

EBA/GL/2023/09

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15 December 2023

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## Final report on the Guidelines

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on the assessment of adequate knowledge and experience of the management or administrative organ of credit servicers, as a whole, under Directive (EU) 2021/2167

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# 1. Executive Summary

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In accordance with the requirements introduced by Directive (EU) 2021/2167, the European Banking Authority (EBA) is developing Guidelines on the assessment of adequate knowledge and experience of the management or administrative organ of credit servicers by credit servicers and competent authorities, as required by Article 5(2) of Directive (EU) 2021/2167. The Guidelines specify common criteria, taking into account the principle of proportionality, to assess the collective adequate knowledge and experience of the management or administrative organ, on the basis of the individual knowledge and experience of the members of these organs.

The Guidelines apply to competent authorities and credit servicers irrespective of their governance structures (unitary structure, two tiers or other structures), without advocating or preferring any specific structure as set out in the defined scope of application.

## 2. Background and rationale

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1. As part of the establishment of the comprehensive strategy to address the issue of non-performing loans (NPLs) within the European Union, Directive (EU) 2021/2167 enables credit institutions to better deal with loans that become non-performing by improving conditions for the sale of credit to third parties. When credit institutions face a large build-up of NPLs and lack the staff or expertise to properly service them, they should be able either to outsource the servicing of those loans to a specialised credit servicer or to sell the credit to a credit purchaser.
2. Directive (EU) 2021/2167 lays down a common framework and requirements for credit servicers of a creditor's right under a non-performing credit agreement, or of the non-performing credit agreement itself, issued by a credit institution established in the Union, and includes requirements for the qualification of the management or administrative organ as a whole.
3. Directive (EU) 2021/2167 and these Guidelines do not apply to entities listed in Article 2(5)(a) of that Directive, including credit institutions. Credit institutions are authorised to service credit as part of their authorisation under Directive 2013/36/EU, which includes an assessment of the suitability of members of the management body.
4. Credit servicers should always act in good faith, treat borrowers fairly and respect their privacy at the same time as they should effectively service credits. In order to protect the integrity of the market and to promote trust, it is important to ensure that the management or administrative organ of a credit servicer, as a whole, has adequate knowledge and experience to conduct the business in a competent and responsible manner, according to the activity to be carried out.
5. In this respect, Directive (EU) 2021/2167 establishes a Union-wide framework for both purchasers and servicers of non-performing credit agreements issued by credit institutions, whereby credit servicers should obtain authorisation from and be subject to the supervision of competent authorities. This applies also to credit purchasers that are at the same time credit servicers and service credit for other credit purchasers as well. This authorisation requires, among other things, the suitability of the management or administrative organ of credit servicers. While some requirements, e.g. on the good repute of the members of the management or administrative organ, are directly encoded within the Directive, the requirement that the management or administrative organ as a whole (i.e. that members of such organs collectively) must have adequate knowledge and experience is further specified by the Guidelines. The assessment of the adequate collective knowledge and experience is based on the assessment of the individual members.

6. The requirements for authorisation must be complied with at all times. Hence, credit servicers need to ensure that they meet the suitability requirements, including the requirement of adequate knowledge and experience and good repute, at all times, including where the business activities or the composition of the management or administrative organ change. Competent authorities have the power to withdraw the authorisation of credit servicers. Consequently competent authorities supervising credit servicers will also assess as part of their supervisory activities the credit servicers' compliance with the suitability requirements.
7. The Guidelines will apply to all existing board structures or administrative organs and do not advocate any particular structure. The Guidelines do not interfere with the general allocation of competencies in accordance with national company law. Accordingly, they should be applied irrespective of the board structures used (unitary, dual board structure or other board structures).
8. Considering all existing governance structures provided for by national laws, competent authorities will ensure the effective and consistent application of the Guidelines in their jurisdiction. For this purpose, competent authorities may further clarify the governing bodies and functions on the basis of the definitions provided in the Guidelines to which the tasks and responsibilities set forth in the Guidelines pertain, when this is appropriate to ensure the proper application of the Guidelines in accordance with the governance structures provided for under the national company law.
9. Other than for the purposes of the legislation applicable to credit servicers, specifically under Directive (EU) 2021/2167, the Guidelines do not aim to interfere with other legislation such as social, company or labour law, which needs to be complied with by credit servicers together with other provisions and independently of EU legislation.

## Legal basis

10. According to Article 5(1)(c) of Directive 2021/2167, the credit servicer's management or administrative organ should have adequate knowledge and experience, as a whole, to conduct the business in a competent and responsible manner. Article 5(1)(b) requires that the members of the applicant's management or administrative organ are of sufficiently good repute and specifies further the assessment.
11. To further harmonise the assessment of the adequate knowledge and experience of the management or administrative organ, as a whole, within the EU financial sector in line with the requirements introduced by Directive (EU) 2021/2167, a mandate is given to the EBA to issue Guidelines on the adequate knowledge and experience of the management or administrative organ of credit servicers to conduct the business in a competent and responsible manner in line with Article 5(2) of Directive (EU) 2021/2167.

## Rationale and objective of the Guidelines

12. To further specify the requirements under Article 5(1) of Directive (EU) 2021/2167, the Guidelines specify the notion of adequate collective knowledge and experience for the credit servicer's management or administrative organ, as a whole, and aim at establishing harmonised criteria for the assessment of the adequate knowledge and experience of the individual members of the management or administrative organ of credit servicers, which form the basis for the assessment of their collective suitability and ensure sound assessment processes.
13. The management or administrative organ should collectively possess adequate knowledge and experience to understand the credit servicer's activities and to conduct the business in a competent and responsible manner. This knowledge should be kept up to date, taking into account changes in the nature, scale and complexity of the credit servicer's activities. Adequate knowledge and experience cannot be determined by having experience expressed only in terms of a period of time in a certain position or a specific educational degree, but need to be assessed on a case-by-case basis. The Guidelines provide criteria for this assessment.
14. The terms 'management or administrative organ in its management function' and 'management or administrative organ in its supervisory function' or 'management or administrative organ' are used throughout these Guidelines without referring to any specific governance structure. The Guidelines should be understood as applicable to the organ or members of the management organ responsible for that function, taking into account the legal form of the credit servicer. To ensure a sufficient level of harmonisation of the assessed persons, the Guidelines provide for a definition of the terms 'management or administrative organ' and 'management or administrative organ in its supervisory function'.
15. To ensure proper business conduct it must be ensured that the management or administrative organ is functioning well. This requires that all members of those organs also individually must meet certain knowledge and experience standards to enable an effective functioning of the organs, including the ability to discuss strategies and business objectives and to challenge and discuss proposals made by other members. Therefore the members of the management or administrative organ should have adequate knowledge and experience to fulfil their individual position. The respective assessment entails whether the inclusion of all individual knowledge and experience results in an organ that has adequate knowledge and experience, as a whole. As the individual members of the management or administrative organ, despite their overall responsibility, may have specific roles, the assessment process and criteria can differ to take into account the specific position held and the principle of proportionality.
16. Credit servicers should ensure that the management or administrative organ fulfils the adequate knowledge and experience requirements as further specified in the Guidelines on an ongoing basis, by establishing appropriate and proportionate policies and procedures for this purpose.

