

JC 2023 77

7 December 2023

Consultation Paper

on the system established by the European Supervisory Authorities for the exchange of information relevant to the assessment of the fitness and propriety of holders of qualifying holdings, directors and key function holders of financial institutions and financial market participants by competent authorities



Contents

1. Responding to this consultation	3
2. Executive Summary	4
3. Background and rationale	6
Joint Guidelines on the system established by the European Supervisory Authorities for the exchange of information relevant to the assessment of the fitness and propriety of holders of qualifying holdings, directors and key function holders of financial institutions and financial market participants by competent authorities	9
Status of these Joint Guidelines	9
Reporting Requirements	10
Title I - Subject matter, scope and definitions	11
Title II- Use of the ESAs Information System	13
Title III- Information exchange and cooperation between the competent authorities using the ESAs Information System	15
Title IV- Final Provisions and Implementation	16
4. Accompanying documents	18
4.1 Cost- Benefit Analysis / Impact Assessment	18
4.2 Overview of questions for consultation	23
4.3 Views of the Stakeholder Groups	24
[Views of the Banking Stakeholder Group]	24
[Views of the Insurance and Reinsurance Stakeholder Group]	24
[Views of the Occupational Pensions Stakeholder Group]	24
[Views of the Securities and Markets Stakeholder Group]	24
4.4 Feedback on the public consultation	25
Summary of key issues and the ESAs' response	25



1. Responding to this consultation

The EBA, EIOPA and ESMA invite comments on amendments to the first consultation paper, highlighted in green in this second consultation paper, concerning only the inclusion of legal persons in the scope of the Guidelines and the information to be exchanged in relation to them. Other comments will not be taken into account as they are in the scope of the first consultation that is now closed. The questions of the second consultation have been summarised in section 4.2.

Comments are most helpful if they:

- respond to the question stated;
- indicate the specific point to which a comment relates;
- contain a clear rationale;
- provide evidence to support the views expressed/ rationale proposed; and
- describe any alternative regulatory choices the EBA should consider.

Submission of responses

To submit your comments, click on the 'send your comments' button on the consultation page by 15 January 2024. Please note that comments submitted after this deadline or submitted via other means may not be processed.

Publication of responses

Please clearly indicate in the consultation form if you wish your comments to be disclosed or to be treated as confidential. A confidential response may be requested from us in accordance with the ESAs' rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the indicate each relevant ESA/ESAs as appropriate Board of Appeal and the European Ombudsman.

Data protection

The protection of individuals with regard to the processing of personal data by the ESAs is based on Regulation (EU) 1725/2018 of the European Parliament and of the Council of 23 October 2018. Further information on data protection can be found under the [Legal notice and data protection section](#) of each ESA's website.



2. Executive Summary

Adequate governance of financial institutions can only be achieved, if the persons who control or manage such institutions are fit and proper and if persons who are not fit and proper are effectively prevented from assuming such roles. To achieve such outcomes, fit and proper assessments by competent authorities are critical and, indisputably, access of these authorities to any relevant information is a basic condition for the success of such assessments.

Against this background, new provisions (Articles 31a) were added to Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010 (collectively referred to as the “Founding Regulations”), thereby tasking EBA, EIOPA, and ESMA (collectively referred to as “ESAs”) to establish a system for the exchange of information relevant to such fit and proper assessments. ESAs are therefore not only strongly committed but also under the legal obligation to establish such a system.

As mandated, therefore, in Articles 31a of the Founding Regulations the ESAs have developed a system which consists of a cross-sectorial database (ESAs Information System) and these guidelines on how to use the ESAs Information System as well as on the exchange of relevant data with the aim to foster a timely exchange of information between competent authorities.

The ESAs Information System will hold limited information on persons who are subject to a fitness and propriety assessment under Union sectoral provisions. Fitness and propriety as referred to in Articles 31a of the Founding Regulations should be construed as referring to the overall assessment of the suitability of the qualifying holders, directors and key function holders, be them natural or legal persons.

