policy.

3:108 The recruitment decision should, where possible, take into account a preselection of suitable applicants which takes into account the diversity objectives set out in the institution's diversity policy.

3:109 Without prejudice to the shareholders' rights to appoint and replace all members of the statutory governing body simultaneously, the nomination committee should establish succession plans for members of the statutory governing body, senior managers (with the exception of senior managers at "N-1" level) and persons responsible for independent control functions. These succession plans should ensure the continuity of decision-making and prevent, where possible, too many managers having to

⁷⁴ See Article 31 of the Banking Law.

⁷⁵ In the specific case of approved or designated (mixed) financial holding companies governed by Belgian law, the implementation of a diversity policy should be considered as a recommendation, as Article 31 of the Banking Law does not apply to (mixed) financial holding companies on an individual basis, but only indirectly on a consolidated or sub-consolidated basis (in accordance with Article 168 of the Banking Law).

be replaced simultaneously. They should also include processes for dealing with sudden or unexpected absences or departures of managers, including any relevant interim arrangements.

3:110 For more information on this subject, please refer to the Governance Manual for the banking sector and Guidelines EBA/GL/2021/06.

3.4.4. INDUCTION AND TRAINING POLICY AND PROCEDURE

3:111 Institutions should establish and implement a policy for the induction and training of members of the statutory governing body. This policy may be part of the suitability policy.

3:112 The human and financial resources provided for induction and training should be sufficient to achieve the objectives of induction and training and to ensure members' ongoing suitability. Directors should receive key information no later than one month after taking up their position, and their induction should be completed within six months.

3:113 The induction and training policy and procedures should at least set out:

- a. the induction and training objectives for the persons concerned;
- b. the responsibilities for the development of a detailed training programme;
- c. the financial and human resources made available by the institution for induction and training, taking into account the number of induction and training sessions, their cost and any related administrative tasks, in order to ensure that induction and training can be provided in line with the policy;
- d. a clear process under which any person concerned can request induction or training.

3:114 Institutions should have in place a process to identify the areas in which training is required, both for the statutory governing body collectively and for its individual members.

3:115 For further information, please refer to the Governance Manual for the banking sector.

3.5 SUITABILITY ASSESSMENT BY THE INSTITUTION

3:116 The assessment of individual and collective suitability must take place before the position is taken up and, subsequently, on a regular basis in the course of the position.

3.5.1 ASSESSMENT BEFORE TAKING UP THE POSITION

3:117 Before appointing an applicant, the institution must conduct a due diligence investigation, the specific level of which should depend on the intended position. This Manual and Guidelines EBA/GL/2021/06 contain concrete recommendations and guidelines for the institution to use when assessing a person's suitability.

3:118 Where the institution has completed the investigation and wishes to consider the person's application for the particular position, it is recommended to record this internal selection decision in writing. The decision should contain not only the selection decision itself but also any considerations upon which it is based (reasons for individual and, if applicable, collective suitability). Where appropriate, it should also mention any agreements that have been made to improve the expertise of the person concerned on certain points.

3:119 A well-documented suitability policy, carefully written job profiles and reasoned selection decisions on the part of the institution can be extremely useful for the subsequent suitability assessment by the NBB.

3.5.2 REASSESSMENT IN THE COURSE OF THE POSITION

3:120 The suitability requirement is ongoing: in accordance with Article 19 of the Banking Law⁷⁶, the persons concerned must possess the appropriate expertise and act with the required professional integrity at all times.

1) Periodic reassessment

3:121 The institution must periodically assess the individual and collective suitability of the persons subject to suitability assessment. More specifically for banks, Article 31 of the Banking Law provides that the nomination committee should at least annually evaluate the structure, size, composition and performance of the statutory governing body, as well as the knowledge, skills, experience and degree of involvement (including regular attendance) of both the individual members of the statutory governing body and the statutory governing body as a whole. For small institutions, this periodic reassessment may take place every two years.

2) Reassessment based on specific events

3:122 Whenever the institution is informed of an event that may affect the assessment of the individual suitability of a person subject to suitability assessment or the assessment of the collective suitability of a decision-making body⁷⁷, it should consider whether an ad hoc reassessment is necessary in view of the impact of this event on the suitability of the person concerned, and document the underlying considerations in writing. If the institution concludes that a reassessment is necessary, it must notify the NBB immediately.

§.1.. Specific events requiring a reassessment of individual suitability

3:123 In accordance with Guidelines EBA/GL/2021/06, a reassessment of the individual suitability of a director, senior manager or person responsible for a control function should be carried out at least in the following cases:

- a) when there are concerns regarding the suitability of members of the statutory governing body, senior managers or persons responsible for independent control functions;
- b) in the event of new elements that have a material impact on the reputation of the person concerned;
- c) where there are reasonable grounds to suspect that money laundering or terrorist financing has been or is being committed or attempted or there is an increased risk thereof in connection with that institution and in particular in situations where the institution:
 - i. has not implemented appropriate internal controls or oversight mechanisms to monitor and mitigate ML/FT risks (e.g. risks identified by supervisory findings from on-site or off-site inspections);
 - ii. has been found to be in breach of its AML/CFT obligations at home or abroad; or
 - iii. has materially changed its business activity or business model in a manner that suggests that its exposure to ML/FT risk has significantly increased;
- d) in any event that can otherwise materially affect the suitability of the person concerned.

§.2.. Specific events requiring a reassessment of collective suitability

3:124 In accordance with Guidelines EBA/GL/2021/06, institutions should reassess the collective suitability of decision-making bodies at least in the following cases:

- a. when there is a material change to the institution's business model, risk appetite or strategy or structure at individual or group level;
- b. when there are material changes to the composition of the body (e.g. when new members are appointed as a result of a direct or indirect acquisition or increase of a qualifying holding in the institution, or when members are reappointed, if the requirements of the position have

⁷⁶ A similar provision is included in the other supervisory laws.

⁷⁷ See in particular Article 60, § 4 of the Banking Law.

- changed or if members are appointed to a different position within the statutory governing body);
- c. as part of the review of the internal governance arrangements by the statutory governing body;
 - d. where there are reasonable grounds to suspect that money laundering or terrorist financing has been or is being committed or attempted or there is an increased risk thereof in connection with that institution and in particular in situations where information available suggests that the institution:
 - i. has not implemented appropriate internal controls or oversight mechanisms to monitor and mitigate ML/FT risks (e.g. risks identified by supervisory findings from on-site or off-site inspections, supervisory dialogue or in the context of sanctions);
 - ii. has been found to be in breach of its AML/CFT obligations in the home or host Member State or in a third country; or
 - iii. has materially changed its business activity or business model in a manner that suggests that its exposure to ML/FT risk has significantly increased;
 - e. in any event that can otherwise materially affect the collective suitability of the statutory governing body.

3) Procedures and processes for suitability reassessment

- 3:125 Procedures and processes should be in place to review the individual and collective suitability of persons covered by this Manual continuously, periodically and in response to specific events.
- 3:126 Periodic reassessments, the review of whether an ad hoc reassessment is necessary in case of specific events and the reassessments triggered by those specific events themselves should be documented in writing. This written document should include both the final assessment and the underlying considerations, including any weaknesses identified and the arrangements made to remedy them.
- 3:127 The outcome of the reassessment, the reason for the reassessment and any recommendations with regard to identified weaknesses should be documented and submitted to the statutory governing body.
- 3:128 Institutions must immediately inform the NBB of any significant shortcomings identified during periodic reassessments or reassessments triggered by specific events. To that end, they should submit the fit & proper form “New elements”.

3.5.3 CONCLUSION OF THE ASSESSMENT OR REASSESSMENT

- 3:129 If an institution’s assessment or reassessment concludes that a person is not suitable for the intended position, that person should not be appointed or, if he/she has already been appointed, this appointment should be revoked. If an institution’s assessment or reassessment identifies easily remediable shortcomings in the knowledge, skills or experience of the person concerned, with the exception of shortcomings related to the criteria relevant to the assessment of professional integrity, the institution should take appropriate corrective measures to overcome those shortcomings in a timely manner. Examples of such corrective measures are set out in paragraph 169 of Guidelines EBA/GL/2021/06.
- 3:130 In any event, the NBB should be notified without delay of any significant shortcoming identified⁷⁸. This notification should include the measures taken or envisaged to remedy those shortcomings and the timeline for their implementation⁷⁹.

⁷⁸ Article 60, § 4 of the Banking Law.

⁷⁹ See in particular the explanatory memorandum to the Law of 5 December 2017 containing various financial provisions, Parliamentary Documents, Chamber, 2017-2018, Doc. 54 - 2682/001, p. 24, which provides that it is the primary responsibility of the person concerned and of the institution to immediately report to the supervisor any relevant new fact that may affect the suitability of the person concerned: they must provide the supervisor with accurate and complete information at all times to enable the latter to form an accurate opinion of the person’s suitability. Failure to do so may, where appropriate, result in the supervisor disqualifying the person concerned, with the implication that he/she is no longer considered suitable.

3.6 SUITABILITY ASSESSMENT BY THE NBB

3.6.1 TIMING OF THE ASSESSMENT

3:131 The NBB assesses the suitability of persons who wish to hold a position which requires a suitability assessment before they actually take up the position. It also carries out an assessment when warranted by facts and/or circumstances.

3:132 The concrete scope and method of the assessment differ depending on when it takes place.

3.6.1.1 Before taking up the position

3:133 This assessment takes place either when an institution applies for authorisation⁸⁰ or when an already authorised institution intends to appoint a person to a position which requires a suitability assessment. In the latter case, the assessment can relate to either a person already working in the institution concerned or an external person.

3:134 In this respect, it should also be noted that credit institutions that are not under the direct supervision of the ECB are still subject to the ECB's competence with regard to suitability assessments carried out in the context of an authorisation procedure or the acquisition of a qualifying holding (see the SSM Guide, Section 6.6). Such assessments are carried out in accordance with the rules of the "common procedure", for which the NBB is also the first point of access.

3.6.1.2 While holding the position

3:135 As part of the NBB's ongoing prudential supervision, the suitability of the persons concerned is also reassessed if there are new facts and/or circumstances that provide reasonable grounds for such a reassessment. It is for the NBB to determine what constitutes new facts and/or circumstances.

1) Reassessment based on specific signals

3:136 In practice, the NBB relies on signals that cast doubt on a person's suitability and thus may justify the need to review whether the person concerned is sufficiently suitable for the position he/she holds. These signals can be very diverse⁸¹.

3:137 When a person in office is subject to criminal, administrative, civil or disciplinary proceedings that are likely to call into question the expertise and professional integrity of that person, the NBB may ask the statutory governing body of the institution concerned whether - in the light of the facts with which the person concerned is charged - it considers that it can maintain confidence in that person. The institution must obtain full transparency from the person concerned with regard to the charges against him/her. In any case, the NBB carries out its own assessment, taking into account the reasoning of the statutory governing body and the nature of the charges.

3:138 Where the NBB carries out a reassessment, it focuses on the actions and performance of the person concerned in practice. In particular, the NBB examines how the person concerned has applied his/her knowledge and skills, and whether or not the person's decision-making and business management demonstrate professional conduct.

3:139 A reassessment may be carried out for one or more persons at the same time, depending on the reason for the reassessment. For instance, if the reassessment was triggered by concerns about the company culture, it is possible that several persons will be reassessed. Conversely, if the

⁸⁰ For appointments considered in the context of an authorisation application, the same suitability assessment criteria should be applied and the assessment procedure should be applied in broadly the same way, taking into account the specificities of the authorisation context. However, the competent authority makes its decision according to an ad hoc schedule, so that the taking up of the position coincides with the authorisation decision.

