

ESMA: Guidelines for fit and proper requirement

On 2 July 2021, ESMA and the EBA published their final updated guidelines on the assessment of the suitability of members of the governing body and persons with key functions under MiFID II. The guidelines entered into force on 31 December 2021



THE MAIN FEATURES OF THE GUIDELINES

The updated guidelines seek to achieve more uniformity with regard to the conditions that members of the management organ and key persons must meet to be fit to hold the positions in the financial sector in question. The guidelines apply to credit institutions, investment firms and financial holding companies ("institutions") but are also applied in practice by supervisory authorities when assessing whether a candidate is fit to hold a given position in the financial sector.

The updated guidelines reflect recent developments in this area, including the changes in the suitability assessment of members of management bodies resulting from the new Capital Requirements Directive ("CRD V") and Directive (EU) 2019/2034 on the supervision of investment firms ("IFD"). The ESMA and EBA state in the guidelines that institutions should take measures and set policies to ensure that a gender balance composition is considered when selecting candidates for management positions. Also, institutions should ensure fair representation of all genders in the management organ.

The guidelines also establish criteria for assessing the knowledge, abilities, and experience of the candidate concerned for the position as a member of the management and for assessing his or her good reputation, honesty, integrity and independence. It is important to note that the guidelines include money laundering requirements in the fit and proper assessment. The guidelines state that institutions and authorities should be aware of the negative impact on the security and soundness of the Institution that could arise if a management member or key person is involved in money laundering or terrorist financing. In this context, the updated guidelines underline that the ability to understand and manage money laundering risks is part of the assessment of the suitability of the candidate concerned to hold the position as a member of the management or other key functions.

Finally, the updated guidelines stipulate that training and experience are essential to ensure the initial and ongoing suitability of the members of the management. Therefore, institutions must set policies for training and courses and allocate the necessary financial and human resources to ensure the training and ongoing training of the members of the management.