17. Events which may potentially affect the required adequate knowledge and experience of the management or administrative organ or call into question the previous assessment's results should lead to a reassessment by the credit servicer and, where necessary, the competent authority. The Guidelines therefore specify also the assessment processes in a proportionate way.
18. Without prejudice to national law, to ensure that the requirements are met at all times, including when there are newly appointed members in the management or administrative organ, credit servicers should assess the knowledge and experience of proposed members prior to their appointment in order to establish if the management or administrative organ, as a whole, possesses adequate knowledge and experience.
19. Competent authorities should have processes in place for the assessment of the adequate collective knowledge and experience of members of the management or administrative organ of credit servicers. Competent authorities' processes should ensure that all these members are assessed. To ensure a proportionate supervision of credit servicers, the Guidelines should specify the supervisory processes but leave sufficient flexibility to competent authorities to organise the supervisory tasks in a proportionate way, including whether an assessment before or after the appointment of members is intended.
20. It is important to ensure that credit servicers and competent authorities intervene if the management or administrative organ, as a whole, is not suitable to conduct the business in a competent and responsible manner. Measures available to competent authorities may differ between Member States depending on the applicable national laws. Such measures can range from ordering a credit servicer to take action to improve the knowledge of a member or members, preventing a member of a credit servicer's management or administrative organ from performing tasks, temporarily banning or replacing a member or members of the management or administrative organ, or ultimately withdrawing the credit servicer's authorisation.

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### 3. Guidelines

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on the assessment of adequate knowledge and experience of the management or administrative organ of credit servicers, as a whole, under Directive (EU) 2021/2167



## 3.1. Compliance and reporting obligations

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### Status of these Guidelines

1. This document contains Guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010<sup>1</sup>. In accordance with Article 16(3) of Regulation (EU) No 1093/2010, competent authorities and financial institutions must make every effort to comply with the Guidelines.
2. Guidelines set the EBA view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. Competent authorities as defined in Article 4(2) of Regulation (EU) No 1093/2010 to which Guidelines apply should comply by incorporating them into their practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where Guidelines are directed primarily at institutions.

### Reporting requirements

3. According to Article 16(3) of Regulation (EU) No 1093/2010, competent authorities must notify the EBA as to whether they comply or intend to comply with these Guidelines, or otherwise with reasons for non-compliance, by 27.05.2024. In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form available on the EBA website with the reference 'EBA/GL/2023/09'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities. Any change in the status of compliance must also be reported to the EBA.
4. Notifications will be published on the EBA website, in line with Article 16(3).

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<sup>1</sup> 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).

## 3.2. Subject matter, scope and definitions

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### Subject matter

5. These Guidelines specify the requirements under Article 5(1)(c) of Directive (EU) 2021/2167 of the European Parliament and of the Council<sup>2</sup> regarding the adequate knowledge and experience of the management or administrative organ, as a whole, of credit servicers, including the criteria for the assessment and the assessment process.

### Addressees

6. These Guidelines are addressed to:
  - a. competent authorities as defined in Article 4(2) of Regulation (EU) No 1093/2010 (EBA authority) which are also designated pursuant to Article 21(3) of Directive (EU) 2021/2167. They apply to the extent that those authorities have been designated as competent for ensuring the application and enforcement of those provisions of that Directive to which these Guidelines relate; and
  - b. competent authorities referred to in Article 21(3) of Directive (EU) 2021/2167; and
  - c. credit servicers as defined in Article 3(8) of Directive (EU) 2021/2167.

### Scope of application

7. The Guidelines apply to all credit servicers of a creditor's right under a non-performing credit agreement, or of the non-performing credit agreement itself, issued by a credit institution established in the Union. On the contrary, the Guidelines do not apply to entities listed in Article 2(5)(a) of Directive (EU) 2021/2167.
8. The Guidelines apply with regard to the assessment of the adequate knowledge and experience of credit servicers' management or administrative organ, as a whole, to conduct the business in a competent and responsible manner under Article 5(1)(c) of Directive (EU) 2021/2167. Where the organ consists of a management and a supervisory function, the Guidelines apply to both functions.

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<sup>2</sup> Directive (EU) 2021/2167 of the European Parliament and of the Council of 24 November 2021 on credit servicers and credit purchasers and amending Directives 2008/48/EC and 2014/17/EU (OJ L 438, 8.12.2021, p. 1–37).

9. Credit servicers should comply with the Guidelines. Competent authorities should ensure that credit servicers comply with these Guidelines.

## Definitions

10. Unless otherwise specified, terms used and defined in Directive (EU) 2021/2167 have the same meaning in the Guidelines. In addition, for the purposes of these Guidelines, the following definitions apply:

<b>Management or administrative organ</b>	means the credit servicer's organs, which are appointed in accordance with national law, which are empowered to set the institution's strategy, objectives and overall direction, and which oversee and monitor management decision-making and include the persons who effectively direct the business of the institution.
<b>Management or administrative organ in its management function</b>	means the credit servicer's organs, which are appointed in accordance with national law, which are empowered to set the institution's strategy, objectives and overall direction, and include the persons who effectively direct the business of the institution.
<b>Management or administrative organ in its supervisory function</b>	means the management or administrative organ acting in its role of overseeing and monitoring management decision-making.
<b>Member</b>	means a proposed or appointed member of the management or administrative organ, including representatives acting on behalf of legal persons being a member of the management or administrative organ.

## 3.3. Implementation

### Date of application

11. These Guidelines apply from 27.06.2024.

## 3.4. Guidelines on the assessment of adequate knowledge and experience of the management or administrative organ, as a whole

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### 1 Application of the proportionality principle

12. Credit servicers should take into account their size, their internal organisation and the nature, scale, and complexity of their activities when assessing the adequate knowledge and experience of their management and administrative organs, as a whole, and when developing and implementing related policies and processes that ensure that the requirements are met. Credit servicers which service large portfolios of credit or more complex credit should have more sophisticated policies and processes, while smaller credit servicers that service less complex credit may implement simpler policies and processes.
13. For the purpose of applying the principle of proportionality and in order to ensure the appropriate implementation of the governance requirements of Directive (EU) 2021/2167 as further specified by these Guidelines, the following criteria should be taken into account by credit servicers and competent authorities:
  - a. the size of the credit servicer as indicated by the number of staff;
  - b. the volume of debt and the number of credit servicing agreements that the credit servicer manages;
  - c. the legal form of the credit servicer;
  - d. whether the credit servicer is listed or not;
  - e. whether or not the credit servicer is part of a group subject to Directive 2013/36/EU on a consolidated basis and, if so, the proportionality assessment for the group;
  - f. whether cross-border activities are performed and the size of the operations in each jurisdiction;
  - g. the nature and complexity of all business activities the credit servicer performs, and the credit servicer's organisational structure; and
  - h. the scope and complexity of existing outsourcing or service provision arrangements with other credit service providers.