⁸¹ For example the opening of or developments in criminal, civil, administrative or disciplinary proceedings, the existence of reasonable grounds to suspect that money laundering or terrorist financing has been or is being committed or attempted or there is an increased risk thereof in connection with the institution concerned, an unexpected change in the institution's results, concerns about the business model applied, concerns about the integrity and control of the institution's management, expansion of the institution's activities abroad, outsourcing of (core) tasks, systematic lack of response or late response to requests for information made by the supervisor, failure to comply with certain recommendations, conditions or obligations imposed by the supervisor, high staff turnover, poor administration and (repeated) violations of laws and regulations. In certain cases, it is a combination of signals that leads the supervisor to doubt a person's suitability.

reassessment is motivated by concerns about specific activities of the institution (a specific product or market, or a particular internal control line) that fall under a specific person's duties, it will likely focus on that particular person, without prejudice to the possibility that other persons may subsequently be held liable for failing to perform their supervisory duties.

3:140 The appointment of a new member to a decision-making body does not automatically trigger a reassessment of the collective suitability of the members of this body that are already in office. However, a change in the composition of the decision-making body, whether or not due to the entry into office of a new person, may constitute reasonable grounds for a reassessment of collective suitability. This may be the case *inter alia* if a person with a certain expertise resigns and no (temporary) replacement is sought or found, or if members of the decision-making body change positions.

2) *Reassessment in the absence of specific signals*

3:141 The NBB may also reassess the individual and collective suitability of persons subject to suitability assessment on an ongoing basis - in the absence of specific signals - as part of its general risk-based supervision.

3.6.2 ASSESSMENT PROCEDURE

3.6.2.1 Before taking up the position

3:142 In accordance with the supervisory laws, institutions must inform the NBB in advance of any proposed appointment, reappointment or non-reappointment, dismissal or resignation of the persons concerned. When a person changes position, including when a significant new division of tasks is established within the statutory governing body, this must be considered as a new appointment.

3:143 In accordance with the principles of sound governance, the NBB endeavours to reach its decision within a reasonable timeframe, preferably within 2 months. However, since suitability assessments may, depending on the case, entail additional verifications (e.g. holding one or more interviews, consulting other [foreign] supervisors, consulting references provided, requesting additional information from judicial or other authorities, etc.), which in turn may require additional analytical work from the NBB, the actual examination of the file may take more time. In such cases, the NBB's guideline is that a decision should be taken within 4 months, as indicated in paragraph 179 of Guidelines EBA/GL/2021/06.

3:144 These indicative time limits start from the moment the duly completed forms and all necessary information have been submitted to the NBB (complete file). If the NBB requests additional information from the institution, the deadlines are suspended until the relevant information is provided. Institutions are requested to take into account these indicative time limits for timely transmission of the written file through the standard forms.

3:145 The appointment cannot take place before the NBB has made a decision. The institution may contact the NBB through the usual channels shortly after sending the duly completed forms in order to find out whether or not the NBB considers the case as time-consuming or complex. If the case is considered time-consuming or complex, the appointment may, exceptionally, take place under a condition precedent and be made public with mention of this condition.

3:146 When a proposed appointment relates to a person who is being proposed for the first time for a position which requires a suitability assessment, the NBB first consults the FSMA⁸². The FSMA sends any relevant factual information to the NBB within one week from receipt of the request for advice.

3.6.2.2 While holding the position

3:147 It is for the NBB to decide whether the suitability of a person in office should be reassessed. For instance, the NBB may decide to reassess the suitability of the persons concerned as a result of findings or analyses in the context of its supervision of a specific institution. This decision may be based, for example, on reports or findings showing a negative or dismissive attitude towards generally accepted best practice (e.g. regarding transparent and complete information flow to the statutory

⁸² Article 60, § 2 of the Banking law and equivalent provisions in the other supervisory laws.

governing body), the emergence of concrete doubts as to whether the institution, members of its statutory governing body, its senior managers or the persons responsible for its independent control functions in the past or present complied with anti-money laundering and counter-terrorist financing requirements, repeated or deliberate non-compliance with the NBB's recommendations, an established lack of availability to attend meetings, disclosure of incomplete or incorrect information to the NBB or shareholders, an uncooperative attitude towards the NBB, etc.⁸³

3:148 In the event of a reassessment of a person, the NBB will specify to the institution what information it wishes to receive. The NBB may request information on the periodic assessments carried out by the institution, or interview the persons concerned.

3:149 When carrying out a reassessment, the NBB may ask the person concerned to cooperate. If the person refuses to do so, the NBB informs the institution in order to obtain the necessary information. If the result is not satisfactory, the NBB may take administrative measures (in particular the replacement of the person concerned) and/or impose administrative sanctions.

3.6.3 INFORMATION FOR THE ASSESSMENT

3.6.3.1 Sources of information for the NBB

3:150 In order to obtain as complete a picture as possible of a person's suitability, the NBB uses a wide range of information sources, such as:

- the current standard form, duly filled in and signed by the institution and the person concerned (see Chapter 5 of this Manual), including any information which the NBB may, if necessary, obtain from the references listed therein;
- the suitability assessments carried out by the institution, including the assessment of collective expertise by the statutory governing body. This also includes the information and documentation listed in Annex III to Guidelines EBA/GL/2021/06, and the information to be provided on conflicts of interest and time commitment as stipulated in the SSM Guide;
- the supervisory information and background available to the NBB as prudential authority;
- the institution's documented policy (processes and procedures) that forms the basis for the recruitment of the person and the job profile that the institution has drawn up for the position in question;
- opinions of the FSMA;
- opinions of other authorities supervising the institution (such as authorities in charge of anti-money laundering and counter-terrorist financing supervision, financial intelligence units and competent law enforcement authorities, tax authorities, etc.) or authorities that have carried out a suitability assessment of the person concerned in the past;
- information obtained from judicial authorities;
- information obtained from EBA databases (e.g. on administrative sanctions or suitability);
- where applicable, the periodic reassessment of the person concerned carried out by the institution (and recorded in writing) on the basis of the applicable job profile, including the considerations that led to this reassessment;
- any other information available to the institution that may be relevant for the suitability assessment;
- public information.

⁸³ See in particular the explanatory memorandum to the Law of 5 December 2017 containing various financial provisions, Parliamentary Documents, Chamber, 2017-2018, Doc. 54 - 2682/001, p. 24.

3:151 The NBB is authorised to request any information it considers necessary to assess the suitability of a person⁸⁴. It is important that institutions spontaneously and systematically inform the NBB of any changes to their suitability and periodic assessment policies, for example in an annex to their internal governance memorandum. However, such policy changes do not automatically trigger a reassessment.

3.6.3.2 Deliberate withholding of information or transmission of incorrect information

3:152 The NBB expects the institution and the person to be assessed to provide it with accurate and complete information through the standard forms and upon its request. If there is doubt as to the relevance or importance of any information, the institution should nevertheless transmit the information or contact the NBB through the usual channels to verify whether it is necessary to do so. Convictions of any kind must always be mentioned on the forms. Only the NBB is authorised to judge to what extent they are relevant or important to the suitability assessment.

3:153 A finding of non-compliance in this respect will have a negative impact on the NBB's assessment. The NBB considers any failure to transmit relevant and important information as supervisory background information. The NBB may detect such non-compliance through any source of information.

3:154 Any deliberate withholding of information will immediately lead to a refusal, as this shows a lack of transparency towards the NBB.

3.6.4 INTERVIEW TECHNIQUE

3:155 As part of a suitability assessment, the NBB may choose to interview the person concerned. It will do so in particular if it considers that a discussion with the person concerned is desirable or necessary to obtain a complete and clear picture of that person's expertise and/or professional integrity. In this respect, the NBB will apply a risk-based approach and take into account the institution's nature, size and risk profile, the position envisaged and any other details which might raise questions about the information provided by the institution and the person concerned. As a rule, in the case of significant institutions, an interview is always conducted for new appointments to the position of CEO (or equivalent position) or chair of the statutory governing body. In all other cases, depending on specific needs, interviews can also be used as a tool for assessing skills and integrity. If concerns remain after the initial interview, a second, specific interview may be held to address them.

3:156 The interview panel consists of at least two members. For applicants for the position of Compliance Officer, the interview may be conducted jointly with the FSMA.

3:157 During this interview, the NBB verifies whether the image that the institution has created of a person's suitability matches the way in which that person presents himself/herself during the interview, possibly taking into account other supervisory information and background relating to the institution or the person concerned. The interview also allows the NBB to ensure that the person concerned is well informed of its own expectations and those of the institution. Where applicable, the NBB will draw the institution's attention to areas where further efforts are needed (e.g. a lack of knowledge about a specific subject).

3:158 In principle, the interview takes place without the institution being present, although the NBB may decide otherwise.

3:159 When a person leaves a position, it can be particularly useful for the NBB to conduct an exit interview to obtain further details about the circumstances in which the person is leaving the position or about the governance of the institution in general.

⁸⁴ Article 36/19 of the Law of 22 February 1998 establishing the organic statute of the NBB.

3.6.5 OUTCOME AND CONSEQUENCES OF THE ASSESSMENT

- 3:160 Upon completion of the suitability assessment (as the case may be before or during the performance of a specific position), the NBB immediately informs the institution and the person concerned of the outcome of the assessment and, where appropriate, of some underlying findings.
- 3:161 Where appropriate, the NBB may accompany its approval decision with ancillary provisions to remedy any minor shortcomings found. Such ancillary provisions may not concern aspects related to integrity. They may take the form of recommendations⁸⁵, but also conditions⁸⁶ or obligations⁸⁷. In the latter case, the NBB clearly defines the conditions or obligations and sets a relatively short deadline for their fulfilment. As suitability is permanent, the NBB at all times has the possibility to monitor compliance with such conditions or obligations, and, if necessary, to carry out a reassessment. For more information on the ancillary provisions that may be imposed, please refer to paragraphs 191 to 193 of Guidelines EBA/GL/2021/06.
- 3:162 If the NBB's suitability assessment shows that the expertise and professional integrity of the assessed person are insufficiently demonstrated and that the deficiencies cannot be remedied, the NBB either informs the institution that the appointment of the person concerned cannot be approved because his/her suitability has not been sufficiently demonstrated, and requests the institution to withdraw the file, or takes a negative decision. This decision will be notified to the institution concerned.
- 3:163 Any negative decisions by the NBB as to a person's suitability are always thoroughly justified. Negative decisions can be appealed against before the Council of State. The effective possibilities of appeal are specified in the notification letter.
- 3:164 Finally, it should be noted that the NBB may also - irrespective of any formal positive, negative or conditional suitability decision - contact the institution to provide feedback on a submitted application. For example, if the institution withdraws its application in the course of the NBB's examination of the file, the latter may provide feedback on the issues identified, as part of the institution's responsibility for assessing suitability on the one hand, and/or the broader governance perspective on the other. Where necessary, the NBB may also impose appropriate prudential measures to remedy certain deficiencies in the institution's suitability policy or governance.

3.7 INDIVIDUAL ACCOUNTABILITY OF DIRECTORS

- 3:165 Members of the statutory governing body of an institution (whether in its management, policy/strategy or supervisory function) must have an appropriate understanding of, and contribute to, areas of the business for which they are collectively accountable with the other members of the statutory governing body, even if an individual member is given sole responsibility for specific areas.
- 3:166 Not having have a specific role or sole responsibility for a particular area does not exempt members of the statutory governing body from the need to have this understanding and hence to prepare for and participate in the discussions and decisions of the statutory governing body in an informed and active manner.

⁸⁵ Recommendations are intended to encourage best practices within institutions and to highlight desirable improvements. The NBB can formulate recommendations not only in the context of suitability assessments, but in all areas of prudential supervision.

⁸⁶ A condition is a requirement imposed on the institution subject to prudential supervision (and which may also have direct implications for the appointee) without which a negative decision would be issued. The most common conditions include: (i) a commitment to undergo specific training; (ii) relinquishment of a management position, mandate or other position outside the institution; (iii) for persons responsible for independent control functions (who are just below management committee level), a probationary period at the end of which the NBB may decide whether or not to validate its initial positive decision.

