

Revisions to the governance and fit & proper
requirements in CRD VI
EBI GAC 2024

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I. Intro

- Why? European Commission Explanatory Memorandum:
 - To further harmonise supervisory powers and tools
 - The fit-and-Proper framework is one of the least hamonised areas EU banking supervisory law
 - To ensure a more consistent, efficient and effective supervision
- How? Adding Art. 91a-91d
 - Art. 91: Replacing the previous version, but only few substantive additions
 - Art. 91a: Suitability assessment by the entities
 - **Art. 91b: Suitability assessment by the supervisor**
 - Art. 91c: **Suitability criteria** and assessment by the entities of **key functions holders**
 - **Art. 91d: Suitability assessment of the heads of the internal control functions and the chief financial officer by the supervisor**
- Building in substance on
 - Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU of July 7, 2021 (76 pages)
 - ECB Guide to fit and proper assessments, 2021 (76 Pages)

II. Selected issue

- Art. 91-91b: management board and its members
 - Management board?
 - Both in its management function (Art. 3(1)(8a) and supervisor function (Art. 3(1)(8)
 - One-tier board system

- Art. 91
 - Management board to possess collective knowledge, skills and experience in order to also be able to take into account the environmental, social and governance factors
 - Implication for individual board members

- Art. 91b: Suitability assessment by the supervisor
 - Certain important institutions
 - Pre-clearance procedure for all board members
 - 80 days assessment period, extension by 40 days at most
 - Not on occasion of mandate renewal
 - Post-clearance in exceptional situations
 - Election of supervisory board members:
 - Prevented to act such during assessment period?
 - Staggered boards as a consequence?

II. Selected issue

- Art. 91b (continued):
 - Supervisory powers
 - Prevent members to be part of the management body
 - Remove members from the management body
 - Art. 16(2)(m) of the SSM (replacing?)
 - Require entities to “educate” the member

- Art. 91c
 - key function holders:
 - persons who have significant influence over the direction of the institution but are not members of the management body, including the heads of internal control functions and the chief financial officer, where those heads or that officer are not members of the management body (Art. 3(1)(9a))
 - Are suitable for the position but in terms of their personality and their capabilities
 - For detail ESMA/EBA Guidelines
 - Same as for board members
 - But: over- als well as understating requirements

II. Selected issue

- Art. 91d
 - Certain important institutions
 - heads of internal control functions and the chief financial officer, Prevent members to be part of the management body: Art. 1(3)(9b)/(9s)
 - Pre-clearance procedure
 - persons who have significant influence over the direction of the institution but are not members of the management body, including the heads of internal control functions and the chief financial officer, where those heads or that officer are not members of the management body (Art. 3(1)(9a))
 - Supervisory powers
 - Same as those regarding board members

- Conclusions?
 - Long-term strategic personal planning is becoming ever more important
 - at all levels