## 2 Credit servicers' assessment of the adequate knowledge and experience of members of the management or administrative organ

14. Credit servicers should ensure that their management or administrative organ, as a whole, possesses adequate knowledge and experience to perform its duties at all times and to conduct the business in a competent and responsible manner. In accordance with Article 5(1)(b) of Directive (EU) 2021/2167, credit servicers should ensure that all members of these organs are of good repute.
15. Credit servicers, including firms that apply for authorisation under Title II, Chapter I of Directive (EU) 2021/2167, should perform the assessment or a reassessment, in particular:
  - a. when applying for authorisation before commencing their activities;
  - b. when material changes to the composition of the management or administrative organ occur, including:
    - i. when appointing new members of the management or administrative organ; and
    - ii. when members have left the management or administrative organ;
  - c. where material changes have occurred to the business model, underlying legal provisions or technologies used.
16. The knowledge and experience assessments of the members of the management or administrative organ, as a whole, should be carried out before the individual members are appointed. Where applicable, the management or administrative organ in its supervisory function should be responsible for performing the final assessment.
17. By way of derogation of paragraph 16, the collective suitability assessments may, without prejudice to national law, be performed after the appointment of the member of the management or administrative organ in any of the following cases for which the credit servicer has duly provided a justification:
  - a. shareholders, owners or members of the credit servicer nominate and appoint members of the management or administrative organ at the shareholders' or equivalent meeting that have not been proposed by the credit servicer or by the management or administrative organ; and
  - b. a complete assessment prior to the appointment of a member or the change of the composition of the management or administrative organ would disrupt the sound

functioning of the management or administrative organ, including as a result of the following situations:

- i. where the need to replace members arises suddenly or unexpectedly, e.g. owing to the death of a member; and
  - ii. where a member needs to be removed as the member is no longer suitable.
18. The assessment of adequate knowledge and experience should take into account all matters relevant to and available for the assessments. Credit servicers should consider the risks, including the reputational risk, arising in the event that any weaknesses are identified affecting the collective suitability of the members of the management or administrative organ.
19. Credit servicers should take into account the knowledge and experience of the individual member of the management or administrative organ when assessing the adequate collective knowledge and experience of the management or administrative organ and vice versa.
20. Credit servicers should document the results of their assessment, and in particular any weaknesses identified between the necessary and the actual collective knowledge and experience of members of the management or administrative organ, and measures to be taken to overcome these shortcomings, including induction or training to be provided.
21. The assessment of the initial and ongoing individual and collective adequate knowledge and experience of the management or administrative organ and the good repute of their members is the responsibility of credit servicers.
22. To ensure appropriate ongoing supervision, credit servicers should inform the competent authority of the proposed appointment of members or, without prejudice to national law, inform it without undue delay after the appointment of members.
23. When the competent authorities have carried out an assessment of the knowledge and experience of the management or administrative organ of a credit servicer for supervisory purposes, the responsibility to assess and ensure the suitability of the management or administrative organ continues to remain with the credit servicer.

### 3 Individual members' adequate knowledge and experience criteria

24. When assessing the adequate knowledge and experience of the management body, as a whole, the credit servicer should assess all individual members of the organ to establish that they have together adequate knowledge and experience to ensure the effective functioning of the organ, including that each member has the ability to present their views and discuss strategies and business objectives, and that collective decision-making processes involve appropriate discussion, challenge and oversight. For that purpose,

- there should be a sufficient number of members with knowledge in each area to allow a discussion of decisions to be made.
25. Members of the management or administrative organ should have an up-to-date understanding of the business of the credit servicer and all of its risks, at a level commensurate with their responsibilities. This includes an appropriate understanding of those areas for which an individual member is not directly responsible but is collectively accountable together with the other members of the management or administrative organ. Up-to-date knowledge may be achieved through training, professional experience and undertakings.
  26. Members of the management or administrative organ should have a clear understanding of the credit servicer's governance arrangements, their respective role and responsibilities and, where applicable, the group structure and any possible conflicts of interest that may arise therefrom.
  27. Members of the management or administrative organ should be able to contribute to the implementation of an appropriate corporate and risk culture, corporate values and behaviour within the management or administrative organ to conduct the business in a competent and responsible manner.
  28. The assessment of adequate knowledge and experience should consider:
    - a. the role and duties of the position and the required capabilities;
    - b. the knowledge attained through education, training and practice;
    - c. the practical and professional experience gained in previous positions and other current directorships; and
    - d. the knowledge and experience acquired and demonstrated by the professional conduct of the member.
  29. The level and profile of the education of the member and whether or not it relates to banking and financial services or other relevant areas should be considered. In particular, education in the areas of banking and finance, economics, law, accounting, auditing, administration, financial regulation, information technology, and quantitative methods can in general be considered to be relevant for the financial services sector.
  30. The assessment should not be limited to the educational degree of the member or proof of a certain period of service in a credit servicer or other firms in areas responsible for the management of credits and non-performing loans. A more thorough analysis of the member's practical experience with regard to the activities of the credit servicer should be conducted, as the knowledge gained from previous occupations depends on the

nature, scale and complexity of the business as well as the function that the member performed within it.

31. When assessing the adequate knowledge and experience of a member, consideration should be given to theoretical and practical experience relating to the activity of credit servicing, including in particular:
  - a. relevant legal and regulatory requirements, including national requirements for credit servicing and debt collection;
  - b. sequestration, insolvency and bankruptcy procedures;
  - c. consumer and borrower protection;
  - d. data protection requirements; and
  - e. anti-money laundering and anti-terrorist financing obligations, where credit servicers are designated as obliged entities for the purpose of preventing and combating money laundering and terrorist financing under national law provisions transposing Directive (EU) 2015/849.
  
32. When assessing the adequate knowledge and experience of a member, consideration should also be given to knowledge areas where a general understanding is needed for the purpose of the day-to-day management of the credit servicer, including:
  - a. assessment of the effectiveness of a credit servicer's governance, oversight and internal controls;
  - b. banking and financial activities;
  - c. contractual law;
  - d. accounting and auditing;
  - e. the interpretation of financial information, the identification of key issues based on this information, and appropriate controls and measures; and
  - f. managerial knowledge.
  
