

TOWARDS A CULTURE OF RESPONSIBILITY: THE ROLE OF INDIVIDUALS UNDER THE EUROPEAN CAPITAL REQUIREMENTS DIRECTIVE IN LIGHT OF THE LATEST AMENDMENTS

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Abstract

This article examines how Directive 2013/36/EU,¹ known as the Capital Requirements Directive (the Directive), and, in particular, its latest amendment by Directive (EU) 2024/1619,² strengthens the governance of credit institutions in the European Union (EU) by placing emphasis on essential aspects of individual responsibility regimes already present in the national legislation of some Member States. It analyses the Directive's key features designed to reinforce the accountability of senior officers responsible for managing and controlling the banking business, such as the mapping of duties, the individual statements of responsibilities and the suitability framework. The reforms are also considered in the light of comparative experience in other countries, in particular Ireland's *Individual Accountability Framework*. On the basis of this comparison, the article discusses possible differences between Member States following the transposition of Directive (EU) 2024/1619, and whether the reforms will succeed in moving towards a more harmonised, predictable and streamlined regulatory framework that facilitates supervisory work and reduces unnecessary burdens in the EU's drive towards regulatory simplification.

Keywords: Capital Directive, governance, individual responsibility, accountability, suitability.

1 Introduction

Effective governance of credit institutions depends to a large extent on the commitment and responsibility of the individuals within them. Ultimately, it is individuals who make decisions, manage risks and ensure compliance with regulations and best practices. The 2008 financial crisis revealed significant governance shortcomings in credit institutions. In particular, in large banks decisions are taken at multiple levels and often in collegiate bodies, which can blur the lines of accountability and makes it difficult to attribute responsibility to specific individuals.

In response to these shortcomings, some countries established regulatory frameworks specifically aimed at strengthening the individual accountability of senior executives in credit institutions, later extending those frameworks to other sectors. The UK *Senior Managers and Certification Regime* (Financial Conduct Authority, 2019) and the Irish *Individual Accountability Framework* (Central Bank of Ireland, 2023a) are examples of standalone regimes in Europe that

1 Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

2 Directive (EU) 2024/1619 of the European Parliament and of the Council of 31 May 2024 amending Directive 2013/36/EU as regards supervisory powers, sanctions, third-country branches, and environmental, social and governance risks.

address individual accountability in credit institutions. These regimes generally have three core features in common:

- they define the functions or duties that are essential for the sound functioning of institutions and set minimum standards for the senior executives responsible for them;
- they require institutions to prepare a mapping of duties and individual statements of responsibilities for the individuals concerned; and
- they allow for individuals subject to the regime to be held directly accountable for shortcomings within their areas of responsibility, unless they can show that they took reasonable steps to prevent the breaches.

Meanwhile, and also in response to the 2008 financial crisis, the European Union (EU) has progressively strengthened the governance requirements for credit institutions laid down in the Directive, which has moved beyond general principles towards more specific requirements, particularly as regards the individuals responsible for the management and control of institutions. Greater emphasis is now placed on ensuring that institutions have sound organisational structures, with clearly defined and independent control functions, and that both members of the management body and senior management are fit to discharge their duties, have appropriate incentives, meet supervisory expectations and can be held accountable for their decisions.

Although the Directive does not establish a standalone and comprehensive individual accountability regime comparable to those in place in some national legal systems, it does include key provisions aimed at strengthening a sense of responsibility among institutions and their managers. These provisions seek, on the one hand, to foster an appropriate risk culture and, on the other, to provide supervisors with tools enabling them to assess decision-making processes more accurately and to take early action where necessary. These provisions most notably include:

- the definition of roles and the clear allocation of functions and responsibilities within credit institutions, in order to determine who makes decisions, who oversees them and, consequently, who may be held accountable in the event of potential breaches;
- a suitability assessment regime³ to ensure that not only members of the management body but all individuals discharging key functions have the necessary skills, experience and integrity, and

3 It may be argued that the suitability assessment regime does not, strictly speaking, form part of the accountability regime, but rather constitutes an independent pillar within a broader framework of sound governance. Its purpose is to ensure, ex ante, that those ultimately responsible for the banking business meet the necessary standards of competence, integrity and reputation required to discharge their duties. By contrast, accountability instruments operate primarily ex post, with a view to supervising and holding individuals accountable for their conduct, performance and compliance with obligations once they have taken up their positions. Nonetheless, the two systems are structurally interdependent: initial suitability lacks effectiveness without a robust framework for supervision and individual responsibility, while individual accountability is insufficient without first ensuring that the individuals occupying the positions are qualified for the role and are of good repute. Therefore, this analysis deals with both regimes as complementary aspects of the same framework.