The competent authorities performing such assessments will include the relevant information consistent with these Guidelines in the ESAs Information System. The aim of the ESAs Information System is to support competent authorities identifying other competent authorities that have conducted such an assessment process for a person of interest, thereby enhancing the efficiency of the fit and proper assessments. At the same time, in line with the applicable data protection requirements only limited and necessary information will be stored in the system, accessible on a strict need to know basis.

The actual exchange of information that is relevant to the assessment of the fitness and propriety of a person of interest will be made between the relevant competent authorities in line with the applicable regulatory framework outside of the ESAs Information System.

The ESAs have made a data protection risk assessment and contacted the European Data Protection Supervisor to ensure that the ESAs Information System and the guidelines comply with the applicable data protection requirements.



JOINT COMMITTEE OF THE EUROPEAN
SUPERVISORY AUTHORITIES

While these Guidelines support the request and exchange of information between competent authorities, the provision of information does not relieve the competent authority to make their own assessments of fitness and propriety. Each assessment follows the applicable sectoral requirements and considers the context in which an assessment is made. The result of a new assessment may therefore differ from the result of a previous assessment.

Next Steps

After a first public consultation, a second public consultation focusing only on the inclusion of legal persons in the scope of the Guidelines and the information to be exchanged in relation to them is organised. Then, the ESAs will aim to finalise the guidelines in the beginning of 2024 with a view to making available the ESAs Information System to competent authorities for the exchange of information relevant to the assessment of fitness and propriety in 2024.



3. Background and rationale

1. Articles 31a of Regulation (EU) No 1093/2010¹, Regulation (EU) No 1094/2010² and Regulation (EU) No 1095/2010³ (collectively referred to as the “Founding Regulations”), task the EBA, EIOPA, and ESMA (collectively referred to as “ESAs”) to establish a system for the exchange of information relevant to the assessment of the fitness and propriety of holders of qualifying holdings, directors and key function holders of financial institutions and financial market participants by competent authorities in accordance with the legal acts referred to in Articles 1(2) of the Founding Regulations. For the purpose of these Guidelines, fitness and propriety as referred to in Articles 31a of the Founding Regulations should be construed as referring to the overall assessment of the suitability of the qualifying holders, directors and key function holders, be them natural or legal persons.
2. Articles 8(1) point (a) of the Founding Regulations provide that the ESAs shall use the full powers available to them when carrying out their tasks in accordance with the Founding Regulations. Articles 8(2) point (c) sets out as a power of the ESAs in order to achieve their tasks the issuance of guidelines pursuant to Articles 16 of the Founding Regulations. In accordance with Articles 16 of the Founding Regulations, the ESAs shall, with a view to establishing consistent, efficient, and effective supervisory practices within the European System of Financial Supervision (ESFS), and to ensuring the common, uniform, and consistent application of Union law, issue guidelines addressed to all competent authorities or all financial institutions and financial market participants.
3. In line with the mandate set out in Articles 31a of the Founding Regulations, the ESAs have developed a system to facilitate the timely exchange of information relevant to the assessment of the fitness and propriety of holders of qualifying holdings, directors and key function holders of financial institutions and financial market participants between competent authorities in accordance with the legal acts referred to in Articles 1(2) of the Founding Regulations that includes the ESAs Information System and these Guidelines. The Guidelines clarify how the ESAs Information system should be used and how data should be exchanged.
4. It is expected that competent authorities apply these Guidelines when requesting and receiving information relevant in the context of their assessments of fitness and propriety in accordance with the Union sectoral provisions. In that respect, competent authorities should make use of the ESAs Information System to identify any competent authority that holds

¹ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

² Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

³ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).



JOINT COMMITTEE OF THE EUROPEAN
SUPERVISORY AUTHORITIES

relevant information on the individuals that are going to be assessed for fitness and propriety. Competent authorities should request the relevant information and take it into account within their assessments of fitness and propriety in accordance with the Union sectoral provisions.