33. When assessing the practical and professional experience gained from previous positions, particular consideration should be given to:
  - a. the nature of the position held and its hierarchical level;
  - b. the length of service;



- c. the nature and complexity of the business where the position was held, including its organisational structure;
  - d. the scope of competencies, decision-making powers, and responsibilities of the member;
  - e. the relevant technical knowledge gained through the position;
  - f. the number of subordinates; and
  - g. additional knowledge gained from academic activities.
34. Where applicable, members of the management or administrative organ in its supervisory function should be able to effectively challenge and monitor decisions made by the management or administrative organ in its management function.

#### 4 Collective adequate knowledge and experience criteria

35. The management or administrative organ, as a whole, should have adequate knowledge and experience to conduct the business in a competent and responsible manner according to the activities carried out by the credit servicer and ensuring the protection and fair treatment of borrowers.
36. The composition of the management or administrative organ should reflect the adequate knowledge and experience necessary to fulfil all of its responsibilities. This includes that the management or administrative organ collectively has an appropriate understanding of those areas for which the members are collectively accountable and to ensure that the business is conducted in a competent and responsible manner.
37. The management or administrative organ, as a whole, should have adequate knowledge and experience with regard to the aspects listed under paragraphs 31 to 33 and in addition regarding:
- a. all business activities of the credit servicer and the management of the main risks related to it, including fraud detection and prevention in the context of credit risk management;
  - b. the legal and regulatory environment;
  - c. financial accounting and reporting;
  - d. risk management, compliance and internal audit;
  - e. information and communication technology (ICT) and ICT security risks;
  - f. local and cross-border markets, where applicable;

- g. managerial skills and experience; and
  - h. strategic planning.
38. When assessing the collective adequate knowledge and experience<sup>3</sup> of the management or administrative organ, credit servicers should assess separately the management body in its management and supervisory functions. The assessment of the adequate collective knowledge and experience should provide a comparison between the required adequate knowledge and experience of the management or administrative organ, as a whole, and the management or administrative organ's actual collective knowledge and experience. The assessment should cover all business activities of the credit servicer and material organisational aspects as well as the underlying processes.

## 5 Assessment of knowledge and experience of individual members

39. As part of the assessment of the management or administrative organ's suitability, credit servicers should assess the knowledge and experience of individual members. For that purpose, credit servicers should:
- a. gather information through various channels and instruments (e.g. diplomas and certificates, recommendation letters, curricula vitae, interviews, questionnaires);
  - b. require the assessed individual to provide accurate information and to provide proof of that information, where necessary;
  - c. validate, to the extent possible, the correctness of the information provided by the assessed individual;
  - d. where applicable, evaluate within the management organ in its supervisory function the assessment results; and
  - e. where necessary, identify necessary corrective measures.
40. Credit servicers should document a description of the position of the member for which an assessment was performed, including the role of that position within the credit servicer, and should specify the results of the assessment in relation to knowledge and experience and the results of the assessment of good repute under Article 5(1)(b) of Directive (EU) 2021/2167.

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<sup>3</sup> An example of a possible methodology for assessment tables for collective suitability can be found in Annex I of the Joint EBA and ESMA Guidelines on the assessment of members of the management body and key function holders under Directives 2013/36/EU and 2014/65/EU, but would need to be adjusted to relate to the business model of a credit servicer.

## 6 Assessment of the collective adequate knowledge and experience of the management or administrative organ

41. Where applicable, in assessing the collective adequate knowledge and experience, credit servicers should assess the composition of the management organ in its management and its supervisory functions separately.
42. Credit servicers should perform an assessment using their own appropriate methodology in line with the criteria set out in these Guidelines and document the results.
43. When assessing a member's knowledge and experience, credit servicers should, within the same time period, also assess the collective suitability of the management or administrative organ. In particular, it should be assessed what knowledge and experience the individual brings to the collective one or, in the case of a member that has left the management or administrative organ, the knowledge and experience that might, following the change of composition of the organ, be missing.

## 7 Credit servicers' corrective measures

44. If a credit servicer's assessment or reassessment concludes that the management or administrative organ, as a whole, does not possess collectively the adequate knowledge and experience, the credit servicer should take appropriate corrective measures in a timely manner.
45. Appropriate corrective measures may include, but are not limited to: adjusting responsibilities between members; replacing certain members; recruiting additional members; training single members; or training for the management organ collectively to ensure the adequate collective knowledge and experience of the management or administrative organ.
46. If a credit servicer's assessment or reassessment identifies easily remediable shortcomings in the adequate knowledge and experience of the management or administrative organ, the credit servicer should take appropriate corrective measures to overcome those shortcomings in a timely manner, including, where relevant, through appropriate training of (all or) individual members.
47. When a credit servicer intends to request the authorisation to commence its activities, such measures should be implemented before the authorisation is requested.
48. In any case, competent authorities should be informed without delay of any material shortcomings identified concerning any of the members of the management organ and the management organ's collective composition. The information should include the measures taken or envisaged to remedy those shortcomings and the timeline for their implementation.

## 8 Assessment by competent authorities

49. Competent authorities should specify the supervisory procedures applicable to the assessment of adequate knowledge and experience of the management or administrative organ, as a whole, of credit servicers and the good repute of its members. Competent authorities should ensure that a description of supervisory procedures is publicly available.
50. Supervisory procedures should ensure that information made available to competent authorities by the credit servicer during the course of the authorisation process is used as appropriate, where possible, for the purpose of the assessment of adequate knowledge and experience. In particular, the supervisory procedures should take into account situations where credit servicers are also authorised or supervised by non-financial authorities in order to ensure efficient coordination.
51. Competent authorities should require from the credit servicer a list of the names of the members of the management or administrative organ and their respective roles and functions in brief, and a statement of the credit servicer regarding the result of its overall assessment of the collective suitability of the management or administrative organ, as a whole. This should include a description of how the overall composition of the management body reflects an adequately broad range of knowledge and experience, and the identification of any gaps or weaknesses and the measures imposed to address these.
52. For the assessment of knowledge and experience, the competent authority should at least require for all members of the management or administrative organ a curriculum vitae containing details of education and professional experience including academic qualifications and other relevant training, the name and nature of all organisations for which the individual has worked and the nature and duration of the functions performed, highlighting in particular any activities within the scope of the position sought, including but not limited to banking and management experience.
53. For the assessment of the good repute of members, the competent authority should require information concerning the following:
  - a. police records or other national equivalent in relation to relevant criminal offences in accordance with Article 5 (b)(i) of Directive (EU) 2021/2167;
  - b. investigations, enforcement proceedings, or sanctions by a supervisory authority in which the individual has been directly or indirectly involved;
  - c. refusal of registration, authorisation, membership or a licence to carry out a trade, business or profession; or the withdrawal, revocation or termination of registration, authorisation, membership or a licence; or expulsion by a regulatory or government body or by a professional body or association;

