

# **EBA/ESMA Joint Guidelines for assessing the suitability of members of the management body and key function holders**

## **About NFU**

NFU – Nordic Financial Unions is an organization that promotes the interests of the Nordic financial trade unions in Europe. Through a high level of competence and dialogue, NFU contributes to shaping a sustainable financial sector, fundamental for job creation. Currently, NFU represents seven trade unions in the bank, finance and insurance sector in Denmark, Finland, Iceland, Norway and Sweden.

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## **Consultation replies:**

**Question 1: Are subject matter, scope of application, definitions and date of application appropriate and sufficiently clear?**

NFU welcomes the possibility to answer to this consultation and provide input to the revised Guidelines. With that in mind, we find the following:

- under 'Scope of application', point 15, there is a reference made that any reference to risk in the guidelines should also include money laundering and terrorist financing risk. Given the increased attention being placed on the development of sustainable business models and sustainable corporate governance, there is a merit in exploring how ESG risks could be considered within the scope of these Guidelines, and in accordance to their mention in the Guidelines on Internal Governance.

- under 'Definitions', we find that adding a definition on 'Management Body' and 'Senior Management' would be helpful, after the definitions of the different institutions, and before the definition of 'Staff'.

**Question 2: Are the changes made in Title II appropriate and sufficiently clear?**

**Question 3: Are the changes made in Title III appropriate and sufficiently clear?**

Point 75 in the Guidelines includes the following addition '*Other adverse reports with relevant, credible and reliable (e.g. as part of whistleblowing procedures) information should also be considered by institutions and competent authorities*'. This addition is not specific enough in deliberating which institutions would have the access to such sensitive information and the policies surrounding that access. Ensuring protection against retaliation and anonymity of employees who report breaches remains a challenge today. This is why reports on suspected money laundering must be safeguarded, ensuring to the fullest extent possible full protection and that no unauthorized person should be informed or have access to them, respectively.

**Question 4: Are the requirements in section 12 sufficiently clear; are there additional measures that should be required to ensure that diversity is appropriately taken into account by institutions and that the principle of equal opportunities for all genders is appropriately reflected?**

We support the added element in point 107 on institutions having policies to facilitate the reintegration of staff after their maternity or parental leave. On the addition in point 102, we would rather that the phrasing goes in line with ensuring employee representation, due to law or traditions in the country, without the language of diminishing this role as a way for the management body to ensure gender balance. Employee representation at management body-level is significant and beneficial for the work of the company, as it advances democracy

at the workplace and ensures representation of employees at the highest level of decision-making. When possible/applicable, employee representatives are/should be appointed by a trade union. We therefore urge ESMA/EBA to adjust the wording under this point.

**Question 5: Are the changes made in Title VI appropriate and sufficiently clear?**

**Question 6: Are the changes made in Title VII appropriate and sufficiently clear?**

**Question 7: Are the changes made in Title VIII appropriate and sufficiently clear?**

**Question 8: Are the changes made in Title IX appropriate and sufficiently clear?**

Concerning the additions made in this section, we would like to highlight that those changes should be done without prejudice to the provisions on the representation of employees in the company boards, as provided by national law/practices; as well as in information/consultation with the employee representatives where appropriate.