⁸⁷ The NBB's decision may also include an obligation to provide specific information for the purposes of the ongoing fit and proper assessment or to adopt a specific measure relating to fitness and propriety which does not affect the appointee but the entire supervised institution. Unlike a condition, non-compliance with an obligation does not automatically affect the fitness and propriety of the appointee. The most common obligations are: (i) reporting ongoing legal proceedings; (ii) responding to requests for improvement of written policies on conflicts of interest; (iii) responding to requests for improvement in the area of collective suitability or diversity.

3: 167A member of the statutory governing body who holds or held a position in the institution at the time when the facts giving rise to certain findings occur (red) (e.g. cases of money laundering, fraud or other findings arising from on-site inspections or legal proceedings) may - depending on the applicable law - be held responsible for those findings, even if there is no connection between his/her individual roles and responsibilities within the statutory governing body and the findings in question. Without prejudice to any other specific circumstances that may be relevant in a particular case, facts indicating that a person in office may be held individually accountable for not complying with his/her collective responsibility to properly address the issues that gave rise to the findings could impact his/her suitability for the position. The timing, relevance and severity of the findings will be taken into account in assessing accountability.

3.7.1 SCOPE

3:168 An assessment of individual accountability is carried out within the scope of a suitability assessment when the respective entities where the person concerned leaves and enters office are regulated financial institutions.

3.7.2 FINDINGS

3:169 Only sufficiently established facts that have been determined by a supervisor to be (i) recent, (ii) relevant and (iii) severe are taken into account when considering the individual accountability of the person concerned. The findings may be supervisory, regulatory or judicial in nature and refer to legal or regulatory breaches or deficiencies in the institution's activity. Findings of the following authorities are generally considered: a financial supervisor (e.g. a prudential authority or an authority in charge of anti-money laundering and counter-terrorist financing supervision), a judicial authority, a tax, competition or data protection authority, etc.

3.7.3 ASSESSMENT

3:170 The findings are assessed to determine whether the person concerned can be held individually accountable. The outcome of this assessment may impact the suitability of the person concerned, based on one or more of the suitability criteria set out above (professional integrity, independence of mind and expertise).

3:171 A detailed assessment of all the relevant facts and circumstances surrounding the concept of accountability is conducted, inter alia by considering what the following were, at the relevant times: (a) the level of awareness of the person concerned (e.g. not aware, partially aware or fully aware); (b) the nature of the roles and responsibilities of the person concerned (e.g. first line, second line or third line of defence); (c) the type of behaviour shown by the person concerned (e.g. neglectful, passive or active); (d) other aggravating or mitigating circumstances.

3:172 To assess whether the appointee can be held individually accountable for issues in the entity where he/she left office, factual information is obtained from this entity, the person concerned and/or the competent authority of the entity to which the facts underlying the findings refer. An interview with the person concerned is usually conducted.

3.7.4 OUTCOME OF THE ASSESSMENT

3:173 The detailed assessment of individual accountability results in one of the following outcomes:

- a positive decision (with no ancillary provisions⁸⁸), where suitability can be confirmed despite the concerns;
- a positive decision with ancillary provisions (condition or obligation), or a positive decision outlining the NBB's supervisory expectations with regard to the supervised entity and/or supervisory expectations as to future behaviour of the appointee; or
- a negative outcome, where suitability cannot be confirmed owing to the severity of the individual accountability and the lack of sufficient mitigating factors.

⁸⁸ The notion of "ancillary provisions" is detailed in the point "Outcome and consequences of the assessment".

These possible outcomes do not preclude the competent authorities from closely monitoring the suitability of the person concerned and taking further measures as part of the ongoing governance supervision of the institution where the person concerned takes up office.

3.8 SUITABILITY ASSESSMENT IN THE CONTEXT OF RESOLUTION⁸⁹

- 3:174 The suitability of persons newly appointed to the statutory governing body of an institution in the context of resolution in accordance with Articles 27 and 28 and 34(1)(c) of BRRD should be assessed by the NBB as competent authority of the institution in accordance with the assessment criteria set out in this chapter.
- 3:175 Resolution authorities must promptly notify the NBB of any new appointment of one or more members to the institution's statutory governing body. When appointing members in accordance with Article 34(1)(c) under the resolution powers referred to in Article 63(1)(l) of BRRD, resolution authorities must provide the NBB as soon as possible with the necessary documents to enable it to carry out a suitability assessment.
- 3:176 Given the urgency of the situation, the NBB carries out the suitability assessment after the member of the statutory governing body has taken office and without undue delay, if possible within one month from the date on which it was notified of the appointment. The NBB informs the resolution authority of the outcome of the assessment.
- 3:177 Where a special manager is appointed by the resolution authority in the context of a resolution procedure and entrusted with tasks exclusively related to the implementation of resolution measures according to Article 35 of BRRD, for a temporary mandate that does not exceed the duration of the resolution procedure, this person is not subject to the suitability assessment.

⁸⁹ This point applies to the institutions covered by this chapter that fall within the scope of BRRD.

4. Suitability requirements for the insurance and reinsurance sector

Regulatory framework:

1. Articles 15, 94°, 40, 41, 45-47, 81-83, 93, 94 and 443 of the Law of 13 March 2016 on the legal status and supervision of insurance and reinsurance companies (hereinafter the “Insurance Supervision Law”)
2. Articles 258 and 273 of Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance.
3. Royal Decree of 8 February 2022 approving the Regulation of the National Bank of Belgium of 9 November 2021 on the exercise of external functions by managers and persons responsible for independent control functions of regulated companies
4. Royal Decree of 15 April 2018 approving the Regulation of the National Bank of Belgium of 6 February 2018 on expertise of heads of the compliance function
5. Communication NBB_2022_19 of 12 July 2022 on the exercise of external functions by managers and persons responsible for independent control functions of regulated companies
6. Communication NBB_2021_04 of 19 January 2021 on the HIVE project and the digitalisation of the fit and proper process
7. Circular NBB_2018_25 of 18 September 2018 on the suitability of directors, members of the management committee, responsible persons of independent control functions and senior managers of financial institutions (the circular introducing this Manual)
8. Circular NBB_2016_31 on the expectations of the National Bank of Belgium regarding the governance system for the insurance and reinsurance sector (updated several times)
9. Circular NBB_2017_21 of 7 July 2017 on loans, credits and guarantees to managers, shareholders and related persons
10. EIOPA Guidelines of 1 January 2014 on system of governance (guidelines 11 to 14)
11. EIOPA Decision of 10 June 2021 on the collaboration of the insurance supervisory authorities

4:1 The Insurance Supervision Law, which transposes the Solvency II Directive⁹⁰, and Delegated Regulation 2015/35⁹¹ contain a number of provisions on the skills and professional integrity of managers and persons responsible for independent control functions of insurance or reinsurance companies. These provisions are explained and clarified by EIOPA in its Guidelines on system of governance (hereinafter the “EIOPA Guidelines”). The fit & proper section of those guidelines is transposed into the Belgian regulatory framework through this Manual, on which the NBB relies for its suitability assessments. This Manual should be read in conjunction with Circular NBB_2016_31 on the expectations of the National Bank of Belgium regarding the governance system for the insurance and reinsurance sector (hereinafter “Circular NBB_2016_31”), which transposes the governance aspects of the EIOPA Guidelines not related to fit & proper.

4.1 SCOPE

4.1.1 COMPANIES COVERED BY THIS CHAPTER

4:2 This chapter applies to:

- Insurance companies governed by Belgian law (including the small insurance companies referred to in Article 272 et seq. of the Insurance Supervision Law⁹²);
- Reinsurance companies governed by Belgian law;
- Branches established in Belgium of insurance or reinsurance companies governed by the law of a third country;
- Insurance holding companies governed by Belgian law;
- Mixed financial holding companies governed by Belgian law that are at the head of a financial conglomerate in which the insurance sector is the main sector.

4:3 For the sake of consistency and to ensure a level playing field, a cross-sectoral approach to suitability requirements has been adopted to the extent possible. As a result, the guidelines set out in this chapter apply to all the above companies, insofar as they fall within the scope of the legal obligations applicable to the companies concerned. However, for each suitability assessment, the NBB takes into account the nature, size, complexity, risk profile and organisational structure of the company in which the person concerned holds a position (see the point on the proportionality principle in the introduction). As supervisor, the NBB considers that there are no compelling reasons to apply different assessment standards for different components of the financial sector.

4.1.2 PERSONS COVERED BY THIS CHAPTER

4:4 This chapter covers the scope and assessment of the individual and, where applicable, collective suitability of persons who hold or wish to hold the following positions:

- director;
- senior manager⁹³; and
- person responsible for an independent control function⁹⁴.

4:5 Senior managers at “N-1” level (managers who exercise a direct and decisive influence on the management of the company but who are not members of the management committee), with the exception of general representatives of branches, do not have to be approved by the NBB⁹⁵. Of course,

⁹⁰ Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance.

⁹¹ Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance.

⁹² Companies that qualify as “small institutions” as defined in the introduction to this Manual.

⁹³ Members of the management committee are subject to the provisions of this chapter, whether or not they are directors.

⁹⁴ The assessment must pertain to the most senior person responsible for the independent control function or, if the independent control function is outsourced, to the person responsible for monitoring the outsourcing (the “contact person responsible”).

⁹⁵ To avoid any misunderstanding, it should be noted that where no management committee has been established, senior managers at “N” level are required to submit a file for approval to the NBB.

this does not mean that these persons should not have the fitness and propriety required for their position. The principles of this chapter also apply to them but, as they are not assessed by the NBB, companies are not required to submit the notification forms covered in Chapter 5 of this Manual.

4.1.3 CROSS-BORDER CONTEXT

4:6 For the application of this chapter within a cross-border context, a distinction must be made between the following three situations:

a) Companies established in the European Economic Area operating in Belgium through a branch or under the freedom to provide services => This chapter does not apply to the managers of companies established in the European Economic Area operating in Belgium through a branch or under the freedom to provide services.

b) Belgian companies operating abroad through a branch => This chapter applies to the managers and persons responsible for independent control functions of branches of companies authorised in Belgium operating abroad through a branch.

c) Companies governed by the law of a non-Member State of the European Economic Area operating in Belgium through a branch => This chapter applies to the managers and persons responsible for independent control functions of branches established in Belgium of companies governed by the law of a non-Member State of the European Economic Area.

4.1.4 GROUP CONTEXT

4:7 In accordance with the Solvency II Directive, as transposed by the Insurance Supervision Law and explained in Circular NBB_2016_31, entities responsible for a group must ensure the implementation of (and compliance with) a consistent and integrated group policy for assessing the suitability of all subsidiaries included in the prudential consolidation.

4:8 The persons concerned must be suitable to hold their positions and thus meet the suitability assessment standards, at the level of both the parent company governed by Belgian law and all regulated Belgian subsidiaries. If a person holds a position falling within the scope of the law at both parent and subsidiary level, two separate assessments need to be carried out.

4.2 DELINEATION OF RESPONSIBILITIES IN THE SUITABILITY ASSESSMENT

4.2.1 RESPONSIBILITY OF THE COMPANY AND OF THE PERSON TO BE ASSESSED

4:9 It is primarily incumbent on the company to assess the suitability of persons who hold positions requiring a suitability assessment. The company should inform (inter alia) the NBB of the outcome of its suitability assessment, including the assessment of suitability of the collective composition of the board of directors and the management committee.

4:10 The board of directors is responsible for the recruitment policy, the selection process and the induction and training policies, which inter alia govern suitability assessments. If the company has a nomination committee, the latter should actively contribute to the company's accountability in this respect. Furthermore, it is among the duties of the company's compliance function to ensure compliance with legal and regulatory suitability requirements.

4:11 Both the company and the person to be assessed must ensure that the information provided to the NBB is complete and accurate.

4.2.2 RESPONSIBILITY OF THE NBB

4:12 When a new person is deemed suitable by the company, the NBB examines the necessary information and carries out an assessment on the basis of which it decides on the final approval of this person's

appointment. For its own assessment, the NBB primarily relies on the information supplied by the company and the person concerned. This information is collected using standard forms designed specifically for this purpose (see Chapter 5 of this Manual). Of course, the NBB is free to request additional information and, where appropriate, to interview the person concerned.

