

EBA's work on governance

Updated fit and proper and internal governance guidelines

Bernd Rummel, Brussels, 25 October 2017

Adopted Guidelines

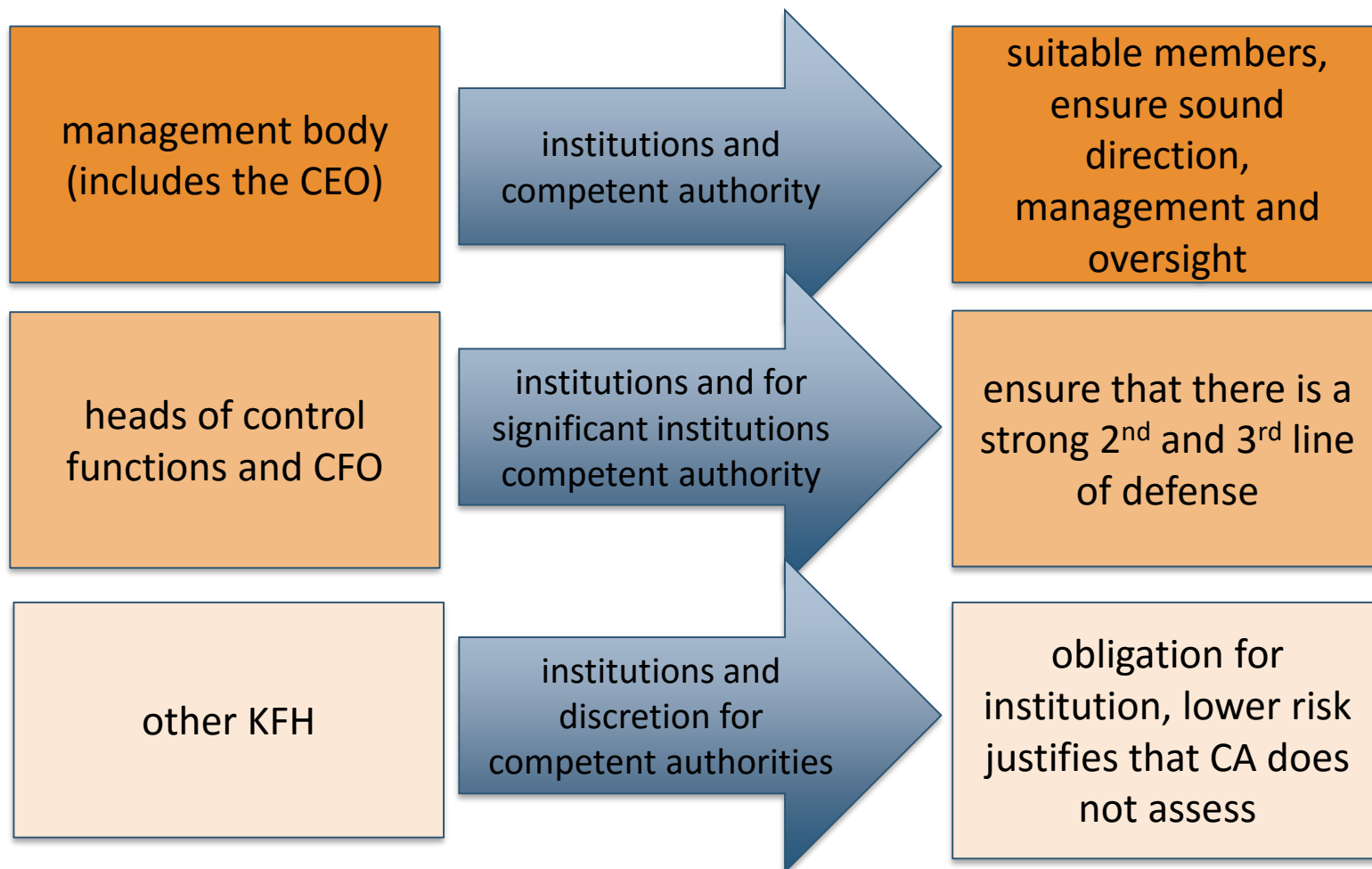
- Guidelines on the assessment of the suitability of members of the management body and key function holders
- Guidelines on internal governance
- **Objectives**
 - Ensure that banks have the desired directors on their boards
 - Harmonised supervisory processes (see also ECB/SSM Guidelines)
 - Robust governance - complete CRD IV requirements
- Guidelines published 26 September 2017
- Guidelines enter into force **30 June 2018**

EBA's fit and proper Guidelines - what is new?

- **Harmonised assessment scope**
- **Additional aspects covered (mandated in Art 91 CRD):**
 - collective suitability
 - time commitment and number of directorships
 - diversity and diversity policies
 - resources for induction and training
- **Specifications regarding independent directors**
- Annex 1 – suitability matrix
- Annex 2 – skills to be considered in assessments

Scope and objectives of fit and proper assessment

Who is assessed by whom?



When to assess fit and proper?

