



Commission de Surveillance
du Secteur Financier

PRUDENTIAL PROCEDURE
FOR THE APPOINTMENT
OF MEMBERS OF THE
MANAGEMENT BODY AND
KEY FUNCTION HOLDERS
IN CREDIT INSTITUTIONS

APPLICABLE AS FROM 01.01.2021

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A. Scope and definitions

1. This Procedure describes the requirements in relation to:
 - a. The applications for authorisation/departure notifications of members of the management body (cf. point 5), i.e. members of boards of directors, members of supervisory boards and authorised managers (including also the members of the Executive Board) in credit institutions incorporated under Luxembourg law and financial holding companies or mixed financial holding companies included in the scope of prudential consolidation;
 - b. The applications for authorisation/departure notifications of members of the authorised management of branches of third-country credit institutions;
 - c. The appointment/departure notifications of the heads of the control functions in the institutions, namely the Chief Risk Officer, the Chief Compliance Officer and the Chief Internal Auditor;
 - d. The appointment/departure notification of the Chief Financial Officer in significant institutions.
2. For the purposes of this Procedure, “institution” refers to a credit institution, a financial holding company or a mixed financial holding company and within the limits of the scope defined under point 1 above;
3. “Competent authority” refers to the supervisory authority determined in accordance with Part E. below.
4. “Departure” of a relevant person refers to the resignation, dismissal, mutually agreed termination of the employment contract or internal transfer¹.
5. “Management body”, “supervisory body”, “authorised management”, “significant institution” and “key function holders” have the same definition as under Chapter 1 of Part I of Circular CSSF 12/552 on central administration, internal governance and risk management (“Circular CSSF 12/552”).
6. “Relevant person” means any person (to be) appointed to one of the functions listed under point 1, letters a - d above.

B. General requirements

7. The requirements stated in this Procedure derive from Circular CSSF 12/552 on central administration, internal governance and risk management, the guidelines on the assessment of the suitability of members of the management body and key function holders published by the European Banking Authority (“EBA/GL/2017/12”), Directive 2013/36/EU of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms and the Law of 5 April 1993 on the financial sector, as amended, (“LFS”), notably Articles 7, 38-2 and 51(4) thereof.
8. This Prudential Procedure and Circular CSSF 12/552 to which it refers must not be considered as an exhaustive compilation of the requirements applicable to the suitability

¹ The internal transfer refers to the change of function of a key function holder within an institution.

assessment of the relevant persons. Institutions must apply all of the requirements set out in EBA/GL/2017/12, considering the principle of proportionality, where applicable.

9. Institutions must apply the requirements set out in this Procedure as regards the appointments and departures of the relevant persons as well as the relating applications and notifications to be transmitted to the competent authorities.
10. As far as the principle of proportionality is concerned, institutions must refer to the general explanations under Part I of Circular CSSF 12/552, under Title I of the guidelines on internal governance published by the European Banking Authority (EBA/GL/2017/11) and EBA/GL/2017/12.

The application of the principle of proportionality requires in any case a prior and documented analysis by the institution in order to determine whether this application is justified considering the organisation, nature, scale and complexity of the activities and risks of the institution.

It should be noted that the principle of proportionality does not apply to professional repute of the relevant persons. Indeed, any relevant person must demonstrate his/her professional repute, honesty and integrity. Independence of mind² of the members of the management body, to which the principle of proportionality does not apply, must be demonstrated as well.

11. Primary responsibility for the initial and ongoing suitability assessment of the relevant persons rests with the institution.

The institution must assume this responsibility as soon as the application for authorisation has been filed and whenever material changes affecting the institution occur, including:

- (1) a change of qualifying shareholder;
- (2) when appointing new members of the management body (including subsequent material changes that affect their functions);
- (3) when re-appointing members of the management body, if the requirements of the position have changed or if the member is appointed to a different position within the management body, or
- (4) when appointing new key function holders.