4.2.3 RESPONSIBILITY FOR THE ONGOING ASSESSMENT OF SUITABILITY

4:13 The legal requirement, provided for in the Insurance Supervision Law, to ensure that the positions falling within the scope of the law are at all times held by persons who are suited to do so constitutes an ongoing obligation on the part of the companies. The persons concerned must be fit and proper at all times. The specific details of ongoing suitability monitoring are discussed in more detail later in this chapter.

4:14 However, as regards the respective responsibilities of the parties involved for ensuring ongoing suitability, the following applies:

The person concerned

4:15 On the standard forms to be completed by the person concerned and the company, the former is expected to declare that he/she has made every effort to comply continuously with the suitability standards for the purposes of the position which he/she already holds or plans to hold.

4:16 Persons already in office must immediately inform the company of any event that is likely to influence their suitability (see Chapter 5).

The company

4:17 Where a company considers that doubts might arise as to the suitability of a person in office or as to the collective suitability of the company's board of directors or management committee, it should take measures as soon as possible to seek a solution. The company must also immediately inform the NBB.

4:18 In order to ensure the ongoing suitability of the persons concerned, the NBB recommends the following:

- When a person takes up a position, it is recommended for the company to request a written declaration in which this person confirms that he/she will unreservedly abide by the current suitability standards for this position and that he/she will immediately communicate any information that could affect the assessment of his/her suitability.
- The person concerned should be reminded of this declaration. For instance, the company can, on an annual basis for significant companies and every two years for less significant companies, explicitly ask the persons concerned whether they are aware of any relevant changes that could affect the assessment of their suitability.

4:19 As the financial sector is constantly evolving, ongoing training is a necessary but not a priori sufficient condition for meeting the fitness requirement on an ongoing basis. The company is expected to take the necessary steps to provide adequate and relevant ongoing training.

The supervisor

4:20 The NBB continuously monitors the fitness and propriety of the persons subject to the suitability assessment. Whenever it becomes aware of any information which raises doubts about the suitability of a person in office, it immediately carries out a more in-depth examination and, where necessary, reassesses this person's suitability.

4.3 GUIDELINES ON SUITABILITY CRITERIA

4:21 This point sets out (non-exhaustive) guidelines on how to apply the suitability criteria in concrete terms. The basic principle is that suitability assessments require an in-depth examination of the information

collected in order to obtain as complete and accurate a picture as possible of a person's suitability for a particular position.

4:22 The following 5 criteria should be considered: (i) expertise (fitness) in terms of knowledge, experience and skills; (ii) professional integrity (propriety); (iii) independence of mind; (iv) time commitment; and (v) collective suitability.

4.3.1 EXPERTISE

4:23 In the context of suitability assessments, the notion of expertise *sensu stricto*⁹⁶ encompasses several elements, i.e. knowledge, experience and skills⁹⁷. These three elements are complementary, and analysing each of them provides an overall picture of a particular person's expertise. For instance, a person who has the knowledge required for a given position but who is unable to transfer and apply it within the company does not have the required expertise.

4.3.1.1 Knowledge

4:24 "Knowledge" refers to everything that a person knows and any insight he/she has acquired. In principle, knowledge can be learned, e.g. through education, training or on the job.

4:25 Irrespective of the specific knowledge and experience required for a given position, all persons subject to suitability assessment must in principle possess basic theoretical knowledge in the following areas:

1. insurance, reinsurance and the financial markets;
2. regulatory framework and legal requirements applicable to insurance and reinsurance companies;
3. strategic planning and understanding of business strategy;
4. risk management (identifying, assessing, monitoring, controlling and mitigating the main types of risk of an insurance or reinsurance company);
5. accounting and auditing;
6. governance and internal control; and
7. the interpretation of financial information about a company and, on this basis, the identification of key issues and appropriate controls and measures.

4:26 Possession of appropriate knowledge and experience may be demonstrated by the successful completion of relevant training and the presence of relevant professional experience. "Relevant training" should be interpreted broadly. In addition to acquired (university and equivalent) degrees, in-company training courses should also be considered.

4:27 Special attention should be paid to the level and nature of education completed and its relevance to the insurance and reinsurance sector. Generally speaking, education in the financial sector (banking, finance, insurance and reinsurance), economics, law, business management, general management, IT, marketing and quantitative methods can be considered relevant.

4:28 As regards the appointment of the person responsible for the actuarial function, Article 59, § 2 of the Insurance Supervision Law provides that this person must have knowledge of actuarial and financial mathematics, commensurate with the nature, scale and complexity of the risks inherent in the business of the company, and must be able to demonstrate his/her relevant experience with applicable professional and other standards. Similarly, for the appointment in life insurance companies of the senior manager who will be designated as the senior officer responsible for the prevention of money

⁹⁶ As mentioned in the introduction, from a legal point of view, the concept of expertise in a broad sense includes the concept of professional conduct, and thus the assessment criteria related to independence of mind, time commitment and collective suitability. However, for the sake of clarity, it was decided to address these assessment criteria separately.

⁹⁷ Article 273(2) of Delegated Regulation 2015/35 also provides that "[t]he assessment of whether a person is fit shall include an assessment of the person's professional and formal qualifications, knowledge and relevant experience within the insurance sector, other financial sectors or other businesses and shall take into account the respective duties allocated to that person and, where relevant, the insurance, financial, accounting, actuarial and management skills of the person".

laundering and terrorist financing⁹⁸, this person is expected to demonstrate specific knowledge in anti-money laundering and countering the financing of terrorism (AML/CFT) and in AML/CFT policies, controls and procedures. He/she should have a good understanding of the money laundering and terrorist financing risk to which the company is exposed

4.3.1.2 Experience

4:29 “Relevant professional experience” refers to experience gained in a work environment that is substantively similar or tangential to the type of company and/or the type of position in which the person concerned is or wishes to be employed.

4:30 In order to determine the extent to which previously held positions constitute “relevant professional experience” or not, the following factors should be considered:

- the nature and hierarchical level of the position(s) held;
- whether the position(s) was/were held within the same company or group;
- the length of time over which experience was acquired (how long the position(s) was/were held);
- the nature, complexity and organisational structure of the company at which the position(s) was/were held;
- the knowledge acquired in the position(s); and
- the number of subordinates of the position(s).

4:31 The relevant professional experience of directors and senior managers of significant insurance and reinsurance companies is assessed by the NBB based on the following thresholds:

- CEO (chair of the management committee): 10 years of recent⁹⁹ practical experience in areas related to insurance or financial services. A significant part of this experience must consist of high-level management positions¹⁰⁰;
- Senior manager: 5 years of recent practical experience in areas related to insurance or financial services. This experience must have been acquired in high-level management positions;
- Chair of the board of directors: 10 years of recent and relevant practical experience¹⁰¹. A significant part of this experience must consist of high-level management positions;
- Non-executive director: 3 years of recent and relevant practical experience in management positions¹⁰². Practical experience gained in the public or academic sector may also be considered relevant.

4:32 For less significant insurance and reinsurance companies and small institutions, the following lower thresholds apply:

- CEO: 5 years;
- Senior manager: 3 years;
- Chair of the board of directors: 5 years;
- Non-executive director: 2 years.

4:33 If the above thresholds are met, the person concerned is deemed to have sufficient experience, unless there is evidence to the contrary. If the thresholds are not met, the person concerned may still be considered suitable, provided such suitability is sufficiently substantiated and justified by the company.

⁹⁸ As a reminder, pursuant to Article 9, § 1 of the Law of 18 September 2017 on the prevention of money laundering and terrorist financing and on the restriction of the use of cash, the senior officer responsible for the prevention of money laundering and terrorist financing has the specific task of ensuring that organisational anti-money laundering measures are adopted. This designation is part of the division of tasks within the management committee and in no way diminishes the responsibility of this committee for the day-to-day management and overall business of the company.

⁹⁹ This experience should not be older than two years. It should be noted that holding several short-term positions (e.g. temporarily replacing a person) is not automatically considered sufficiently long relevant professional experience.

¹⁰⁰ In principle, positions held at “N-1” level relative to the management committee.

¹⁰¹ The concept of “relevant experience” is broader for a non-executive director than for a senior manager.

¹⁰² “N-1” or “N-2” level.

- 4:34 In this regard, it should be noted that a non-executive director who does not meet the required thresholds may still be considered suitable if (i) he/she has experience or expertise that meets the specific needs of the company (e.g. experience in IT or in climate or environmental risks); (ii) he/she and the company commit to the necessary training being undertaken to overcome the identified lack of experience; and (iii) he/she fulfils all other suitability requirements.
- 4:35 The NBB considers that persons responsible for independent control functions should in principle have at least three¹⁰³ to five years of recent and relevant practical experience, taking into account the characteristics (nature, size, complexity of the activities and risk profile) of the company.
- 4:36 There is a specific arrangement for the person responsible for the compliance function¹⁰⁴.
- 4:37 Where the independent control function is fully outsourced, the NBB assesses the relevant professional experience of the contact person responsible for monitoring such outsourcing, by verifying whether this person has sufficient practical experience of the outsourced control function to be able to critically review the service provider's performance and results.

4.3.1.3 Skills

- 4:38 "Skills" refer to the actions a person is competent in. They enable the person concerned to behave in a specific way in certain situations (for instance in negotiation processes or when making a decision). Like knowledge, skills can be learned.
- 4:39 It is primarily up to the company to determine what skills are important for a particular position. In doing so, it should take into account the variables set out in the point on proportionality in the introduction to this Manual.
- 4:40 Examples of these variables include:
- when assessing the skills of an applicant for the position of person responsible for the risk management function (Chief Risk Officer - CRO), particular attention must be paid to his/her independent judgement and his/her ability to resist/oppose in the context of the decision-making process;
 - when assessing the skills of an applicant for the position of chair of the board of directors, the primary focus should be on the applicant's ability to chair meetings and develop a strategy;
 - when assessing the skills of a non-executive director, particular attention should be paid to his/her ability to challenge members of the management committee.
- 4:41 The NBB does not assess individual skills, but rather evaluates how the company has taken the overall "skills" component into account in its internal assessment of the applicant (e.g. by organising assessments). For small companies, the NBB does not assess this component separately unless there are facts or circumstances that justify it.

4.3.2 PROFESSIONAL INTEGRITY

¹⁰³ See Article 2, § 1, 1° of the Regulation of the NBB of 6 February 2018 on the expertise of the persons responsible for the compliance function.

¹⁰⁴ Without prejudice to the principles laid down in this Manual, persons responsible for the compliance function are subject to the specific requirements on appropriate knowledge and experience set out in the Regulation of the NBB of 6 February 2018 on the expertise of the persons responsible for the compliance function (Article 2). In particular, these persons must:

- have at least three years of relevant experience;
- hold a master's degree (unless they are exempted from this requirement on the basis of their practical experience and knowledge);
- have passed an examination conducted by a company whose examinations are recognised by the NBB and the FSMA and, upon passing the examination, participate every three years in a training programme with a minimum duration of 20 hours at a training company recognised by the FSMA, on the advice of the NBB.

In order to comply with the knowledge requirement on an ongoing basis, the persons responsible for the compliance function must, from their appointment, participate every three years in a training programme with a minimum duration of 40 hours. The requirements for permanent training are further explained in the explanatory note annexed to the aforementioned regulation and Communication FSMA_2018_05 of 8 May 2018 on permanent training for compliance officers.

4:42 A person's professional integrity relates to his/her reliability and honesty. This characteristic can be analysed more concretely on the basis of a person's past actions¹⁰⁵. More specifically, a person's background can be used to assess whether it is reasonable to assume that he/she will carry out the task entrusted to him/her honestly, faithfully, independently, ethically and with integrity.