Assessment of suitability of members of the management body (individually and collectively)

- at authorisation
- appointment of new members (limited assessment for re-appointment)
- material changes in the board composition
- ongoing monitoring of suitability – new facts may trigger re-assessment (e.g. reputation, change of business model etc.)

Objective – a well functioning board **at all times** – collective assessment should ensure that all areas are covered with expert knowledge, while all individuals must have or gain (induction and training) sufficient knowledge with regard to the institutions business activities

What is suitability?

Assessment of the suitability of board members includes:

- good repute, honesty and integrity,
- independence of mind
- knowledge,
- skills,
- experience,
- time commitment

Individually – member to meet general minimum standards and the specific requirements for the specific position

Collectively – overall the board needs to cover all aspects of the business model allowing for a discussion of strategies and decisions

Additional requirements

Diversity

- to be taken into account when recruiting directors – aim is to improve the board composition and its functioning
- gender, age, educational and professional background, geographical provenance -> different points of view improve quality of decision making
- diversity policy – quantitative targets for gender diversity in significant banks

Independent directors

- similar to diversity aims at improving discussion/challenge within the board

Limitation of number of directorships

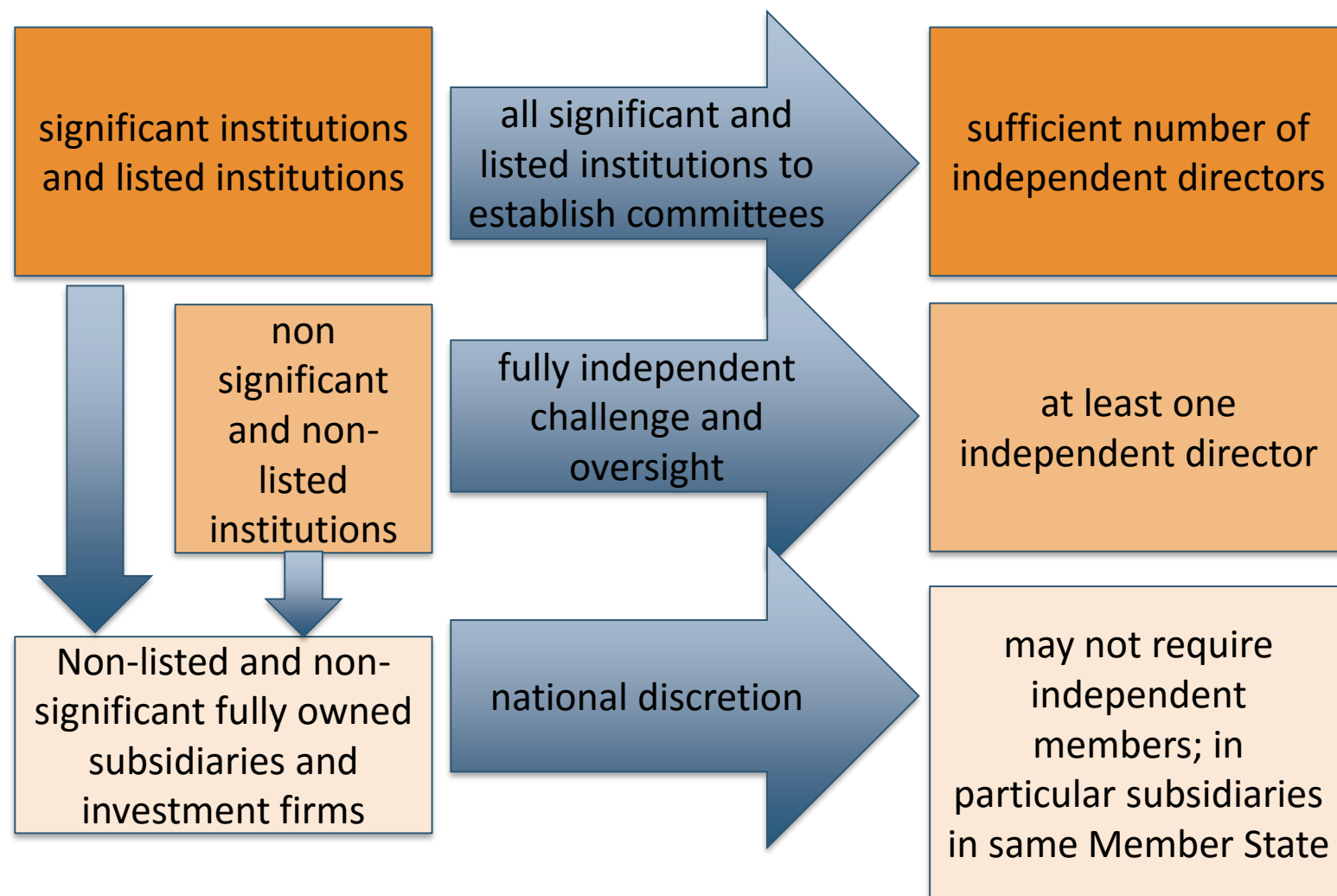
- hard limit for directors holding a mandate in a significant institution, encoded in CRD IV – aims at safeguarding possible time commitment