5. In accordance with Articles 31a and in conjunction with Articles 2(4) and Articles 35 of the Founding Regulations the Guidelines should ensure that competent authorities include the information on holders of qualifying holdings, directors and key function holders of financial institutions and financial market participants in the ESAs Information System in the context of the assessment of fitness and propriety of a person of interest.
6. To ensure that all relevant information on such assessments is available, it is necessary to include information at the initiation of assessments (when a notification or application is filed to the competent authority), so that not only concluded but also ongoing assessments and assessments that were ended before a final decision has been taken, e.g., in case an application has been withdrawn or is put on hold, are included in the ESAs Information system. Additional assessments made for the same persons should be included into the ESAs Information System, to ensure a full overview of assessments initiated.
7. An entry in the ESAs Information System will provide information about the competent authority that holds relevant information about a person of interest. It will not contain any qualitative information on the assessment or its outcome.
8. Competent authorities should make the initial request for information relevant to the assessment of fitness and propriety through the ESAs Information System, which will help the tracking of such requests and will allow for generating statistics on the use of the system. Any requests for information should set out the Union sectoral provisions based on which the request is being made.
9. In accordance with the principle of sincere cooperation set out in Article 4(3) of the Treaty on European Union (TEU) and reflected in Articles 2(4) of the Founding Regulations, the request for information should be appropriately responded, to the extent that it is legally feasible. Confidentiality, data privacy or other professional secrecy restrictions set out in the sectoral or in any other applicable legal provisions must be duly considered in relation to the information requested.
10. The actual exchange of underlying information that is relevant to the assessment of the fitness and propriety of a person of interest will be made bilaterally between the relevant competent authorities outside the ESAs Information System. The information exchange may be supported by additional cooperation agreements⁴. Where an application for the assessment of fitness and propriety has been withdrawn, put on hold or rejected the information should, to the extent permissible and possible, also include the reasons thereof.

⁴ ESMA Multilateral Memorandum of Understanding on Cooperation Arrangements and Exchange of Information



JOINT COMMITTEE OF THE EUROPEAN
SUPERVISORY AUTHORITIES

11. While these Guidelines support the request and exchange of information between competent authorities, the provision of information does not relieve the competent authority to make their own assessments of fitness and propriety. Each assessment follows the applicable sectoral requirements and takes into account the context in which an assessment is made. The result of a new assessment may therefore differ from the result of a previous assessment.
12. Compliance with these Guidelines should be without prejudice to the provisions of the Union legal acts referred to in Articles 1(2) of the Founding Regulations and, in particular, to the provisions of the legal framework or other existing legal acts dealing with the fitness and propriety assessment by competent authorities and any exchanges of information for this purpose. Where such provisions prevent the information exchange or where they set out specific requirements for such exchange, these guidelines will apply to the extent permissible under these provisions.
13. The ESAs will develop operational operating rules for the ESAs Information System which do not form part of these Guidelines. The operational operating rules will be communicated to competent authorities.



JOINT COMMITTEE OF THE EUROPEAN
SUPERVISORY AUTHORITIES

Joint Guidelines on the system established by the European Supervisory Authorities for the exchange of information relevant to the assessment of the fitness and propriety of holders of qualifying holdings, directors and key function holders of financial institutions and financial market participants by competent authorities

Status of these Joint Guidelines

This document contains Joint Guidelines to be issued pursuant to Article 16 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority; Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority); and Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority)) (collectively referred to as the “Founding Regulations”).

The adoption of the Guidelines is to be done in accordance with Articles 56 second subparagraph of the Founding Regulations.

In accordance with Articles 16(3) of the Founding Regulations, competent authorities must make every effort to comply with the Guidelines.

The Joint Guidelines aim at establishing consistent, efficient and effective supervisory practices within the European System of Financial Supervision (ESFS), and at ensuring the common, uniform and consistent application of Union law with regard to the use of the system established by the ESAs for the exchange by competent authorities of information relevant to the assessment of the fitness and propriety of holders of qualifying holdings, directors and key function holders of financial institutions and financial market participants in accordance with the legal acts referred to in Articles 1(2) of the Founding Regulations.



Competent authorities to whom the Joint Guidelines apply should comply by incorporating them into their supervisory practices or regulatory framework as appropriate (e.g., by amending their legal framework or their supervisory processes).