4:43 A distinction should be made between professional disqualification, which is imposed automatically without the NBB exercising its discretion, and the broader assessment of professional integrity, where the NBB does have to exercise its discretion. However, there is a link between the two, in the sense that, in specific situations that do not fall under professional disqualification, the NBB can use its discretion in such a strict manner that it results in a situation similar to a professional disqualification ("quasi-automatic" refusal).

4.3.2.1 Professional disqualification

4:44 The Insurance Supervision Law refers to the list provided for in the Banking Law of convictions that result in the offender being disqualified from serving as a director, senior manager or person responsible for an independent control function for a specified period of time. As supervisor, the NBB cannot grant any derogations or exceptions in this respect.

4.3.2.2 The NBB's discretion

4:45 However, the assessment of a person's professional integrity should not be limited solely to verifying the absence of professional disqualifications. The concept of integrity must be understood broadly, in the sense that any relevant details in the person's background may affect his/her professional integrity. Criminal proceedings and the intervention of the Bank as an administrative authority are independent of one another in that they pursue separate objectives and may thus lead to a different appraisal of the facts. The assessment of professional integrity is not necessarily linked to the criminal classification of acts or actions or to the outcome of criminal proceedings. Indeed, this assessment is not based on the concept of "guilt" in the criminal sense of the word, but rather on an appraisal of facts and actions, the aim being to determine whether the persons who fall within the scope of the law actually have the qualities required to perform their duties and bear the corresponding responsibilities.

4:46 Using the standard form covered in Chapter 5 of this Manual as a guide, companies can determine which details should be given special attention as part of an assessment of integrity, in particular: (i) criminal, civil or administrative convictions of any kind; (ii) ongoing judicial, administrative or regulatory investigations; (iii) disciplinary or supervisory actions; (iv) actions related to the applicant's past financial performance and soundness; and (v) issues of lack of transparency.

a. Events in a person's background considered as offences for professional disqualification

4:47 An admission of guilt without a formal conviction by the competent body should be treated in the same way as a conviction, as the person concerned cannot be deemed to have the required professional integrity. In practice, this means, for example, that a suspended sentence (with admission of guilt) is treated in the same way as a conviction.

4:48 Where any criminal, administrative or disciplinary cases are in progress or pending against a person to be assessed, the NBB uses its discretionary power in a strict manner by deeming that person to not have the required professional integrity if:

- the person concerned has acknowledged the underlying facts; or
- the person concerned has already incurred a conviction in this respect, even if this conviction is still subject to appeal.

b. Past offences relating to money laundering and terrorist financing

4:49 The utmost attention should be paid to facts relating to money laundering and terrorist financing. In this respect, a distinction should be made between (i) breaches of legislation on the prevention of

¹⁰⁵ Article 273(4) of Delegated Regulation 2015/35 provides the following: "The assessment of whether a person is proper shall include an assessment of that person's honesty and financial soundness based on evidence regarding their character, personal behaviour and business conduct including any criminal, financial and supervisory aspects relevant for the purposes of the assessment".

money laundering and terrorist financing (repressive aspects) and (ii) breaches of obligations to combat money laundering and terrorist financing (preventive aspects).

- 4:50 The NBB has no investigative powers for breaches of legislation on the prevention of money laundering and terrorist financing. In this regard, it relies on the information provided by the competent authorities in this field and the judicial authorities (criminal law). The findings of these authorities are considered essential information for establishing the professional integrity of the person concerned.
- 4:51 Conversely, the NBB is competent to monitor the compliance of Belgian financial institutions with their European and national obligations to combat money laundering and terrorist financing, as well as their organisational obligations regarding assets freezing and transfers of funds. If a person has previously held a position at an institution where a breach of these obligations has been identified, the company where this person applies for a new position must conduct a thorough examination of the facts to assess their impact on his/her professional integrity¹⁰⁶. The NBB also carries out its own assessment based on the information available to it.

c. Financial background

- 4:52 A person's financial conduct is relevant to an assessment of his/her professional integrity as it may have an impact on his/her reputation. Persons falling within the scope of the law are expected to manage their affairs in a sound and prudent manner. They must be able to prove that the performance of their duties is not adversely affected by their financial background.
- 4:53 However, it should be emphasised that having limited financial resources should not negatively impact a person's suitability for a position.
- 4:54 Taking into account the above weighting factors, attention should be paid to both personal and professional financial background. Examples include the following situations:
- the person concerned has had major personal financial problems (e.g. recurrent gambling issues, pattern of over-indebtedness, etc.) which have led to legal, recovery or debt collection proceedings;
 - suspension of payments, insolvency, bankruptcy, debt restructuring or arrangement with creditors has been requested or ordered with regard to the person concerned;
 - the person concerned has been or is likely to be involved in tax proceedings;
 - the person concerned has been ordered to pay outstanding debts on grounds of liability for the bankruptcy of a company or legal person;
 - cessation of payments or bankruptcy has been requested or ordered for a company, institution or any other body in which the person concerned holds or has held a position falling within the scope of the law, or in which this person otherwise significantly influences or has influenced policy, or in which he/she holds or has held a significant interest.

d. Other background

- 4:55 Taking into account the above weighting factors, consideration should also be given to the following events in a person's background:
- other criminal, disciplinary, civil and administrative convictions (e.g. violations of anti-money laundering legislation, consumer protection legislation, tax legislation, etc.);
 - ongoing cases in these areas, especially a person's involvement in sanction investigations or proceedings carried out by the NBB or other supervisors;
 - amicable settlements (termination of criminal proceedings on payment of a sum of money) or settlements concluded in relation to breaches of financial or other legislation;
 - other facts which, irrespective of their legal classification, are likely to cast doubt on a person's professional integrity. Companies should consider the following factors among others:

¹⁰⁶ Companies can obtain background information relating to money laundering and terrorist financing through various means, including a statement by the person concerned, consultation of the criminal record, administrative sanctions published by the supervisors, the list of financial sanctions published by the Treasury, the press, etc.

- any evidence that the person concerned has not been transparent, open, and cooperative in his/her dealings with the competent authorities;
- refusal, revocation, withdrawal or expulsion of any registration, authorisation, membership, or licence to carry out a trade, business or profession;
- the reasons for any dismissal or removal from a position of trust, fiduciary relationship or similar situation, and for any request to resign from such a position;
- disqualification by any relevant competent authority from serving as a member of the statutory governing body, including persons who effectively direct an entity's business; and
- any other evidence suggesting that the person concerned is acting in a manner contrary to high standards of conduct.

4:56 This list must be considered both directly (with regard to the person concerned) and indirectly (with regard to a company, institution or any other body in which the person holds or has held a position falling within the scope of the law, or in which he/she otherwise significantly influences or has influenced policy, or in which he/she holds or has held a significant interest). When considering the latter, the person's degree of involvement should certainly be taken into account.

4.3.3 INDEPENDENCE OF MIND

4:57 A distinction should be made between (i) independence of mind and (ii) "formal" independence within the meaning of Article 15, 94° of the Insurance Supervision Law.

4:58 With regard to the first concept (independence of mind), any person who acts as a director, senior manager or person responsible for an independent control function must be able to make conscientious, objective and independent decisions in the interest of the company and its stakeholders, after having carefully weighed all available information and opinions, and independently of any external influence.

4:59 With regard to formal independence, please refer to the criteria set out in Article 15, 94° of the Insurance Supervision Law. This qualification is granted to certain non-executive directors whose task is to represent all of the company's stakeholders and to supervise management, in particular by participating in specialised committees of the board of directors.

4.3.3.1 Independence of mind and conflicts of interest

4:60 Directors, senior managers and persons responsible for independent control functions must be able to make their own decisions in a sound, objective and independent manner. Independence of mind is demonstrated by the character and conduct of the person concerned and may be affected by conflicts of interest.

4:61 Thus, the company must assess whether or not the person subject to the suitability assessment:

- a. has the necessary behavioural skills, including:
 - i. courage, conviction and strength to effectively assess and challenge the proposed decisions submitted to him/her;
 - ii. the ability to ask questions and express divergent opinions; and
 - iii. the ability to resist groupthink;
- b. is likely to face conflicts of interest that could impede his/her ability to perform his/her duties with the necessary independence and objectivity.

4:62 Given the risk of conflicts of interest, the Insurance Supervision Law stipulates that the statutory governing body should establish governance mechanisms to prevent such conflicts. In this regard, please see Article 83 of the Insurance Supervision Law, which relates to the exercise of external

functions¹⁰⁷, and Article 93 of the same law, which relates to loans, credits, guarantees and insurance contracts to managers, shareholders and related persons¹⁰⁸.

- 4:63 With regard to situations that may give rise to conflicts of interest, please refer to the overarching Circular on governance NBB_2016_31¹⁰⁹. The notion of conflicts of interest is not limited to property-related conflicts of interest within the meaning of the Companies and Associations Code.
- 4:64 Companies should identify the actual or potential conflicts of interest of the person concerned, in accordance with their conflict of interest policy, and assess whether or not these conflicts are material¹¹⁰.
- 4:65 All actual and potential conflicts of interest, whether material or not, on the part of the board of directors, senior management or a person responsible for an independent control function must be adequately discussed, documented, decided on and duly managed by the competent body (i.e. the necessary measures should be taken). The persons concerned should abstain from voting on any matter which places them in a situation of conflict of interest.
- 4:66 If a material conflict of interest has been identified, the company should (i) perform a detailed assessment of the situation; (ii) decide which mitigating measures it will take based on its internal conflicts of interest policy; and (iii) decide which measures it will take to prevent the conflict of interest, if it cannot adequately mitigate or manage it.
- 4:67 The company should inform the NBB of any actual or potential material conflict of interest that may impact the independence of mind of a member of the board of directors, of a senior manager or of a person responsible for an independent control function. In the latter case, the company should provide the NBB with at least the following information: (i) a description of the conflict of interest identified, (ii) a description of the assessment performed within the company, (iii) the company's conclusion as to the mitigating or preventive measures taken, and (iv) the reasons for the adequacy of those measures (conflict of interest statement).

4.3.3.2 Independence of mind versus formal independence within the meaning of Article 15, 94° of the Insurance Supervision Law

- 4:68 As mentioned above, independence of mind should not be confused with the notion of formal independence within the meaning of Article 15, 94° of the Insurance Supervision Law. An independent director in the formal sense is a non-executive director who has no link with the shareholder and who represents the interests of all the company's stakeholders. The Insurance Supervision Law requires the presence of one or more independent directors in the specialised committees of the statutory governing body¹¹¹.
- 4:69 The concept of independence is defined in Article 15, 94° of the Insurance Supervision Law, which sets out a list of 9 criteria. However, the company has the possibility to demonstrate to the NBB that, although not all criteria are met, the independence of the person concerned is not compromised (in accordance with the "comply or explain" principle)¹¹².

¹⁰⁷ See also the Royal Decree of 8 February 2022 approving the Regulation of the National Bank of Belgium of 9 November 2021 on the exercise of external functions by managers and persons responsible for independent control functions of regulated companies, as well as Communication NBB_2022_19 on the same subject.

¹⁰⁸ See also Circular NBB_2017_21 on loans, credits, guarantees and insurance contracts to managers, shareholders and related persons.

¹⁰⁹ Including the sections on loans to managers and external functions.

¹¹⁰ With regard to conflicts of interest that may arise from loans, credits, guarantees and insurance contracts referred to in Article 93 of the Insurance Supervision Law, only loans, credits and guarantees exceeding EUR 100,000 are to be considered as material.

¹¹¹ See Article 48 of the Insurance Supervision Law, which stipulates that companies which are required to set up an audit committee, a risk committee and a remuneration committee must ensure that at least one independent director sits on each of these committees. Furthermore, the majority of the members of the audit committee must be independent.

¹¹² In this case, the company must submit a request for derogation together with the fit & proper form of the director concerned, in which it justifies the validity of this request. The NBB decides whether or not to grant this derogation as part of its governance supervision.