Requirements regarding independence

	Being Independent certain number of members	Independence in mind All members
What is it?	factual status	pattern of behaviour, skill
Aim?	safeguard checks and balances and effective oversight	ensure balanced decision making and objectivity
Look at:	formal and personal relationships	behaviour, skills shown, all conflicts of interest
Consequence?	if one or more criteria are met, the member is presumed to be a non-independent member; presumption can be rebutted	manage Col adequately. If not possible or if skills are insufficient, member is not suitable

Independent Directors – board composition

It is good practice for all boards to have independent and non-independent directors

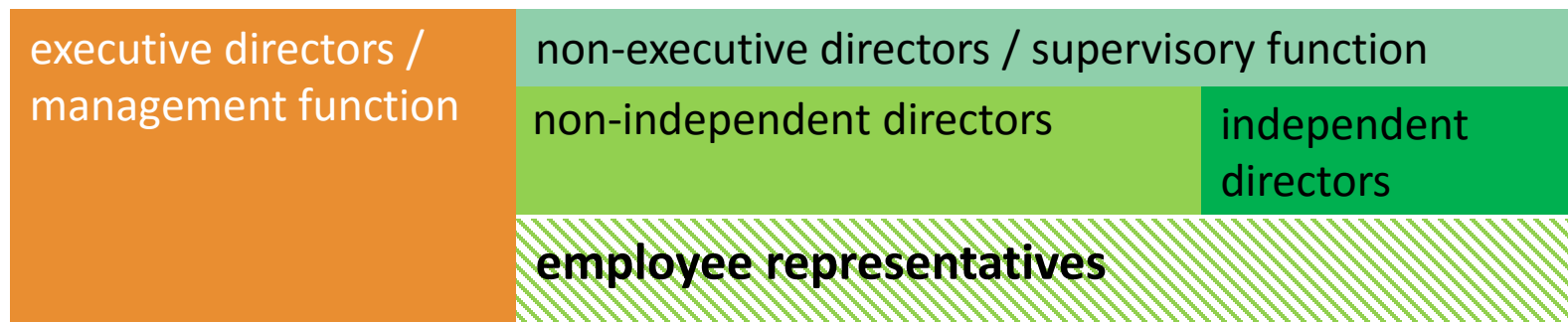


Independence Criteria – simplified

Rebuttable criteria – looking at professional and personal relationships

- mandate as a member of the management body in its management function within the group (last 5 years)
- being a controlling shareholder of the CRD-institution,
- being employed by any entity within the scope of consolidation, except employee representatives
- previous employment in senior management position within group (3 years)
- principal of a material adviser, auditor or consultant to the group (3 years)
- material supplier or material customer of the group (one year)
- receiving significant fees or other benefits other than for MB position
- being a member of the MB within the entity for 12 consecutive years or longer
- close family member of a member of the MB in the management function

Board composition



- chair should be a member of the supervisory function; in general no combination with CEO (unless approved by the competent authority)
- no specification of ‘sufficient number’ of independent directors
- employee representatives are not counted towards the ‘sufficient number’ of independent directors
- considering committee composition rules in practice at least 2, but usually 3 independent members are needed when all committees are formed

GL - areas where existing internal governance guidance has been enhanced

- management body sets the “Tone at the Top”, implementation top down throughout the organisation
- know your structure principle enhanced in light of “Panama events” (transparent structures with a purpose)
- Improved risk culture and risk management
- new product process extended (markets, products, services, including processes, systems) and significant changes thereof
- independence and functioning of control functions
- conflicts of interest policy
- whistleblowing processes

Key requirements for the management body

- Overall responsibility for management body regarding risk oversight (members may be head of control function)
- Management body to set the risk strategy/appetite
- Implement and oversee an effective internal control and risk management framework
- Ensure the independency of the control functions
 - separation from business they control (3-lines of defence)
 - sufficient resources and stature
 - direct reporting to supervisory function, where necessary
 - replacement of heads requires approval by the supervisory function

Committees

General principles for committee composition

Committees of the supervisory function:

- always chaired by an non-executive director
- independent directors should be actively involved
- at least 3 members
- occasional rotation of chairs to be considered
- cross-participation of members possible

Risk committee: proportionate approach

non-executive directors / supervisory function

non-independent directors

independent directors and possibly
independent employee representative

Chair
GSII
OSII

Specific provisions for risk committee of G-SIIs and O-SIIs:

- include a majority of members who are independent,
- Be chaired by an independent, non-executive member.

Other significant institutions:

- include a sufficient number of members who are independent; and
- be chaired, where possible, by an independent member.

All institutions:

- The chair should neither be the chairperson of the management body nor of any other committee.

Nomination committee: proportionate approach

non-executive directors / supervisory function

non-independent directors

independent directors and possibly
independent employee representative

Chair
GSII
OSII

Specific provisions for nomination committee G-SIIs and O-SIIs:

- include a majority of members who are independent; and
- be chaired by an independent member, non executive member.

Other significant institutions:

- should include a sufficient number of independent members
- an independent chair is considered good practice.

Questions or comments?





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