- d. dismissal from employment or a position of trust, fiduciary relationship, or similar situation, or having been asked to resign from employment in such a position (excluding redundancies); and
  - e. whether or not an assessment of the good repute of the individual has already been conducted by another competent authority (including the identity of that authority, the date of the assessment and evidence of the outcome of this assessment).
54. Without prejudice to Article 5(1)(c) of Directive (EU) 2021/2167 specifying the assessment of the suitability of members of the management or administrative organ in the context of the authorisation of a credit servicer, competent authorities should set out a maximum period for their assessment of adequate knowledge and experience of the management or administrative organ, as a whole, of credit servicers and the good repute of its members where such assessments take place after the authorisation of the credit servicer. Where a competent authority establishes that additional documentation and information are needed to complete the assessment, that period may be suspended from the time when the competent authority requests additional documentation and information necessary to complete the assessment, until the receipt of that documentation and information.
55. Competent authorities should inform credit servicers of at least a negative decision on the assessment of suitability as soon as possible. Where provided by national law or defined by the competent authority as part of their supervisory processes, a positive decision may be deemed to be taken by silence, when the maximum period for the assessment, as referred to in paragraph 54, is completed and the competent authority has not taken a negative decision.
56. Competent authorities should ensure that their supervisory procedures allow them to address cases of non-compliance with the requirement that the management or administrative organ, as a whole, has adequate knowledge and experience.

## 4. Accompanying documents

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### 4.1. Draft cost-benefit analysis / impact assessment

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Article 16(2) of the EBA and ESMA Regulations provides that the EBA and ESMA should carry out an analysis of ‘the potential related costs and benefits’ of any Guidelines they develop. 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.

#### A. Problem identification

As part of the establishment of the comprehensive strategy to address the issue of non-performing loans (NPLs) within the European Union, Directive (EU) 2021/2167 enables credit institutions to better deal with loans that become non-performing by selling the credit to a credit purchaser, who may task a credit servicer with its administration.

According to Article 5(1)(c) of Directive 2021/2167, the credit servicer’s management or administrative organ should have adequate knowledge and experience, as a whole, to conduct the business in a competent and responsible manner.

To further harmonise the assessment of adequate knowledge and experience of the management or administrative organ, as a whole, within the EU financial sector in line with the requirements introduced by Directive (EU) 2021/2167, a mandate is given to the EBA to issue Guidelines on the adequate knowledge and experience of the management or administrative organ of credit servicers to conduct the business in a competent and responsible manner in line with Article 5(2) of Directive (EU) 2021/2167.

#### B. Policy objectives

Credit servicers should always act in good faith, treat borrowers fairly and respect their privacy; at the same time they should effectively service credits. In order to protect the integrity of the market and to promote trust, it is important to ensure that the management or administrative organ of a credit servicer, as a whole, has adequate knowledge and experience to conduct the business in a competent and responsible manner, according to the activity to be carried out.

### C. Baseline scenario

The baseline scenario for the impact assessment includes the requirements on the assessment of the fitness and propriety of management and administrative organs set out in Directive (EU) 2021/2167. The assessment of costs and benefits is limited to the specifications of requirements provided in the Guidelines and does not include an assessment of the requirements directly encoded in the Directive.

### D. Options considered

#### **Scope of the Guidelines**

The mandate within Directive (EU) 2021/2167 requires that the EBA develops guidelines on the criteria for the assessment of the adequate knowledge and experience of the management or administrative organ of credit servicers, as a whole. The setting of guidelines limited to the assessment criteria would not lead to an effective harmonisation of such assessments. A higher level of harmonisation will be achieved by setting additional guidelines on the points in time or events where assessments are necessary and the assessment processes as well as on the follow-up of assessment results. Therefore, the EBA is setting out additional guidelines in line with its mandate under Article 16 of the EBA Founding Regulation (EU) 1093/2010.

#### **Assessment approach and process**

While the Directive requires that the management or administrative organ has adequate knowledge and experience, as a whole, the assessment of all members is envisaged under the Guidelines. On this basis the collective suitability is assessed. A certain level of knowledge and experience is necessary for each member to ensure that the organs function effectively. There is no other option.

The Directive requires, among other things, an assessment of the adequate knowledge and experience of the management and administrative organ, as a whole. The requirement applies not only at authorisation, but also on an ongoing basis. The respective clarification of the points in time within the Guidelines therefore does not trigger additional costs, but clarifies the required assessments process.

#### **Corrective measures**

The approach taken ensures that identified weaknesses are remedied under appropriate supervision by competent authorities and therefore has a beneficial effect on the continuous functioning of the management or administrative organ. The approach taken allows for training or the replacement of members. In any case, such measures would be needed to ensure compliance with the suitability requirements under the Directive. Therefore these additional guidelines do not create additional costs.

### **Setting guidelines for competent authorities**

The Guidelines set high-level principles for competent authorities to set out their supervisory processes in a transparent way. Transparency as to the processes reduces the costs for credit servicers when assessments by competent authorities are required. Given the newly introduced requirements and considering that the level of supervisory involvement towards such firms will be lower as compared to credit institutions, it has been seen as appropriate to limit the provided guidelines and to provide for more flexibility (compared to other financial entities, e.g. institutions or investment firms) with regard to the timelines for the assessments made and allowing competent authorities to define themselves the timelines for the assessment within their procedures.

Such an approach is more proportionate and will reduce the overall supervisory costs as the market in credit servicing and the volumes of credit to be serviced differ between Member States.



## 4.2. Summary of responses to the consultation and the EBA's analysis

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The consultation ran from 19 April 2023 to 19 July 2023. Fifteen responses to the consultation were received. Of these, six respondents asked that their responses be treated as confidential.

The responses most significantly centred on four topics:

- the nature of the activities carried out and the level of financial risk-taking borne by credit servicers;
- the proportionality criteria relevant to the assessment of knowledge and experience of the management organ of credit servicers;
- the areas of knowledge relevant to the conduct of the business of credit servicers; and
- the guidance on the supervisory procedures to be implemented by competent authorities.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
<b>General comments</b>			
Nature of credit servicing	Several respondents voiced concerns regarding the definition of credit servicing and noted that credit servicing of an NPL is in reality debt management and debt collection (not the management or re-negotiation of an active credit agreement), without the same risk-taking and systemic implications.	<p>EU Directive 2021/2167 defines credit servicers as performing any of four credit servicing activities, here summarised as follows : a) collecting money from the borrower; b) renegotiating with the borrower on the credit purchaser’s instructions; c) administering complaints; and d) informing the borrower of any changes.</p> <p>A credit servicer does not have to perform all four functions to fall under the definition of the directive.</p> <p>Any of these activities constitutes a regulated activity that requires applying for and obtaining a credit servicer licence.</p>	No change
National legislation	One respondent noted that the fact that any credit servicer when servicing an NPL is obligated to follow the rules on debt collection in the respective Member State should be emphasised.	Directive (EU) 2021/2167 and the EBA’s mandate to produce guidelines on knowledge assessment aim at fostering a common EU-wide framework, therefore the focus of the GLs is not the respect of national rules.	No change
Complexity of guidelines / burden	Several respondents recommended that the draft Guidelines be reduced in scope and complexity and limited to a few overarching principles. One respondent warned against creating a heavy administrative burden for credit servicers and argued that Directive 2021/2167 does not require credit servicers to set up policies and processes dedicated to the assessment of knowledge and experience.	Article (5)(1)(c) of Directive (EU) 2021/2167 mandates a credit servicer’s management or administrative organ to have adequate knowledge and experience to conduct the business in a competent and responsible manner. This entails the need for credit servicers to be able to assess such knowledge and experience, which can only be done by defining and implementing appropriate specific procedures.	Guidelines adjusted