4:70 In practice, the NBB's decisions on the suitability of the person concerned and its decisions relating to justification of non-compliance with one of the criteria set out in Article 15, 94° of the Insurance Supervision Law are usually taken simultaneously. However, it cannot be excluded that these decisions are taken separately when the issue of independence also concerns the ongoing monitoring of governance.

4.3.4 TIME COMMITMENT

4:71 Pursuant to Articles 82, § 1 and 83, § 1 of the Insurance Supervision Law, all directors, senior managers and persons responsible for independent control functions must devote sufficient time to the performance of their duties in the company¹¹³. This also applies in periods of particularly increased activity, such as a restructuring, crisis situation, merger, etc.

4:72 Time commitment should be assessed on a case-by-case basis, taking into account the position of the person concerned and the nature, complexity of the activities, size, risk profile and organisational structure of the company.

4:73 It is recommended that the overall assessment of time commitment be guided by (i) basic assumptions, (ii) a quantitative assessment of the number of external functions performed by the person concerned, and (iii) a qualitative assessment of the time required for the intended position.

4:74 The company should determine its own basic assumptions for assessing the time commitment of all persons to be assessed. It is considered good practice to assume that the positions of member of the management committee and person responsible for a control function are held full-time, subject to exceptions related to synergies between different positions within the group.

4:75 The simultaneous exercise of multiple mandates is an important factor that can affect a person's time commitment. While there is no maximum number of mandates for directors of the companies covered by this chapter, it is recommended that these companies analyse the number of external functions performed by the person concerned and check whether this is consistent with their internal rules on external functions (quantitative assessment).

4:76 In addition to the quantitative assessment, companies should assess qualitatively whether the person concerned has sufficient time to perform the intended position, taking into account all relevant factors (number of meetings, travel required, induction and training required, etc.).

4:77 Companies should inform the NBB through the fit & proper form "New appointment" of the outcome of their overall assessment of time commitment, distinguishing where possible between the quantitative and qualitative assessment¹¹⁴. This overall assessment should take into account the above factors and include at least an estimate of the number of days per year devoted to the position in question and, where appropriate, to the other professional activities of the person concerned.

4.3.5 COLLECTIVE SUITABILITY

4:78 In principle, an assessment of expertise always relates to an individual. However, when the assessment relates to a position in a multi-member body, account must also be taken of the composition and operation of this body as a whole¹¹⁵. This means that it must be checked whether the expertise within the body is sufficiently guaranteed with the person concerned, in view of his/her knowledge, experience and skills. The same applies to the senior management in cases where the company does not have a management committee.

4.3.5.1 Areas of collective suitability

¹¹³ See in particular Article 83 of the Insurance Supervision Law.

¹¹⁴ In accordance with Communication NBB_2022_19 on external functions, the company must notify the NBB via the eManex platform of all external functions performed by the persons concerned. Any material changes to existing external functions must also be communicated to the NBB via the fit & proper form "New Elements" (see also Chapter 5 of this Manual).

¹¹⁵ In this respect, Article 273(3) of Delegated Regulation 2015/35 provides the following: "The assessment of whether members of the administrative, management or supervisory body are fit shall take account of the respective duties allocated to individual members to ensure appropriate diversity of qualifications, knowledge and relevant experience to ensure that the undertaking is managed and overseen in a professional manner".

- 4:79 The board of directors and the management committee should collectively be able to understand the company's business, including the main risks to which it is exposed.
- 4:80 The collective knowledge, skills and experience that must be present in the relevant body depend on the characteristics of the company. In determining the areas of collective suitability to be present in the board of directors and the management committee, account should be taken of the company's business model, strategy, risk appetite and risk profile and of the nature, scale and location of its activities.
- 4:81 In accordance with the EIOPA Guidelines, collective suitability should at least cover the following areas:
- a. insurance and financial markets;
 - b. the company's strategy and business model;
 - c. the governance system;
 - d. financial and actuarial analysis;
 - e. the regulatory context and requirements.
- 4:82 These are minimum criteria. The NBB recommends also considering the following areas, unless the company can demonstrate that they are not relevant:
- risk management, compliance and internal audit;
 - information technology and security;
 - climate and environmental risk;
 - local, regional and international markets;
 - where applicable, money laundering and terrorist financing risk; and
 - where applicable, the management of (inter)national groups and risks related to group structures.
- 4:83 In this context and taking into account the proportionality principle, the NBB pays particular attention to the following 3 components of the assessment of collective suitability: (i) information technology and security; (ii) environmental and climate risk; and (iii) money laundering and terrorist financing risk (for companies carrying out life insurance business).
- 4:84 These areas must be specified in the company's suitability policy.

4.3.5.2 Assessment

- 4:85 When assessing collective suitability, companies should assess the composition of the board of directors and that of the management committee separately. While the management committee should collectively have a high level of managerial skills, the board of directors in its policy/strategy and supervisory function should collectively have sufficient management skills to organise its tasks effectively and to be able to understand and challenge the management practices applied and decisions taken by the management committee.
- 4:86 The collective suitability of the board of directors and the management committee should be assessed using a matrix. Companies should use either:
- a) the suitability matrix template used in the fit & proper form; or
 - b) their own appropriate methodology in line with the criteria set out in this Manual.
- 4:87 The company also assumes responsibility for identifying gaps by conducting continuous self-assessments of its board of directors and management committee.
- 4:88 Based on the information provided by the company, the NBB assesses the extent to which the applicant contributes to collective suitability.
- 4:89 Finally, it should be noted that companies are required to inform the NBB of any distribution of tasks between members of the management committee and non-executive directors, as well as of any significant changes thereto.

4.4 ORGANISATIONAL REQUIREMENTS FOR THE SUITABILITY ASSESSMENT

4:90 As stated above, the primary responsibility for suitability assessment lies with the company. To carry out this assessment, it must have policies, procedures and processes in place¹¹⁶.

4.4.1. SUITABILITY POLICY

4:91 The company should develop and implement a suitability policy that takes into account applicable regulations and is aligned with its overall governance framework, corporate culture and risk appetite. In this context, the company's board of directors should adopt and update a policy for suitability assessment that covers directors, senior managers and persons responsible for independent control functions. This policy should include at least the following:

- a. the process for the selection, appointment, reappointment and succession planning of members of the board of directors, senior managers and persons responsible for independent control functions, and the applicable internal procedure for the assessment of the suitability of these persons;
- b. the criteria to be used in the suitability assessment, which should include at least the 5 suitability criteria set out in this Manual; and
- c. how the assessment is documented.

4:92 Where, taking into account the proportionality principle, a nomination committee has been established, it contributes to the development of such a policy. The board of directors and, where appropriate, the nomination committee may also call on the HR, Legal and Compliance departments to actively contribute to the development of this policy.

4:93 For more information on the suitability policy, please refer to the overarching Circular on governance NBB_2016_31.

4.4.2. SELECTION PROCESS AND SUCCESSION PLANS

4:94 Without prejudice to the shareholders' rights to appoint members of the board of directors, the latter must, where appropriate through the nomination committee, actively contribute to the selection of applicants for vacant positions as member of the board of directors, senior manager (with the exception of senior managers at "N-1" level) and person responsible for an independent control function, where appropriate in cooperation with the HR, Legal and Compliance departments.

4:95 Without prejudice to the shareholders' rights to appoint and replace all members of the board of directors simultaneously, the latter should establish succession plans for its members, senior managers (with the exception of senior managers at "N-1" level) and persons responsible for independent control functions.

4:96 For more information on these subjects, please refer to the overarching Circular on governance NBB_2016_31.

4.4.3. INDUCTION AND TRAINING

4:97 It is recommended that insurance and reinsurance companies provide directors and senior managers (with the exception of senior managers at "N-1" level) with relevant induction and training programmes, where appropriate individually tailored to their profile.

4:98 For more information on this subject, please refer to the overarching Circular on governance NBB_2016_31.

¹¹⁶ Article 273(1) of Delegated Regulation 2015/35 provides in this respect that "[i]nsurance and reinsurance undertakings shall establish, implement and maintain documented policies and adequate procedures to ensure that all persons who effectively run the undertaking or have other key functions are at all times fit and proper within the meaning of Article 42 of Directive 2009/138/EC".

4.5 SUITABILITY ASSESSMENT BY THE COMPANY

4:99 The assessment of individual and collective suitability must in principle take place before the position is taken up and, subsequently, on a regular basis in the course of the position.

4.5.1 ASSESSMENT BEFORE TAKING UP THE POSITION

4:100 Before appointing an applicant, the company must conduct a due diligence investigation, the specific level of which should depend on the intended position. This Manual contains concrete recommendations and guidelines for the company to use when assessing a person's suitability.

4:101 Where the company has completed the investigation and wishes to consider the person's application for the particular position, it is advisable to record this internal selection decision in writing. The decision should contain not only the selection decision itself but also any considerations upon which it is based (reasons for individual and, if applicable, collective suitability). Where appropriate, it should also mention any agreements that have been made to improve the expertise of the person concerned on certain points.

4.5.2 REASSESSMENT IN THE COURSE OF THE POSITION

4:102 The suitability requirement is ongoing: in accordance with Article 40 of the Insurance Supervision Law, the persons concerned must possess the appropriate expertise and act with the required professional integrity at all times.

1) Periodic reassessment

4:103 It is recommended that the board of directors and, where appropriate, the nomination committee periodically assess the structure, size, composition and performance of the board of directors on the one hand, and the knowledge, skills, experience and degree of involvement of the individual members of the board of directors and the board of directors as a whole, on the other hand. This periodic reassessment should take place once a year for significant companies and every two years for less significant companies.

2) Reassessment based on specific events

4:104 Whenever the company is informed of an event that may affect the assessment of the individual suitability of a person subject to suitability assessment or the assessment of the collective suitability of a decision-making body¹¹⁷, it should consider whether a formal reassessment is necessary in view of the impact of this event on the suitability of the person concerned, and document the underlying considerations in writing. If the company concludes that an ad hoc reassessment is necessary, it must notify the NBB immediately. Examples of events that should automatically trigger a reassessment of a body's collective suitability include: a significant change in the company's business model, risk appetite or strategy; a significant change in the composition of the board of directors or management committee; reasonable grounds to suspect that money laundering or terrorist financing has been or is being committed or attempted; etc.

3) Procedures and processes for suitability reassessment

4:105 It is recommended that procedures and processes be in place to review the individual and collective suitability of persons covered by this Manual continuously, periodically and in response to specific events. Periodic reassessments, the review of whether an ad hoc reassessment is necessary in case of specific events and the reassessments triggered by those specific events themselves should be documented in writing.

4:106 Companies must immediately inform the NBB of any significant shortcomings identified during periodic reassessments or reassessments triggered by specific events. To that end, they should submit the fit & proper form "New elements".

¹¹⁷ See Article 81, § 4 of the Insurance Supervision Law.

4) Conclusion of the assessment or reassessment

- 4:107 If a company's assessment or reassessment concludes that a person is not suitable for the intended position, that person should not be appointed or, if he/she has already been appointed, this appointment should be revoked. If a company's assessment or reassessment identifies easily remediable shortcomings, with the exception of shortcomings related to the criteria relevant to the assessment of professional integrity, the company should take appropriate corrective measures to overcome those shortcomings in a timely manner.
- 4:108 In any event, the NBB should be notified without delay of any significant shortcoming identified¹¹⁸. This notification should include the measures taken or envisaged to remedy those shortcomings and the timeline for their implementation¹¹⁹.

4.6 SUITABILITY ASSESSMENT BY THE NBB

4.6.1 TIMING OF THE ASSESSMENT

- 4:109 The NBB assesses the suitability of persons who wish to hold a position falling within the scope of the Insurance Supervision Law before they actually take up the position. It also carries out an assessment when warranted by facts and/or circumstances. The concrete scope and method of the assessment differ depending on when it takes place.

4.6.1.1 Before taking up the position

- 4:110 This assessment takes place either when a company applies for authorisation¹²⁰ or when an already authorised company intends to appoint a person to a position which falls within the scope of the Insurance Supervision Law. In the latter case, the assessment can relate to either a person already working in the company concerned or an external person.