As a general rule, the institution must fulfil its obligations on an ongoing basis. This ongoing monitoring by the institution of the relevant persons should trigger a formal re-assessment when doubts arise on the skills or good repute of the relevant persons, as part of the review of the institution's internal governance arrangements, in the event of a material impact on the reputation of the relevant persons and, more generally, in any event that could otherwise materially affect the suitability of the relevant persons.

12. Institutions must have guiding principles, policies and procedures governing:
 - (a) the selection, assessment, re-assessment, appointment and succession of relevant persons, as well as

² Independence of mind is referred to in Chapter 9.2 of EBA/GL/2017/12.

- (b) the diversity³, induction⁴, training, monitoring and re-appointment of the members of the management body and the re-assessment of the collective suitability of the members of the management body.

These principles, policies and procedures must comply with EBA/GL/2017/12, Circular CSSF 12/552 and this Procedure and ensure the good reputation, honesty, integrity and independence of mind of these persons, as well as their appropriate knowledge, skills, experience and availability for the functions that they must perform.

The above-mentioned principles, policies and procedures, as well as the assessments of the relevant persons and the re-assessment of the members of the management body and the appointment decisions must be documented in writing.

C. Applications for authorisation and notifications

13. The applications for authorisation and notifications submitted to the competent authority must be accompanied by an exhaustive and detailed file on the relevant person, drawn up in accordance with the below parts C.1, respectively C.2, or D.

Where applications and notifications are filed in the context of an authorisation file of a new institution or of a qualifying holding procedure, the elements that must be included in the files and the steps to be followed within the file may deviate from the ad hoc applications and notifications set out below.

Any file that does not comply with the requirements set out in this Procedure will be deemed incomplete and may be rejected.

14. Any appointment of a member of the management body or of a key function holder must be preceded by the institution's assessment of the relevant person. Such assessment must comply with the requirements of EBA/GL/2017/12 and must document the conclusions of the competent body or, where relevant, of the nomination committee. The information and documents requested for the first appointment of a member of the management body must include the items listed in Annex III of EBA/GL/2017/12. The assessment of the members of the management body includes, in particular, the criteria listed in Annex II of EBA/GL/2017/12.
15. Where material changes affect the functions of a member of the management body, whether during the mandate or at the re-appointment, institutions must provide the competent authority with an amended file containing all the elements that have changed as compared to the initial file, as well as the outcome of the re-assessment performed by the institution. The material changes referred to above include, in particular, a change in the executive or non-executive nature of the mandate.
16. Institutions must inform the competent authorities, without delay, of any event or information of which they have become aware and which casts doubts on the suitability of a relevant person, of any identified material shortcomings concerning the management

³ Diversity aspects refer to the characteristics of the members of the management body, including their age, gender, geographical provenance and educational and professional background. (cf. Title V of EBA/GL/2017/12).

⁴ Induction must facilitate the understanding of the institution's structure, business model, risk profile and governance arrangements, and the role of the member(s).

body's collective composition, as well as of any measure envisaged by the institution to remedy the situation and the timeline for their implementation.

C.1. Appointment of new members of the management body

17. When appointing members of the management body, the institution must assess the knowledge, skills and experience of the relevant person, his/her availability for the contemplated function and the conflicts of interest that may affect him/her.
18. The institution must also consider the impact of an appointment on the collective suitability of the management body.

While the authorised management should collectively have a high level of managerial skills, the supervisory body 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 authorised management.

The institution must also re-assess whether the diversity and the collective knowledge, skills and experience within these bodies remain adequate considering the institution's business model and the nature, scale and complexity of its activities and inherent risks. This re-assessment must also be performed at the departure of members who are not immediately replaced.

When assessing the collective adequacy of knowledge, skills and experience within the management body, institutions may refer to Annex I of EBA/GL/2017/12, considering the principle of proportionality.