Reporting Requirements

The expected date of application of [July 2024] might be updated taking into account the necessary time period for the comply or explain process. In addition, competent authorities are expected to comply with parts of the GL, at a later stage (different when provisions concern legal or natural persons), taking into account the time necessary to feed in the system with historical data before using the system.

In accordance with Articles 16(3) of the Founding Regulations, competent authorities must notify the respective ESA whether they comply or intend to comply with the Joint Guidelines, or otherwise with reasons for non-compliance, by dd.mm.yyyy (two months after the publication of translation of the final Joint Guidelines in all official EU languages). In the absence of any notification by this deadline, competent authorities will be considered by the respective ESA to be non-compliant. Notifications should be sent to [compliance@eba.europa.eu, compliance@eiopa.europa.eu and compliance@esma.europa.eu] with the reference 'JC/GL/2024/xx'. A template for notifications is available on the ESAs' websites. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities.

Notifications will be published on the ESAs' websites in line with Articles 16(3) of the Founding Regulations.



Title I - Subject matter, scope and definitions

Subject matter

1. These Guidelines clarify the use of ESAs Information System by competent authorities and the exchange of information relevant to the assessment of the fitness and propriety of holders of qualifying holdings, directors, and key function holders in accordance with the legal acts referred to in Article 1(2) of Regulation (EU) 1093/2010, Article 1(2) of Regulation (EU) 1094/2010 and Article 1(2) of Regulation (EU) 1095/2010 on the basis of Articles 31a thereof.

Addressees

2. These Guidelines are addressed to competent authorities referred to in Article 4(2) of Regulation (EU) No 1093/2010 and Regulation (EU) No 1094/2010 and in Article 4(3) of Regulation (EU) No 1095/2010.

Definitions

3. Terms used and defined in legal acts referred to in Article 1(2) of Regulation (EU) 1093/2010, Article 1(2) of Regulation (EU) 1094/2010 and Article 1(2) of Regulation (EU) 1095/2010 on the basis of Articles 31a of the Founding Regulations have the same meaning in these Guidelines.

Assessment

means a final decision of a competent authority on the suitability of a person of interest in accordance with Union sectoral provisions, which would be either an approval, including a tacit approval, or rejection, including a tacit rejection, including at the point of authorisation.

ESAs Information System

means a digital platform established jointly by the EBA, EIOPA and ESMA in accordance with Articles 31a of Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010.

ESAs Information System operating rules

means the set of rules, specifications, arrangements, processes, and procedures for the use of the ESAs Information System by competent authorities, including but not limited to technical specifications, language



JOINT COMMITTEE OF THE EUROPEAN
SUPERVISORY AUTHORITIES

	arrangements, access rights and their management.
Competent authorities	means authorities as defined in Articles 4(2) of Regulation (EU) No 1093/2010 and Regulation (EU) No 1094/2010 and in Article 4(3) of Regulation (EU) No 1095/2010.
Financial institution and financial market participant	means a financial institution referred to in Articles 4(1) of Regulation (EU) No 1093/2010 and Regulation (EU) No 1094/2010 and a financial market participant referred to in Article 4(1) of Regulation (EU) No 1095/2010.
Union sectoral provisions	mean provisions of the legal acts referred to in Articles 1(2) of Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010 on the exchange of information relevant to the assessment of the fitness and propriety of persons of interest.
Request for information	means a request for information relevant to the assessment of the fitness and propriety of a holder of qualifying holdings, director or key function holder of a financial institution and a financial market participant in accordance with the Union sectoral provisions submitted through the ESAs Information System by an assessing authority consistent with these Guidelines.
Requesting authority	means a competent authority submitting a request for information.
Requested authority	means a competent authority receiving a request for information.
Person of interest	means a natural or legal person to be assessed for the fitness and propriety of a holder of qualifying holding(s), as director and/or as key function holder of financial institutions and



financial market participants in accordance with Union sectoral provisions.

Withdrawal of application

means the retraction by the applicant of any explicit or tacit application or notification for an assessment process before a decision has been taken by the competent authority.