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		The complexity of the assessment may be reduced by a reduction in the number of proportionality criteria and by simplifying the assessment of some knowledge areas (see specific question below).	
<b>Responses to questions in Consultation Paper EBA/CP/2023/07</b>			
Question 1. Is the section on subject matter, scope, definitions and implementation appropriate and sufficiently clear?			
Scope of Guidelines	Several respondents considered that the Guidelines should be simplified. One respondent considered that the Guidelines should be limited to principles to be applied by competent authorities when assessing knowledge and experience.	The aim of Directive 2021/2167 and of the EBA’s mandate to produce guidelines on knowledge assessment is to foster a common EU-wide framework, which may not be attained by limiting the guidelines to overarching principles to be applied by competent authorities.  Nevertheless, the complexity of the assessment may be reduced by a reduction in the number of proportionality criteria and by simplifying the assessment of some knowledge areas.	No specific change
Automatic compliance with Guidelines	One respondent suggested the following addition with reference to Recital 25 of the Directive:  Where Member States that already have in place rules equivalent to, or stricter than, those established in the Directive for credit servicing activities recognise in their national law transposing the Directive the possibility for existing entities providing credit servicing activities to be	The EBA guidelines are mandated by the Directive and as such they may not contradict it but may be more precise. Therefore, national rules equivalent to those established in the Directive do not guarantee that entities recognised under those rules are compliant with the guidelines.	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>automatically recognised as authorised credit servicers, these entities should also be automatically considered compliant with these guidelines.</p>		
<p>Scope of bodies/individuals falling under Guidelines</p>	<p>Several respondents asked for more specific definition of the bodies/individuals falling under the Guidelines. One respondent warned against an excessive burden should too many individuals be included and recommended the deletion of the words ‘and include the persons who effectively direct the business of the institution’ in the definition of the management or administrative organ. One respondent asked for clarification on whether ‘first line management’ and the board of auditors are included.</p> <p>Conversely, one respondent suggested to drop any definition of the management organ in favour of including a reference to national legislation.</p>	<p>The Guidelines provide a definition of the ‘management or administrative organ’ that references national legislation, and the Guidelines will apply to all existing board structures and do not advocate any particular structure.</p> <p>The reference to persons who effectively direct the business of the institution is also found in the EBA/ESMA guidelines for CRD.</p> <p>Competent authorities may further clarify the governing bodies and functions on the basis of the definitions provided in the Guidelines to which the tasks and responsibilities set forth in the Guidelines pertain.</p>	<p>No change</p>
<p>Interaction with national law and national supervision</p>	<p>One respondent asked for clarification on whether some financial intermediaries with a licence under a specific national law and operating exclusively as servicers can be qualified as ‘credit institutions not falling under the scope of the directive’.</p> <p>One respondent suggested clarity on the items so as to avoid double national supervision in that jurisdiction (ministry of justice plus financial authority).</p>	<p>The requirements for knowledge already reference national law applicable to credit servicing. Moreover, competent authorities may further clarify the guidelines in accordance with the specificities of national law.</p> <p>In jurisdictions where credit servicers are authorised by authorities other than competent authorities (typically the ministry of justice), competent authorities should coordinate with authorities in</p>	<p>Guidelines clarified</p>

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		charge of credit servicers' authorisation to avoid possible duplication of requests.	
Question 2. Is the section on proportionality appropriate and sufficiently clear?			
<p>Proportionality: general remarks</p>	<p>A strong majority of respondents welcomed the proportionality principle, however a majority of respondents also noted that the principle as stated leaves significant scope to interpretation with the risk of inconsistent application.</p> <p>Several respondents noted that some of the criteria are not applicable to credit servicing, e.g. the complexity of the original credit agreement is no longer of relevance, and that others needed specifying further as to how credits would be qualified as less complex or more complex, and how the proportionality principle would impact the requirements.</p> <p>Several respondents noted that proportionality cannot apply to all of the requirements (e.g. fair and transparent treatment of borrowers as well as governance requirements must be ensured irrespective of the size of the credit servicer).</p> <p>One respondent noted that the proposed Guidelines appear to target the largest credit servicing companies, typically also engaged in credit purchasing.</p>	<p>The proportionality principle applies in such a manner as to expect more complex and larger entities to perform a more detailed assessment of knowledge and experience than smaller and less complex entities.</p> <p>It is possible to reduce the room for interpretation of the principle of proportionality by reducing the number of proportionality criteria being considered in the Guidelines. In particular, the complexity of the original credit arrangement may be considered less relevant as appraising the risks stemming from the complexity of a credit arrangement is not typically part of a credit servicer's activities.</p> <p>Some of the requirements are to be complied with irrespective of the size and complexity of the credit servicer (e.g. fair and transparent treatment of borrowers, good reputation of members of the management or administrative organ). Besides, some criteria are meant to ensure that the credit servicer's management organ is collectively fit to run a business and are more easily considered in conjunction with the proportionality principle.</p>	<p>Guidelines clarified</p>

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Single administrator	One respondent suggested that in the case of credit servicers with a single administrator the Guidelines should not be applicable or to clarify how the experience and knowledge shall be assessed on a proportional basis in such a case.	The Guidelines are still applicable in the case of a single administrator. In such a case, the assessment may especially highlight training to be provided to the single administrator.	No change
Complexity of credit servicers	<p>Several respondents suggested to introduce complexity thresholds, with some respondents suggesting that servicers could be considered 'complex' if they reach:</p> <ul style="list-style-type: none"> <li>- a total turnover higher than EUR 5 million;</li> <li>- a gross book value under management higher than EUR 5 billion;</li> <li>- an organisation composed of more than 50 FTEs (employees, contractors or advisors employed to support servicing activities).</li> </ul>	<p>Applying the proportionality principle does not require the definition of thresholds.</p> <p>Besides, thresholds incur the risk that some companies that would fall below the threshold or thresholds may feel allowed not to perform any assessment of knowledge and experience.</p>	No change
Proportionality criteria	<p>Several respondents considered that several of the assessment criteria (notably A, B and G) are not sufficiently clear and thus open to subjective interpretation, and suggested that further thresholds / objective requirements / checklists / guidance on methodology be introduced.</p> <p>Other criteria were deemed unclear or not relevant and to be removed in several responses, notably C, D, F and H.</p>	<p>The criterion on size is reworded to reference the number of staff of the credit servicer rather than its balance sheet.</p> <p>The criterion on volume references debt instead of credits.</p> <p>Applying the proportionality principle does not require the definition of thresholds. Defining thresholds may also create the risk that some</p>	Guidelines adjusted