4.6.1.2 While holding the position

- 4:111 As part of the NBB's ongoing prudential supervision, the suitability of the persons subject to the Insurance Supervision Law is also reassessed if there are new facts and/or circumstances that provide reasonable grounds for such a reassessment. It is for the NBB to determine what constitutes new facts and/or circumstances.

1) Reassessment based on specific signals

- 4:112 In practice, the NBB relies on signals that cast doubt on a person's suitability and thus may justify the need to review whether the person concerned is sufficiently suitable for the position he/she holds. These signals can be very diverse¹²¹.

¹¹⁸ See Article 81, § 4 of the Insurance Supervision Law.

¹¹⁹ See in particular the explanatory memorandum to the Law of 5 December 2017 containing various financial provisions, Parliamentary Documents, Chamber, 2017-2018, Doc. 54 - 2682/001, p. 24, which provides that it is the primary responsibility of the person concerned and of the institution to immediately report to the supervisor any relevant new fact that may affect the suitability of the person concerned: they must provide the supervisor with accurate and complete information at all times to enable the latter to form an accurate opinion of the person's suitability. Failure to do so may, where appropriate, result in the supervisor disqualifying the person concerned, with the implication that he/she is no longer considered suitable.

¹²⁰ For appointments considered in the context of an authorisation application, the same suitability assessment criteria should be applied and the assessment procedure should be applied in broadly the same way, taking into account the specificities of the authorisation context. However, the NBB makes its decision according to an ad hoc schedule, so that the taking up of the position coincides with the authorisation decision.

¹²¹ For example the opening of or developments in criminal, civil, administrative or disciplinary proceedings, the existence of reasonable grounds to suspect that money laundering or terrorist financing has been or is being committed or attempted or there is an increased risk thereof in connection with the company concerned, an unexpected change in the company's results, concerns about the business model applied, concerns about the integrity and control of the company's management, expansion of the company's activities abroad, outsourcing of (core) tasks, systematic lack of response or late response to requests for information made by the supervisor, high staff turnover, poor administration and (repeated) violations of laws and regulations. In certain cases, it is a combination of signals that leads the supervisor to doubt a person's suitability.

- 4:113 When a person in office is subject to criminal, administrative, civil or disciplinary proceedings that are likely to call into question the expertise and professional integrity of that person, the NBB may ask the board of directors of the company concerned whether - in the light of the facts with which the person concerned is charged - it considers that it can maintain confidence in that person. The company must obtain full transparency from the person concerned with regard to the charges against him/her. In any case, the NBB carries out its own assessment, taking into account the reasoning of the board of directors and the nature of the charges.
- 4:114 Where the NBB carries out a reassessment, it focuses on the actions and performance of the person concerned in practice. In particular, the NBB examines how the person concerned has applied his/her knowledge and skills, and whether or not the person's decision-making and business management demonstrate professional conduct.
- 4:115 A reassessment may be carried out for one or more persons at the same time, depending on the reason for the reassessment. For instance, if the reassessment was triggered by concerns about the company culture, it is possible that several persons will be reassessed. Conversely, if the reassessment is motivated by concerns about specific activities of the company (a specific product or market, or a particular internal control line) that fall under a specific person's duties, it will likely focus on that particular person, without prejudice to the possibility that other persons may subsequently be held liable for failing to perform their supervisory duties.
- 4:116 The appointment of a new director does not automatically trigger a reassessment of the collective suitability of the members of the company's board of directors that are already in office. However, a change in the composition of the board of directors, whether or not due to the entry into office of a new person, may constitute reasonable grounds for a reassessment of collective suitability. This may be the case *inter alia* if a person with a certain expertise resigns and no (temporary) replacement is sought or found, or if members of the board of directors change positions (e.g. from non-executive to executive director).

2) Reassessment in the absence of specific signals

- 4:117 The NBB may also reassess the individual and collective suitability of persons subject to suitability assessment on an ongoing basis - in the absence of specific signals - as part of its general risk-based supervision.

4.6.2 ASSESSMENT PROCEDURE

4.6.2.1 Before taking up the position

- 4:118 In accordance with Article 81 of the Insurance Supervision Law, companies must inform the NBB in advance of any proposed appointment, reappointment or dismissal of persons falling within the scope of this law. When a person changes position, including when a significant new division of tasks is established within the board of directors or management committee, this must be considered as a new appointment.
- 4:119 In accordance with the principles of sound governance, the NBB endeavours to reach its decision within a reasonable timeframe, preferably within 2 months. However, since suitability assessments may, depending on the case, entail additional verifications (e.g. holding one or more interviews, consulting other [foreign] supervisors, consulting references provided, requesting additional information from judicial or other authorities, etc.), which in turn may require additional analytical work from the NBB, the actual examination of the file may take more time. In such (time-consuming or complex) cases, the NBB's guideline is that a decision should be taken within 4 months.
- 4:120 These indicative time limits start from the moment the duly completed forms and all necessary information have been submitted to the NBB. If the NBB requests additional information from the company, the deadlines are suspended until the relevant information is provided. Companies are requested to take into account these indicative time limits for timely transmission of the written file through the standard forms.
- 4:121 The appointment cannot take place before the NBB has made a decision. The company may contact the NBB through the usual channels shortly after sending the duly completed forms in order to find out whether or not the NBB considers the case as time-consuming or complex. If the case is considered

time-consuming or complex, the appointment may, exceptionally, take place under a condition precedent and be made public with mention of this condition.

4:122 When a proposed appointment relates to a person who is being proposed for the first time for a position falling within the scope of the law, the NBB consults the FSMA¹²². The FSMA sends any relevant factual information to the NBB within one week from receipt of the request for advice.

4.6.2.2 While holding the position

4:123 It is for the NBB to decide whether the suitability of a person in office should be reassessed. For instance, the NBB may decide to reassess the suitability of the persons concerned as a result of findings or analyses in the context of its supervision of a specific company. This decision may be based, for example, on reports or findings showing a negative or dismissive attitude towards generally accepted best practice (e.g. regarding transparent and complete information flow to the statutory governing body), the emergence of concrete doubts as to whether the company, members of its board of directors or management committee or the persons responsible for its independent control functions in the past or present complied with anti-money laundering and counter-terrorist financing requirements, repeated or deliberate non-compliance with the NBB's recommendations, an established lack of availability to attend meetings, disclosure of incomplete or incorrect information to the NBB or shareholders, an uncooperative attitude towards the NBB, etc.¹²³

4:124 In the event of a reassessment of a person, the NBB will specify to the company what information it wishes to receive. The NBB may request any information necessary for its assessment (including periodic assessments carried out by the company) or interview the persons concerned.

4:125 When carrying out a reassessment, the NBB may ask the person concerned to cooperate. If the person refuses to do so, the NBB may inform the company in order to obtain the necessary information. If the result is not satisfactory, the NBB may take administrative measures (in particular the replacement of the person concerned) and/or impose administrative sanctions.

4.6.3 INFORMATION FOR THE ASSESSMENT

4.6.3.1 Sources of information for the NBB

4:126 In order to obtain as complete a picture as possible of a person's suitability, the NBB uses a wide range of information sources, such as:

- the current standard form, duly filled in and signed by the company and the person concerned (see Chapter 5 of this Manual), including any information which the NBB may, if necessary, obtain from the references listed therein;
- the suitability assessments carried out by the company, including the assessment of collective expertise by the board of directors and the assessment of conflicts of interest and time commitment;
- the supervisory information and background available to the NBB as prudential authority;
- the company's suitability policy, the job profile that the company has drawn up for the position in question and the board of directors' selection decision, the minutes of which must be annexed to the suitability form;
- opinions of the FSMA;
- opinions of other authorities supervising the company (such as authorities in charge of anti-money laundering and counter-terrorist financing supervision, financial intelligence units and competent law enforcement authorities, tax authorities, etc.);
- information obtained from judicial authorities;
- information obtained from EIOPA databases (e.g. on suitability);

¹²² Article 81, § 2 of the Insurance Supervision Law.

¹²³ See in particular the explanatory memorandum to the Law of 5 December 2017 containing various financial provisions, Parliamentary Documents, Chamber, 2017-2018, Doc. 54 - 2682/001, p. 24.

- where applicable, the periodic reassessment of the person concerned carried out by the company (and recorded in writing) on the basis of the applicable job profile, including the considerations that led to this reassessment;
- any other information available to the company that may be relevant for the suitability assessment;
- public information.

4:127 The NBB is authorised to request any information it considers necessary to assess the suitability of a person¹²⁴. It is important that companies spontaneously and systematically inform the NBB of any changes to their suitability policy.

4.6.3.2 Deliberate withholding or incorrect transmission of information

4:128 The company and the person to be assessed must provide the NBB with accurate and complete information through the standard forms and upon its request. If there is doubt as to the relevance or importance of any information, the institution should nevertheless transmit the information or contact the NBB through the usual channels to verify whether it is necessary to do so. Convictions of any kind must always be mentioned on the forms. Only the NBB is authorised to judge to what extent they are relevant or important to the suitability assessment.

4:129 A finding of non-compliance in this respect will have a negative impact on the NBB's assessment. The NBB considers any failure to transmit relevant and important information as supervisory background information. The NBB may detect such non-compliance through any source of information.

4:130 Any deliberate withholding of information will immediately lead to a refusal, as this shows a lack of transparency towards the NBB.

4.6.4 INTERVIEW TECHNIQUE

4:131 As part of a suitability assessment, the NBB may choose to interview the person concerned. It will do so in particular if it considers that a discussion with the person concerned is desirable or necessary to obtain a complete and clear picture of that person's expertise and/or professional integrity. In this respect, the NBB will apply a risk-based approach and take into account the company's nature, size and risk profile, the position envisaged and any other details which might raise questions about the information provided by the company and the person concerned. As a rule, in the case of significant companies, an interview is always conducted for new appointments to the position of CEO (or equivalent position) or chair of the board of directors. In all other cases, depending on specific needs, interviews can also be used as a tool for assessing skills and integrity. If concerns remain after the initial interview, a second, specific interview may be held to address them.

4:132 The interview panel consists of at least two members. For applicants for the position of Compliance Officer, the interview may be conducted jointly with the FSMA.

4:133 During this interview, the NBB verifies whether the image that the company has created of a person's suitability matches the way in which that person presents himself/herself during the interview, possibly taking into account other supervisory information and background relating to the company or the person concerned.

4:134 The interview also allows the NBB to ensure that the person concerned is well informed of its own expectations and those of the company. Where applicable, the NBB will draw the company's attention to areas where further efforts are needed (e.g. a lack of knowledge about a specific subject).

4:135 In principle, the interview takes place without the company being present, although the NBB may decide otherwise.

4:136 If the interview raises or confirms doubts as to the applicant's suitability, or highlights a number of areas for improvement, the NBB will send this assessment of the interview in writing to both the chair of the company's board of directors and the person concerned.

¹²⁴ Article 36/19 of the Law of 22 February 1998 establishing the organic statute of the NBB.

4:137 When a person leaves a position, it can be particularly useful for the NBB to conduct an exit interview to obtain further details about the circumstances in which the person is leaving the position or about the governance of the company in general.

4.6.5 OUTCOME AND CONSEQUENCES OF THE ASSESSMENT

4:138 Upon completion of the suitability assessment (as the case may be before or during the performance of a specific position), the NBB immediately informs the company of the outcome of the assessment and, where appropriate, of some underlying findings.

4:139 Where appropriate, the NBB may accompany its approval decision with ancillary provisions to remedy any minor shortcomings found. Such ancillary provisions may not concern aspects related to professional integrity.

4:140 They may take the form of recommendations¹²⁵, but also conditions¹²⁶ or obligations¹²⁷. As suitability is permanent, the NBB at all times has the possibility to monitor compliance with such conditions or obligations, and, if necessary, to carry out a reassessment.