Content of the authorisation files to be submitted to the competent authority

19. Following the internal assessment of a relevant person for his/her first appointment within a given institution, the institution concerned is required to provide the competent authority with an initial file, comprising at least the following information and documents:
 - I. For significant institutions (SIs), or financial holding companies or mixed financial holding companies included in the scope of prudential consolidation, directly supervised by the ECB:
 - a. A "Fit & Proper" declaration for SIs, filled in with due care and signed by the relevant person and the institution in the spaces provided (cf. last version of this document in the section dedicated to credit institutions on the CSSF website, sub-section Forms), and
 - b. all of the annexes required in the declaration.

As from 27 January 2021, the "Fit & Proper" declaration (Word document) published on the CSSF website may no longer be used. It will be replaced by the "FAP Luxembourg" online declaration, to be filled in directly in IMAS (cf. point 25 below).

II. For less significant institutions (LSIs), or financial holding companies or mixed financial holding companies included in the scope of prudential consolidation, directly supervised by the CSSF:

- a. A “Fit & Proper” declaration for LSIs, consisting of two documents: the first one to be filled in with due care and signed by the relevant person and the second one to be filled in with due care and signed by the institution (cf. last version of this document in the section dedicated to credit institutions on the CSSF website, sub-section Forms)⁵, and
- b. all of the annexes required in this declaration.

C.2. Appointment of new key function holders

20. Following the internal assessment for the appointment of a key function holder within a given institution, the institution concerned is required to provide the competent authority with a file comprising at least the following information and documents on the relevant person:

- a. A “Fit & Proper” declaration for key function holders, filled in with due care and signed by the institution in the spaces provided (cf. last version of this document in the section dedicated to credit institutions on the CSSF website, sub-section Forms), and
- b. A “Fit & Proper” declaration for key function holders, filled in with due care and signed by the relevant person in the spaces provided (cf. last version of this document in the section dedicated to credit institutions on the CSSF website, sub-section Forms), and
- c. all of the annexes required in the declaration.

21. Except for significant institutions, the appointments of key function holders do not require formal authorisation under Luxembourg law where key function holders are not members of the authorised management.

D. Notification of departure of a member of the management body or of a key function holder

22. In case of resignation or mutually agreed termination of the employment contract of a relevant person, the institution must notify the resignation or termination to the competent authority without undue delay. The notification must include all the reasons stated by the resigning person and, where applicable, a copy of the resignation letter or termination agreement.

23. In case of dismissal or internal transfer of a relevant person, the institution must immediately inform the competent authority by providing a detailed and comprehensive justification of this decision. The institution must indicate all the arguments having had an impact on this decision or having been put forward vis-à-vis the relevant person.

⁵ The declaration may be amended from time to time, hence the importance of always downloading the latest version from the CSSF website

The dismissal or internal transfer of key function holders requires a prior decision or written agreement by the supervisory body, which must be attached to the notification to the competent authority. At the request of the competent authority, the institution must also provide a copy of the letter of dismissal or motivation addressed, where applicable, to the relevant person.

24. When notifying the departure of a relevant person, the institution must specify if and when the institution intends to replace the relevant person. In case of departure of a member of the management body, the institution must, in addition and in accordance with point 18 under C.1. above, perform a re-assessment of the body as a whole, whose conclusions are taken into account for the replacement decision.

E. Competences of Authorities and processing of appointments and notifications

Appointments and departure notifications of members of the management body

25. The CSSF is the single point of contact for the introduction of all files (for significant institutions (SIs) and less significant institutions (LSIs)). The files must include all the information and all the documents requested under C.1 or D, respectively, and be transmitted electronically and **without delay** to the CSSF.

The institution must confirm in its cover letter that “the enclosed documents are copies of the original documents and that the original documents are or will be kept in the institution’s archives”.

- For already authorised LSIs, the CSSF has exclusive competence for the assessment of the files and the authorisation of the relevant persons.
- For SIs directly supervised by the ECB, the CSSF and the ECB are jointly involved in the assessment of the files. The authorisation is granted by the ECB.

In the case of a new institution requesting a banking licence, the assessment of the files and the authorisation of the relevant persons are an integral part of the institution’s authorisation.