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>In more detail:</p> <p>Criterion A (size of balance sheet): while some respondents considered this criterion unclear and in need of a threshold, a majority considered it not relevant, as it does not reflect the number of borrowers the credit servicer has under management, and to be removed.</p> <p>One respondent noted that credit purchasers in companies offering both credit servicing and credit purchasing activities will become subject to further requirements unless the credit purchasing segment is expressly carved out from the assessment criteria (e.g. excluded from the balance sheet total).</p> <p>Criterion B (volume of credits) : several respondents suggested it should be further specified (threshold plus specify whether it should refer to the number of cases or the outstanding balance of credits).</p> <p>Criterion C (complexity of credit arrangement): some respondents requested it to be removed, others expressed support but requested it to be further specified.</p> <p>Criterion D (legal form of credit servicer): several respondents considered it not relevant and to be removed.</p>	<p>companies that would fall below the threshold may feel allowed not to perform any assessment.</p>	

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>Criterion E (being part of a group): one respondent considered it not relevant and strongly recommended against it.</p> <p>Criterion F (whether the credit servicer is listed): one respondent considered this criterion not relevant.</p> <p>Criterion G (whether cross-border activities are performed and their size): one respondent asked for this criterion to be further specified.</p> <p>Criterion H (nature and complexity of activities performed and of organisational structure including outsourcing arrangements): several respondents asked for this criterion to be further specified.</p>		
Question 3. Is section 2 on the suitability assessment by credit servicers appropriate and sufficiently clear?			
Simplification of assessment	<p>Several respondents considered generally that the assessment needs to be simplified. Several respondents considered that the assessment should only take into account knowledge with regard to debt collection.</p>	<p>Some knowledge areas are essential for running credit servicers' activities: relevant legal requirements for the servicing of loans and the applicable regulatory framework; consumer and borrower protection; data protection requirements; money laundering; etc.</p> <p>In other areas, including banking and financial activities, a sound understanding is required for running a business in general.</p> <p>Therefore all of these areas should be part of the knowledge and experience assessment. It is necessary that the requirements be detailed and</p>	Guidelines clarified



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		stringent enough to avoid any regulatory oversight, with consumer protection purposes in mind.	
Delegation of assessment	One respondent considered that it should be clarified that delegation of the assessment is possible, while the final responsibility lies with the management or administrative organ.	Delegation within the firm is possible but the responsibility remains with the management organ.	No change
Reasonable delay to comply	One respondent considered that a reasonable time should be given to comply with the requirement that credit servicers should ensure that their management or administrative organ, as a whole, possesses adequate knowledge and experience to perform its duties at all times (e.g. six months).	When shortcomings are identified, a reasonable delay to comply with the requirement may be warranted, but whether it is the case and the actual duration of a reasonable time will depend on the circumstances and should be decided in each case by the competent authority.	No change
Material changes	Several respondents required clarification as to 'material changes' in the context of NPLs / debt collection by providing relevant examples. One respondent suggested replacing this requirement with an annual reassessment of the business model. Another respondent noted that material shortcomings to communicate to the authority should be listed.	The Guidelines already clarify that material changes may mean changes to the composition of the management (new members or members leaving) or material changes to the business model (including changes in underlying legal provisions or technologies).	No change
Exception allowing for ex post assessment	One respondent noted that the possibility to perform an ex post suitability assessment should be broadened, in situations where members of the management organ are appointed by the shareholders, to situations where the credit	This situation falls within the general case described in the Guidelines (where a shareholders' or equivalent meeting nominates a member that has not been proposed by the credit servicer).	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>servicer (or management board) does not need to be consulted prior to the appointment.</p> <p>With regard to possible disruption caused by a prior full assessment, one respondent asked for this possibility to encompass situations beyond the control of the credit servicer preventing the prior assessment; some respondents suggested that it should include situations where one board member needs to be replaced due to misconduct.</p>		
Assessment by authorities	<p>Several respondents strongly suggested that the assessment of individual members should remain the exclusive remit of the credit servicer, and suggested removing para. 23 or amending it in order to reflect this stance.</p> <p>One respondent considered that, since the self-assessment is cumbersome, it should be provided that competent authorities may be consulted by credit servicers on those aspects.</p>	<p>Competent authorities may, under their own prerogative for supervisory purposes, carry out assessments of supervised entities (i.e. distinct from assessments to be carried out by credit servicers: this point has been clarified).</p> <p>Such assessments do not diminish the requirements for credit servicers to perform their own assessments under these Guidelines.</p>	Guidelines clarified
Question 4. Are sections 3 and 4 on the individual and collective criteria for the assessment of members of the management or administrative organ appropriate and sufficiently clear?			
General remarks on Q4	<p>One respondent noted that the criteria are generally very strict and that provisions under para. 24 (which states the principle of individual assessment of members) are very complex to implement.</p>	<p>Taking into account the adjustments following remarks on the relevant proportionality criteria and knowledge areas, the assessment is deemed to be sufficiently streamlined to be performed practicably with entities of varying sizes in accordance with the proportionality principle.</p>	Guidelines clarified

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>Another respondent considered that these sections are too derivative of the fit &amp; proper framework for the banking industry.</p>		
<p>Knowledge and experience / relevance of areas of experience</p>	<p>Several respondents considered that knowledge and education relating to banking and financial services, especially credit management, are not relevant to debt collection and should be deleted.</p> <p>One respondent generally agreed with the criteria on knowledge and experience of members of the credit servicer’s management or administrative organ, as well as with the requirements to assess such suitability on an individual and on a collective basis.</p> <p>Several respondents strongly noted that credit servicing does not bear the financial and capital risk associated with credit lending, therefore criteria applicable to banks should not be applied, at least not unchanged in some responses, to credit servicers.</p> <p>Several respondents considered that experience required should be proportionate and related to NPLs and debt collection; that experience in the areas of sequestration, insolvency and bankruptcy procedures, contract law, accounting and auditing, anti-money laundering and anti-terrorist financing obligations, the interpretation of financial information, and ICT is not relevant to debt collection and should be removed, or limited to a</p>	<p>Some knowledge areas are essential for running credit servicers’ activities: relevant legal requirements for the servicing of loans and the applicable regulatory framework; consumer and borrower protection; data protection requirements; money laundering; etc.</p> <p>In other areas, including banking and financial activities, a sound understanding is required for running a business in general.</p> <p>Therefore all of these areas should be part of the knowledge and experience assessment. It is necessary that the requirements be detailed and stringent enough to avoid any regulatory oversight, with consumer protection purposes in mind.</p>	<p>Guidelines clarified</p>