Title II- Use of the ESAs Information System

Using the ESAs Information System

4. For the purpose of the assessments of the fitness and propriety of persons of interest in accordance with Union sectoral provisions, competent authorities should use the ESAs Information System, thereby submitting, searching and requesting information relevant to the assessment of fitness and propriety in line with these Guidelines.

Data input into the ESAs Information System

5. Competent authorities that make an assessment of the fitness and propriety of a person of interest should include the data referred to in paragraph 7 of these Guidelines into the ESAs Information System within 2 weeks after the receipt of a notification or application for an assessment of fitness and propriety (date of entry).
6. Where there is an additional or a new assessment of an already assessed person of interest a new entry into the ESAs Information System should be created.
7. The data to be provided into the ESAs Information System should include with regard to the person of interest:

7.1 natural person:

- a. first name(s),
- b. surname/family name,
- c. date of birth,
- d. place of birth,
- e. where available, birth name,
- f. where available, other names used by the person (AKA names),

7.2 legal person:



- a. the legal name of the legal person or entity (including abbreviation of legal form);
- b. AKA names of the legal person
- c. the legal entity identifier (LEI);
- d. where the LEI is not available, the registration number, such as from a central register, commercial register, companies register or similar public register; and
- e. country of incorporation (headquarters)

and with regard to the assessing competent authority:

7.3 for natural person and legal person:

- a. data as set out below:
 - i. for data added after the establishment of the ESAs Information System: the date of entry as per paragraph 5,
 - ii. for historical data added to the ESAs Information System: relevant date available to the competent authority (e.g., date of application or notification, decision, entry in function, etc.)
 - b. legal act referred in Articles 1(2) of the Founding Regulations under which the assessment was performed, and
 - c. where available, reference number of the record held by the competent authority.
8. The information entered in the ESAs Information System under paragraph 7 will be kept in the ESAs Information System for a maximum period of 15 years from the date of entry by a competent authority and then be automatically deleted from the ESAs Information System except where the person of interest is still subject to fitness and propriety requirements. Competent authorities may apply shorter retention periods. Where shorter retention periods have been applied in line with national legislation, data should be removed from the ESA Information System by the competent authority accordingly after such periods end. Data should be removed after persons of interest lawfully require the deletion of personal data.
9. Competent authorities should designate contact points for receiving and responding to requests and make this information available in the ESAs Information System. The contact points details should include the functional e-mail address used in the process of fitness and propriety assessments and for relevant staff members the given name(s)/family name, position, professional e-mail, and phone number.



10. Competent authorities should maintain the lists of contact points, including functional e-mail boxes, up-to-date and review them at least annually.

Question 1: Are the provisions within the point 7.2 appropriate and sufficiently clear?

Data searches within the ESAs Information System

11. Before a competent authority makes an assessment of the fitness and propriety of a person of interest in accordance with Union sectoral provisions, the competent authority should look up in the ESAs Information System if there is any other competent authority that holds information on this person of interest.

Title III- Information exchange and cooperation between the competent authorities using the ESAs Information System

Sending requests for information

12. Where the ESAs Information System search indicates that relevant information for the purpose of an assessment is available, the competent authority should, before making the assessment, submit to the competent authorities identified in line with paragraph 11 that hold relevant information on the person of interest, a request for information through the ESAs Information System.
13. The requesting authority should set out the reason for the request, the information requested and the Union sectoral provisions on the basis of which the assessment is being made.
14. The requesting authority should provide the requested authority with any document or supporting material deemed necessary to support the request using bilateral means of communication outside of the ESAs Information System. Competent authorities may facilitate the exchange of information by way of cooperation arrangements⁵.

Processing and responding to requests for information

15. The actual exchange of underlying information that is relevant for the assessment of the fitness and propriety of a person of interest will be made bilaterally, between the requesting and requested authorities outside the ESAs Information System.
16. The requested authority should, in accordance with the principle of sincere cooperation set out in Article 4(3) of the Treaty on European Union (TEU) and reflected in Articles 2(4) of the Founding Regulations, and taking into account Union sectoral provisions and any

⁵E.g., ESMA Multilateral Memorandum of Understanding on Cooperation Arrangements and Exchange of Information



other applicable legal acts related to sectoral provisions, respond to the request within 2 weeks from receipt of the request and provide the information or explain why the information can only be provided at a later date and specify such date. In case of a negative assessment or a withdrawal of application for an assessment, available information about the reasons for the negative assessment or the withdrawal should also be provided.