4:141 Where a company fails to provide the NBB with sufficient information regarding the suitability of a person to be assessed, the NBB either informs the company that the appointment of the person concerned cannot be approved because his/her suitability has not been sufficiently demonstrated, and requests the company to withdraw the file, or takes a negative decision.

4:142 Any negative decisions by the NBB as to a person's suitability are always thoroughly justified. These decisions can be appealed against before the Council of State. The effective possibilities of appeal are specified in the notification letter.

4:143 Finally, it should be noted that the NBB may also - irrespective of any formal positive, negative or conditional suitability decision - contact the company to provide feedback on a submitted application. For example, if the company withdraws its application in the course of the NBB's examination of the file, the latter may provide feedback on the issues identified, as part of the company's responsibility for assessing suitability on the one hand, and/or the broader governance perspective on the other. Where necessary, the NBB may also impose appropriate prudential measures to remedy certain deficiencies in the company's suitability policy or governance.

4.7 INDIVIDUAL ACCOUNTABILITY OF DIRECTORS

4:144 Members of the board of directors and the management committee must have an appropriate understanding of, and contribute to, areas of the business for which they are collectively accountable with the other members, even if an individual member is given sole responsibility for specific areas.

4:145 Not having have a specific role or sole responsibility for a particular area does not exempt members of the board of directors or management committee from the need to have this understanding and hence to prepare for and participate in the discussions and decisions of the board of directors or management committee in an informed and active manner.

¹²⁵ Recommendations are intended to encourage best practices within companies and to highlight desirable improvements. The NBB can formulate recommendations not only in the context of suitability assessments, but in all areas of prudential supervision.

¹²⁶ A condition is a requirement imposed on the company subject to prudential supervision (and which may also have direct implications for the appointee) without which a negative decision would be issued. The most common conditions include: (i) a commitment to undergo specific training; (ii) relinquishment of a management position, mandate or other position outside the institution; (iii) for persons responsible for independent control functions (who are just below management committee level), a probationary period at the end of which the NBB may decide whether or not to validate its initial positive decision.

¹²⁷ The NBB's decision may also include an obligation to provide specific information for the purposes of the ongoing fit and proper assessment or to adopt a specific measure relating to fitness and propriety which does not affect the appointee but the entire supervised company. Unlike a condition, non-compliance with an obligation does not automatically affect the fitness and propriety of the appointee. The most common obligations are: (i) reporting ongoing legal proceedings; (ii) responding to requests for improvement of written policies on conflicts of interest; (iii) responding to requests for improvement in the area of collective suitability.

4: 146A member of the board of directors or management committee who holds or held a position in the company at the time when the facts giving rise to certain findings occur (e.g. cases of money laundering, fraud or other findings arising from on-site inspections or legal proceedings) may - depending on the applicable law - be held responsible for those findings, even if there is no connection between his/her individual roles and responsibilities within the management body and the findings in question. Without prejudice to any other specific circumstances that may be relevant in a particular case, facts indicating that a person in office may be held individually accountable for not complying with his/her collective responsibility to properly address the issues that gave rise to the findings could impact his/her suitability for the position. The timing, relevance and severity of the findings will be taken into account in assessing accountability.

4.7.1 SCOPE

4:147 An assessment of individual accountability is carried out within the scope of a suitability assessment when the respective entities where the person concerned leaves and enters office are regulated financial institutions.

4.7.2 FINDINGS

4:148 Only sufficiently established facts that have been determined by a supervisor to be (i) recent, (ii) relevant and (iii) severe are taken into account when considering the individual accountability of the person concerned. The findings may be supervisory, regulatory or judicial in nature and refer to legal or regulatory breaches or deficiencies in the institution's activity. Findings of the following authorities are generally considered: a financial supervisor (e.g. a prudential authority or an authority in charge of anti-money laundering and counter-terrorist financing supervision), a judicial authority, a tax, competition or data protection authority, etc.

4.7.3 ASSESSMENT

4:149 The findings are assessed to determine whether the person concerned can be held individually accountable. The outcome of this assessment may impact the suitability of the person concerned, based on one or more of the suitability criteria set out above (professional integrity, independence of mind and/or expertise).

4:150 A detailed assessment of all the relevant facts and circumstances surrounding the concept of accountability is conducted, inter alia by considering what the following were, at the relevant times: (a) the level of awareness of the person concerned (e.g. not aware, partially aware or fully aware); (b) the nature of the roles and responsibilities of the person concerned (e.g. first line, second line or third line of defence); (c) the type of behaviour shown by the person concerned (e.g. neglectful, passive or active); (d) other aggravating or mitigating circumstances.

4:151 To assess whether the appointee can be held individually accountable for issues in the entity where he/she left office, factual information is obtained from this entity, the person concerned and/or the competent authority of the entity to which the facts underlying the findings refer. An interview with the person concerned is usually conducted.

4.7.4 OUTCOME OF THE ASSESSMENT

4:152 The detailed assessment of individual accountability results in one of the following outcomes:

- a positive decision (with no ancillary provisions¹²⁸), where suitability can be confirmed despite the concerns;
- a positive decision with ancillary provisions (condition or obligation), or a positive decision outlining supervisory expectations with regard to the supervised entity and/or supervisory expectations as to future behaviour of the appointee; or
- a negative outcome, where suitability cannot be confirmed owing to the severity of the individual accountability and the lack of sufficient mitigating factors.

¹²⁸ The notion of "ancillary provisions" is detailed in the point "Outcome and consequences of the assessment".

4:153 These possible outcomes do not preclude the competent authorities from closely monitoring the appointee's suitability and taking further measures as part of the ongoing governance supervision of the supervised entity.

5. Fit & proper forms

- 5:1 The suitability assessments carried out by the NBB/(ECB) are primarily based on a variety of information that institutions and persons subject to suitability assessment should provide to it, using the standard forms that the NBB/(ECB) has prepared for that purpose. These forms enable financial institutions to provide information and documentation to the NBB/(ECB) about the expertise and professional integrity of the persons to be assessed in a consistent and uniform manner.
- 5:2 Where a standard form is to be signed "by the institution concerned", this should be understood to mean the following, subject to the provisions of the articles of association governing the representation of the statutory governing body:
- if the form concerns the chair of the board of directors, it should be signed by two other non-executive directors;
 - if the form concerns a member of the management committee or a person responsible for an independent control function, it should be signed by the chair of the statutory governing body and the chair of the management committee;
 - if the form concerns the chair of the management committee, it should be signed by the chair of the statutory governing body;
 - if the form concerns another member of the statutory governing body, it should be signed by the chair of the statutory governing body.

5.1 NEW APPOINTMENT

- 5:3 Where the candidate takes up a new position, the standard form "New appointment" should be completed. It is also applicable in the event of a material change of function, in particular with regard to the division of tasks between the members of the statutory governing body of the institution and the members of the management committee¹²⁹.
- 5:4 For each type of institution there is a specific version of this form covering the five suitability criteria. It covers the 5 suitability assessment criteria¹³⁰ and should be signed by the institution itself as well as by the person concerned.
- 5:5 As indicated in Communication NBB_2021_04 of 19 January 2021 concerning the HIVE project and the digitalisation of the fit & proper process, this form should be submitted to the NBB/ECB exclusively electronically through the appropriate portals:
- for significant credit institutions: the ECB portal;

¹²⁹ There is a "material change of function" in the statutory governing body and the management committee, as referred to *inter alia* in Article 60, §3 of the Banking Law and Article 81, §3 of the Insurance Supervision Law, and for which a new suitability assessment should be carried out using the "New appointment" form, in at least the following 4 situations:

- A non-executive director becoming chair of the board of directors or of a specialised committee (risk, audit, nomination and/or remuneration committee);
- A non-executive director becoming a member of the audit committee and/or the risk committee;
- A member of the management committee becoming chair of the management committee (CEO); and
- A change in the division of tasks among the members of the management committee that involves a change in the reporting of the independent control functions and the finance function (e.g., new member of the management committee with responsibility for an independent control function like the Chief Risk Officer or new member of the management committee Chief Financial Officer).

These situations are not to be confused with a case where a non-executive director becomes an executive director or vice versa, which is not a material change of function in a decision-making body as referred to in Article 60, §3 of the Banking Law and Article 81, §3 of the Insurance Supervision Law. In such a case, however, the change of function must be subject to an assessment as referred to in Article 60, §1 of the Banking Law and Article 81, §1 of the Insurance Supervision Law.

¹³⁰ For a material change of function, the NBB/ECB may, on a case-by-case basis, indicate that certain parts of the "New Appointment" form should not be filled in.

- for less significant credit institutions and all other institutions: the NBB portal.

5:6 The links to the relevant portals can be found on the NBB's website. The form for significant credit institutions subject to ECB supervision is harmonised for all countries where the ECB is the competent supervisor, but some questions/sections take into account national specificities. These specificities, which are listed at the end of the form, should be consulted by the candidates concerned before they complete the form.

5:7 It is important to emphasize that the NBB/(ECB) will not start the assessment until it has received a duly completed standard form.

5:8 The form should be signed by the person concerned and the institution in accordance with the instructions provided for this purpose on the ECB and NBB portals.

5.2 NEW ELEMENTS

5:9 When new elements arise that may affect one or more of the 5 criteria for assessing the suitability of a person subject to suitability assessment or the collective suitability of a decision-making body, the institution must immediately inform the NBB/ECB by submitting a "New elements" form. In this form, the institution should provide a detailed description of these new elements and their impact on the aforementioned individual or collective suitability assessment. It should also indicate whether these new elements have led/will lead to a formal reassessment of the individual suitability of the person concerned or the collective suitability of the decision-making body in question and, if not, the institution should specify the reasons that led it to conclude that a formal reassessment is not necessary. If a formal reassessment has taken place, the institution should also specify its outcome in the form. After examining this information, the NBB/ECB assesses whether it is appropriate to reassess the individual suitability of the person concerned or the collective suitability of the decision-making body in question.

5:10 The "New elements" form is also applicable when a manager in office takes on a new external function. In this case, the form may be submitted retrospectively and should include: (i) the start and end dates of the external function concerned, (ii) the precise identification details of the company, undertaking or institution where the external function is performed (including capital links or membership of the same group), (iii) the characteristics of the external function performed, (iv) the authorisation procedure followed by the institution's bodies, and (v) the conclusions of the analysis of the impact of this external function on the time commitment and independence of mind of the person concerned.

5:11 As indicated in Communication NBB_2021_04 concerning the HIVE project and the digitalisation of the fit & proper process, a standard form for submitting such information is available on the NBB portal. This "New elements" form applies to all financial institutions covered by this Manual (including significant credit institutions under ECB supervision). The link to this portal can be found on the NBB's website.

5:12 This form should be signed by the person concerned and the institution in accordance with the instructions provided for this purpose on the NBB portal.

5.3 EXIT

5:13 If a person ceases to hold a position requiring a suitability assessment, the NBB wishes to receive information in this respect. In this case too, in accordance with Communication NBB_2021_04, a standard form available on the NBB portal (OneGate and soon Hive) should be used. This "Exit" form applies to all financial institutions covered by this Manual (including significant credit institutions under ECB supervision).

5:14 The link to this portal can be found on the NBB's website.

5:15 This form should be signed by the institution in accordance with the instructions provided for this purpose on the NBB portal.

5:16 In the event of replacement of a person subject to a suitability assessment, two forms should be filled in: an "Exit" form for the person who ceases to hold the position and a "New appointment" form for the person who wishes to hold the position.

5.4 REAPPOINTMENT

- 5:17 Where an institution wishes to reappoint a person to a position requiring a suitability assessment, a standard form should also be completed. In this case, in accordance with Communication NBB_2021_04, the “Reappointment” form available on the NBB portal (OneGate and soon Hive) should be used. This form applies to all financial institutions covered by this Manual (including significant credit institutions under ECB supervision).
- 5:18 The link to this portal can be found on the NBB's website.
- 5:19 This form should be signed by the person concerned and the institution in accordance with the instructions provided for this purpose on the NBB portal.
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