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>basic understanding / awareness / provided by external consultants.</p> <p>Several respondent considered that fraud in the context of credit risk is not relevant for credit servicers' work and should be removed from the criteria.</p>		
Up-to-date knowledge / training	One respondent considered that the criteria on up-to-date knowledge should be clarified to refer to training of members of the management organ, if this is what is implied.	An up-to-date understanding of the business of the credit servicers and all of its risks may be achieved through several means, including training. Other means may include professional experience and undertakings, contact with professionals or academia, etc.	Guidelines clarified
Language of assessment	One respondent considered that there should be an option in all Member States to conduct the assessment process in English.	The mandate provided to the EBA by Directive 2021/2167 does not allow for such a requirement. It is up to authorised credit servicers and the competent authorities to agree on the languages that may be used for the assessment.	No change
Assessment of collective knowledge	One respondent asked for clarification on how complementarity between individual members may help achieve the requirements for collective knowledge.	<p>Complementarity between board members can be understood as a diversity of profiles, allowing the level of collective knowledge and experience to be increased and allowing enough members of the board to be sufficiently experienced and knowledgeable to engage in discussions and challenge decisions.</p> <p>Besides, the EBA has developed a methodology for assessment tables for collective suitability in Annex I of the Joint EBA and ESMA Guidelines on the assessment of members of the management body</p>	Guidelines clarified

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		and key function holders under Directives 2013/36/EU and 2014/65/EU. This may be used as a useful reference tool by credit servicers but is not part of the Guidelines' requirements.	
Advice from external members	<p>One respondent suggested alternative wording to para. 37:</p> <p>'the members can seek advice from nominated experts in the group, not being explicitly members of the management body, to take decisions in specific areas. To avoid a potential conflict of interest, the advice should not be received by the credit servicer itself but e.g. from a holding function or external advisors'.</p>	<p>The assessment of collective knowledge of the management organ is intended to capture the ability of the organ itself to conduct informed and sound discussions on all subjects pertaining to the credit servicer's activities, especially when having decision-making meetings without external participation.</p>	No change
Limitation of assessment to education and relevant experience (para. 30)	<p>One respondent considers that the combination of education degree and relevant experience should be sufficient to establish the requirements for knowledge and experience (contrary to para 30).</p>	<p>Guidelines are sufficiently clear, as para. 30 provides that the assessment should not be limited to an education degree or the mere presence in a credit servicer but should go into the practical details of the relevant experience.</p>	No change
Credit servicers belonging to a group engaged in credit servicing	<p>One respondent considered that assessment of knowledge and experience present in the management organ of such a group should not be duplicated at the credit servicer level.</p>	<p>The Guidelines' requirements apply on an individual basis, i.e. each board should be suitable, within the same group or not.</p> <p>Moreover a person may found to be suitable to be a member of the board of a credit servicer of a given size and complexity, but not for the board of a credit servicer with a different level of complexity within the same group.</p>	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		Besides, if the ground work for the assessment of a member has been carried out at a group level, it will likely be shared and reused as appropriate, not duplicated.	
Additional requirements	Some respondents argued that additional requirements should cover the knowledge of applicable national law on late payments and debt collection.	Requirements on applicable law on debt collection are mandated by the Guidelines.	No change
Question 5. Are sections 5 and 6 on the individual and collective assessment of members of the management or administrative organ appropriate and sufficiently clear?			
Complexity of assessment / template	Several respondents considered that the assessment is too complex or cumbersome, the respondents suggesting in some cases that competent authorities provide a template. One respondent considered them to be an undue interference in credit servicers' freedom to choose members of their management organs.	Taking into account the adjustments on proportionality criteria and knowledge areas, the assessment is deemed to be sufficiently streamlined to be performed practicably by entities of varying sizes in accordance with the proportionality principle.  Moreover, templates are usually useful when performing data collection exercises or similar tasks. In this case, templates would be too generic to be useful.	Guidelines clarified
Tacit assent	Some respondents suggested having a tacit assent mechanism whereby the servicer having presented the request for authorisation can operate if the request has not been responded to after a certain deadline.	Authorities may authorise tacitly or not, in line with the CRD guidelines.	Guidelines clarified

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Data protection	One respondent considered that common criteria on the duration of retention of personal data by the credit servicers would be helpful.	The data retention duration is subject to a specific legal framework (GDPR plus national law).	No change
Question 6. Is section 7 on corrective measures appropriate and sufficiently clear?			
	Some respondents asked for the words ‘timely manner’ to be clarified in the Guidelines.	It would be difficult to clarify further the meaning of ‘timely manner’, as the timeliness of corrective measures will depend on the scope of identified shortcomings, on the size and complexity of the credit servicer, on business circumstances, etc. It is expected that in such cases competent authorities will engage with the credit servicer and define timelines on an ad hoc basis.	No change
Pre-emptive opinion by competent authorities	One respondent suggested the possibility for the credit servicer to obtain an opinion from the competent authorities on non-compliance of a member in order to pre-empt potential conflicts with such members.	The mandate provided to the EBA by Directive 2021/2167 does not allow for such a requirement in the Guidelines.  It is expected that credit servicers should liaise with competent authorities when assessing members and dealing with potential conflicts of interest.	no change
Question 7. Is section 8 on the assessment by competent authorities appropriate and sufficiently clear?			
Supervisory procedures	Several respondents suggested that guidance regarding the supervisory procedures to be specified by competent authorities should be given in the EBA Guidelines, in one case the respondent suggesting a common EU template.	The main components of supervisory procedures’ main points will typically involve the collection of documents, analysis, feedback to the supervised entity including appropriate corrective measures where shortcomings are identified, reasonable	Guidelines clarified

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>One respondent asked for clarification on the deadline for the competent authority to make supervisory procedures publicly available.</p>	<p>timelines, information from the supervised entity and response, etc.</p> <p>The assessment of good repute should also be part of the supervisory procedure, in line with previous guidelines on CRD, and drawing on the EBA’s remit to issue guidelines on its own initiative under the EBA founding regulation.</p> <p>Beyond that, imposing a common template would encroach on competent authorities’ remit.</p> <p>Since the assessment of adequate knowledge and experience is a different process (and has a different legal basis) from the authorisation process, but can for some aspects be evidenced by the same pieces of information, information made available to the competent authorities during the authorisation process should be reused where possible for the assessment of knowledge and experience, and competent authorities should coordinate in that respect when the credit servicer is supervised or authorised by a non-financial authority.</p>	
<p>Language of communication with competent authorities</p>	<p>Several respondents suggested that supervisory procedures or communications should be made available by competent authorities in English.</p>	<p>The mandate provided to the EBA by Directive 2021/2167 does not allow for such a requirement. It is up to authorised credit servicers and the competent authorities to agree on the languages that may be used for communication, including on supervisory procedures.</p>	<p>No change</p>