17. The requested authority should not provide the information requested, where confidentiality or personal data protection requirements set out in Union sectoral provisions or in any other applicable legal provisions prevent it from doing so or where the requested authority cannot, for objective reasons, provide the information requested.

18. Where the exchange of information is impossible in accordance with paragraph 16, the requested authority should as soon as possible but at the latest within 2 weeks from receipt of the request, inform the requesting authority and explain the reasons thereof. In case of a partial impossibility to provide all requested information, the requested authority should provide to the requesting authority the part of the information whose provision is permitted and explain the reasons for withholding other parts of the information.

19. The requested authority may ask for clarifications from the requesting authority regarding the request received. The requesting authority should respond to any such clarification requests without undue delay. If clarifications are sought, the time period under paragraphs 16 and 18 should start after the clarifications are provided by the requesting authority.

Confidentiality

20. Competent authorities should treat all information received in accordance with these Guidelines as confidential and treat them in line with professional secrecy and personal data protection requirements set out in Union legislation and applicable national law.

Title IV- Final Provisions and Implementation

21. These Guidelines apply from [1 July 2024], with the exception of:

- a. Paragraphs 4, 11, 12, 13, 14, 15, 16, 17, 18, 19 which will apply from [XX October 2024] for assessments of natural persons, and, from [XX October 2025] for assessments of legal persons.
- b. Paragraph 7.2 (a-e) will apply from [1 July 2025]



22. Competent authorities should include available historical data on natural persons for the last 5 years, calculated from the date of application of these Guidelines, in the ESAs Information System.

- a. When single data points for the natural person, e.g., date or place of birth, specified under paragraph 7.1 are not available, the requesting and requested authorities should ensure by other means that the information that should be provided is relevant to the assessment of the person of interest.
- b. Competent authorities should include available historical data on legal persons for the last 2 years, calculated from the [01 July 2025]. In the absence of LEI for legal persons, other registration numbers, e.g., from a central register, commercial register, companies register or similar public register and in addition the country of incorporation should be input in the ESAs Information System.

***Question 2:** Are the provisions within the point 21 and 22 b appropriate and sufficiently clear?*



4. Accompanying documents

4.1 Cost- Benefit Analysis / Impact Assessment

Articles 16(2) of Regulation (EU) 1093/2010, Regulation (EU) 1094/2010 and Regulation (EU) 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (Founding Regulations) specifies that the ESAs should carry out an analysis of ‘the potential related costs and benefits’ of any guidelines it develops. Such analyses shall be proportionate in relation to the scope, nature and impact of the guidelines. This analysis should provide an overview of the findings regarding the problem to be dealt with, the solutions proposed and the potential impact of these options.

Articles 31a Founding Regulation requires the ESAs to establish a system for the exchange of information relevant to the assessment of the fitness and propriety of holders of qualifying holdings, directors and key function holders of financial institutions and financial market participants by competent authorities in accordance with the legislative acts referred to in Article 1(2). Therefore, the impact of this requirement will not be assessed, as it stems directly from the Level 1 text, rather than from these Guidelines.

Other aspects of procedural specifications within these Guidelines, will be assessed from the perspective of costs and benefits that they entail to competent authorities, ESAs and in terms of financial stability.

More generally, the Guidelines are not expected to create a significant burden on financial institutions and financial market participants as the requirement to assess the suitability of persons of interest stems from other legal acts. The information exchange is limited to competent authorities. The cost impact for market participants is limited to the cost of supervision that is invoiced to financial institutions and financial market participants. Compared to the overall costs of supervision the difference in costs of different options of a mandated information system is seen as immaterial.

In this section ESAs look at specific issues where various options were weighed, and choices made. The section explains the costs and benefits of each of these options and the preferred option.