As from 27 January 2021, SIs must submit their appointment applications exclusively via a portal dedicated to authorisations set up by the ECB, the “IMAS Portal”. Further information as well as the access link to the IMAS Portal can be found under: <https://www.cssf.lu/en/legal-requirements-and-authorisation-procedures/>

The dedicated IMAS Portal of the ECB must exclusively be used for new “Fit & Proper” applications regarding members of the management body of significant institutions, both in their management (executive) and supervisory function (non-executive).

Applications received via mail or email will no longer be accepted.

In accordance with the generally applicable deadlines for administrative decisions authorisation decisions are communicated to the institution concerned by the competent authority within three months of receipt of an application file which the competent authority considers to be complete. Where the authorisation file is supplemented by an

interview with the relevant person, the three-month period only starts at the end of this complementary step.

The refusal or withdrawal of a relevant person's authorisation will be communicated to the person with the relevant factual and legal elements on which the competent authority intends to base its decision. The relevant person will have the opportunity to express his/her views. A final decision will indicate the remedies, means and time limits available to the parties concerned to bring an action.

Notifications relating to key function holders

26. The files must include, at a minimum, all the information and all the documents requested under C.2 or C, respectively, and be transmitted electronically and **without delay** to the competent authority. The institution must confirm in its cover letter that "the enclosed documents are copies of the original documents and that the original documents are or will be kept in the institution's archives".
- a. For already authorised LSIs, the competent authority for receiving and processing the files is the CSSF.
 - b. For SIs directly supervised by the ECB, the competent authority is the ECB and the files must be transmitted to the Joint Supervisory Team (JST).

In the case of a new institution requesting a banking licence, the files of the relevant persons are submitted to the CSSF and processed in the context of the institution's authorisation (provided these persons have already been designated).

27. Where the competent authority considers that the institution's internal governance or control arrangements show weaknesses, it may require the institution to promptly take appropriate remedial measures in accordance with Article 53-1 of the LFS.
28. By submitting the file of a member of the management body or of a key function holder, the institution and the relevant person accept that the information concerning this file be processed by the CSSF and the ECB in accordance with their respective procedures and the regulations in force.

F. Specific provisions applicable to significant institutions

29. Institutions that are significant in Luxembourg are those corresponding to the definition given in Circular CSSF 12/552.
30. In accordance with point 105 of EBA/GL/2017/12, the diversity policy for significant institutions must include a quantitative target for the representation of the underrepresented gender in the management body. Significant institutions must quantify the targeted participation of the underrepresented gender and specify an appropriate timeframe within which the target should be met and how it will be met. The target must be defined for the management body collectively, but may be broken down into the management and supervisory functions where a sufficiently large management body exists.
31. Significant institutions must also document, as part of the annual review of the composition of the management body, their compliance with the diversity objectives and

targets set. In the event that these objectives or targets have not been met, the significant institution must document the reasons why, the measures to be taken and the timeframe for measures to be taken, in order to ensure that the diversity objectives and targets will be met. These documents must be made available by the institutions on first request of the competent authority.

32. In accordance with point 159 of EBA/GL/2017/12, significant institutions inform the competent authorities at least annually of any re-assessments of collective suitability made.
33. With the exception of the representatives of the Luxembourg State, the members of the management body of institutions that are significant in Luxembourg must comply with the limitations provided for in Article 38-2(2) of the LFS as regards the number and the nature of the mandates and functions which may be held at the same time. This strict limitation of the number of mandates and functions is complementary to the general availability requirements deriving from Article 38-2(1)(b) of the LFS.
34. In accordance with points 171 and 178 of EBA/GL/2017/12, the appointments of key function holders must be subject to assessment and authorisation by the competent authorities.

G. Effect of this Procedure

This Procedure cancels and replaces the previous version with effect as from 1 January 2021. Any authorisation files that may be pending on that date must be completed, at the request of the competent authority, in order to meet the requirements of this Procedure.



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