Necessity of Guidelines

Articles 31a of the Founding Regulations requires to establish a system for the exchange of information relevant to the assessment of the fitness and propriety of holders of qualifying holdings, directors and key function holders of financial institutions and financial market participants by competent authorities in accordance with the legislative acts referred to in Articles 1(2) of the Founding Regulations.



These guidelines are based on Articles 16(1) of the Founding Regulations. The objectives of these Guidelines are to establish consistent, efficient and effective supervisory practices within the ESFS and to ensure the common, uniform and consistent application of Articles 31a of the Founding Regulations. In particular, they aim to provide clarifications to CAs on how to use the ESAs information system and how to exchange information relevant to the assessment of the fitness and propriety of holders of qualifying holdings, directors and key function holders of financial institutions and financial market participants by competent authorities in accordance with the legislative acts referred to in Articles 1(2) of the Founding Regulations.

The harmonization of the underlying processes leads to their increased efficiency. A higher level of transparency is seen as appropriate as personal data will be processed. While administrative costs for the issuing of guidelines may be slightly higher than for the issuance of internal operating instruction, the issuance of guidelines has been chosen as they lead to a higher level of harmonization and transparency.

Options

Two options have been discussed.

Option A: Developing a basic address book with the contacts of the persons in charge of the fit and proper assessment process in the competent authorities.

Option B: Developing a more sophisticated solution in the form of (i) a basic address book with the contacts of the persons in charge of the fit and proper assessment process in the competent authorities and (ii) a cross-sectorial shared database where the competent authorities will post the basic details of the person of interest, and that other competent authorities may consult in their assessments in order to identify which competent authority to contact for specific information regarding the assessment(s) of the person of interest.

Option A would be a system documented in guidelines without a database, which would harmonise the information exchange processes and establishes a contact list that enables competent authorities to contact other competent authorities and make requests. Such an option would not be efficient as competent authorities would potentially issue requests to competent authorities that do not hold information on a person. Relying fully on the information provided by a person of interest on previous assessments made has been considered but was seen as too risky as in the case of negative assessments such information might be withheld or as there may be other intentional or unintentional omissions by persons of interest. Additionally, as a standalone solution, Option A might eventually lead to a higher number of requests as the competent authorities performing the assessment (requesting competent authority) would have to approach other competent authorities (requested competent authorities) on a more speculative basis to know whether the person of interest had been already assessed by another competent authority. Overall, such a system has not been seen as sufficiently effective and Option A would have a limited added value as a standalone solution and therefore would be suboptimal.



JOINT COMMITTEE OF THE EUROPEAN
SUPERVISORY AUTHORITIES

Option B would be a system in which competent authorities enter a specified information relevant to the assessments and guidelines that harmonise the use of the system and the information exchange. Such a system would ensure that all assessments are recorded and requesting competent authorities can directly contact the competent authorities that hold relevant information. Option B should provide a significant gain of time for the requesting competent authority to identify - following matches being made by the system on basic person of interest data – requested competent authority that performed an assessment of a similar given person of interest, and this would increase the efficiency of the supervisory processes and rational use of resources. Option B should also help reduce the risk of fraud as requesting competent authorities could, just with the information visible on the ESA information system, cross-check information from a person of interest against past assessments made by other competent authorities and, in a second step, leverage on the result of the assessment itself with the bilateral exchange with the requested competent authorities. Such a system has fewer risks than Option A and ensures the effective processing of information exchanges.

Option B has been retained and sub-options regarding the retention periods and points of data entry and the technical exchange of data have been considered.

Historical data

The added value of the ESA information system is to allow competent authorities to perform the assessment on a person of interest, and to find whether this person has been previously assessed by other competent authorities. Therefore, historical data are needed to make the database a practical tool from the beginning. Questions were raised by competent authorities around costs related to the reporting burden of populating the database with historical data. Further concerns were raised around the feasibility of inputting the data on historical assessments, which may involve large volumes of data. As a consequence of the above, a pragmatic approach, whereby historical data would be uploaded when is readily available for the assessments performed in the five years preceding the date of application of these Guidelines. Some data incompleteness in terms of data fields can be accepted for historical data as without data the ESA information system would not be useful, not be used and would not fulfil its purpose. This solution would bring the benefit of being able to use the ESA information system starting the first day of the Guidelines implementation but without excessive costs. A retention period of 15 years has been seen as sufficient to ensure that all relevant assessments can be identified within the database. Longer time periods would create a risk that the database holds information of persons that are no longer active in the financial system and will also not return into it. To reduce the amount of such data and to protect personal data, maximum retention of data has been set at 15 years after the date of data entry into the system, whereby the date would not be changed after entry. Competent authorities may apply shorter retention periods, on a case-by-case basis, when required for compliance with EU and national legislation.

Data entry



JOINT COMMITTEE OF THE EUROPEAN
SUPERVISORY AUTHORITIES

The entry of multiple dates, date of entry, and date of decision has been considered to have all data in the database in a timely manner and a retention date linked to the date of entry. However, this option was seen as too burdensome as multiple entries would need to be made. As there are thousands of such assessments per year the additional burden would be material. The disadvantage of the date of entry is that assessment processes have a different length and therefore the time period in which relevant information would be found is not 100% harmonized. Depending on whether the assessment is conducted independently or as part of other processes (e.g., licensing a new entity) the assessment process would vary in general from 4 months to up to a year, the timing differences are not seen as problematic. Moreover, an existing notification/application is already considered relevant information and therefore the database should also include the names of persons that are currently assessed and not only the name of persons where the assessment has been finalized.

Data could have been exchanged within the IT system to be developed or outside of it. While a central solution would allow the tracking of requests and ensure a common set of data security measures, the costs for such a system need to be considered. Currently, competent authorities exchange information bilaterally. No need has been identified for a centralized technical platform for the actual exchange of information, which would also create the need for additional data protection risk assessments. Therefore, the system is only used for identification of the relevant CAs that hold information on the person of interest and for the requests of information, but not for the actual exchange of information, which takes place outside the system on a bilateral basis between CAs. If later it would be desired to have a secure information exchange platform, such an option could be added separately.

Natural persons and legal persons of interest

The inclusion of persons of interest is appropriate to fulfil the ESAs mandate under Articles 31a Founding Regulation and should not be limited to natural persons only. It was considered that information on legal persons is crucial and its omission material (i) to enable competent authorities to discharge their independent obligation to assess the reputation of the legal person itself, and (ii) to increase the effectiveness of the ESAs Information System.

Costs

The costs for the development of the intended ESAs information system have been estimated at ~ EUR 200 000, the annual costs for its use and maintenance at EUR 40 000 p.a. and operational costs cost ~ 300 EUR/month. For competent authorities limited one-off costs for the adaption of existing data bases exist.

Stability of the financial market

The requirement that the suitability of people responsible for financial institutions and financial market participants (e.g., management body and directors) are assessed safeguards the sound management of financial institutions and financial market participants and contributes to financial



JOINT COMMITTEE OF THE EUROPEAN
SUPERVISORY AUTHORITIES

stability. Hence, a more efficient system for assessments of such persons is seen as beneficial for financial stability. No negative effects have been identified.

Overall conclusion

The development of these Guidelines is necessary to comply with Articles 31a of the Founding Regulations. Overall, the costs created by the Guidelines and the ESA information system are low for the ESAs and competent authorities, and the cost impact on market participants is minimal. Overall, the ESA information system should support financial stability, by ensuring a more effective process and more complete information to assess the suitability of persons of interest.



JOINT COMMITTEE OF THE EUROPEAN
SUPERVISORY AUTHORITIES

4.2 Overview of questions for consultation

Question 1: Are the provisions within the point 7.2 appropriate and sufficiently clear?

Question 2: Are the provisions within the point 21 and 22 b appropriate and sufficiently clear?



4.3 Views of the Stakeholder Groups

[Views of the Banking Stakeholder Group]

[Views of the Insurance and Reinsurance Stakeholder Group]

[Views of the Occupational Pensions Stakeholder Group]

[Views of the Securities and Markets Stakeholder Group]



4.4 Feedback on the public consultation

Changes to the draft Joint Guidelines have been incorporated as a result of the responses received during the public consultation.

Summary of key issues and the ESAs' response