- a broad set of sanctioning powers available to supervisors over individuals where breaches are detected that could undermine sound governance or financial stability.

The article is organised into six sections, preceded by this introduction. Section 2 examines the organisational structure and the role of the management body, of senior management and of key function holders. Section 3 describes the suitability regime and Section 4 analyses other relevant tools of accountability regimes, while Section 5 focuses on the sanctioning and supervisory powers available to supervisors in this area. The article ends with a brief set of conclusions.

This article focus solely on credit institutions, although the Directive also applies to financial holding companies and mixed financial holding companies subject to approval under Article 21a of the Directive, as well as to investment firms subject to Title VII of the Directive pursuant to Article 1(2) and (5) of Regulation (EU) 2019/2033.⁴

Throughout the article, references to the Directive should be understood as references to Directive 2013/36/EU. References to CRD VI refer specifically to Directive (EU) 2024/1619 amending Directive 2013/36/EU. Any reference to the regime applicable before the amendment will be clearly indicated. Likewise, references to the *Guidelines on internal governance* and the *Guidelines on suitability* – both currently under consultation – correspond, respectively, to the *Draft revised Guidelines on internal governance*, of the European Banking Authority (EBA, 2025), and to the *Draft Joint Guidelines on the assessment of the suitability of members of the management body and key function holders*, of the European Securities and Markets Authority (ESMA) and the EBA (ESMA and EBA, 2026).

2 Organisational structure and the role of the management body, senior management and key function holders

As a key element of the individual accountability framework, CRD VI provides supervisors with new tools to support their work of reviewing institutions' governance arrangements, and specifies the scope of accountability for members of the management body in its management function, for senior management and for key function holders.

Prior to the amendments introduced by CRD VI, the Directive merely set out general principles on internal organisation, focusing on the upper levels of institutions' governance structure, namely the management body – with particular emphasis on its supervisory function – and senior management. CRD VI has introduced two substantial changes.

First, the requirement to draw up specific documents – a mapping of duties and individual statements of responsibilities – to enable more accurate monitoring of decision-making processes

⁴ Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014. In addition, pursuant to Article 9 of Directive 2014/65/EU, competent authorities must ensure that investment firms and their management bodies comply with Articles 88 and Article 91 of Directive 2013/36/EU.

at all levels of the institution, and a comprehensive definition of the roles and responsibilities of the individuals within that organisational structure. This change aims to ensure that institutions clearly define the allocation of responsibilities and that supervisors can understand how decision-making and control processes are structured and escalated. As Recital 54 of CRD VI expressly states, this enhanced transparency is intended to strengthen individual accountability.

Second, the Directive places particular emphasis on the senior officers who manage and control credit institutions, irrespective of whether they are formally part of the management body or of senior management.

2.1 Mapping of duties and statement of responsibilities

The general principles governing the organisation of institutions are set out in Article 74 of the Directive, which establishes that institutions shall have robust internal governance arrangements, including, among other things, a clear organisational structure with well-defined, transparent and consistent lines of responsibility. It also states that these governance arrangements must be comprehensive and proportionate to the nature, scale and complexity of the risks inherent in the business model and the institution's activities.

Against this background, the newly added paragraph 3 of Article 88 of CRD VI gives effect to these principles by requiring institutions to draw up both a document setting out roles or mapping duties and individual statements of responsibilities. Although these documents serve distinct purposes, they are closely linked. The mapping of duties describes the management structure and reporting lines, thereby defining the “what” and the “how” of the internal organisation. The individual statements, in turn, specify the duties assigned to each manager, identifying the “who”. Institutions are therefore required to present their organisational model and allocation of responsibilities in a clear and consistent manner.

Pursuant to Article 88(3), the mapping of duties must include details of the reporting lines, lines of responsibility, and of the persons who are part of the institution's governance arrangements, indicating the duties assigned to each of them. This document therefore goes beyond a formal organisational chart and must:

- be prepared on an individual basis and, in accordance with Article 109 of the Directive, also on a sub-consolidated and consolidated basis;
- take into account the size, nature, organisational structure and complexity of the institution, as well as, where applicable, arrangements with third parties;
- avoid overlapping of roles or gaps in the allocation of duties; where a role is shared, this circumstance must be duly justified;
- clearly identify reporting lines and, where several exist, distinguish appropriately between them; and

- be consistent with the statements of responsibilities and complement the other documentation forming part of the institution's governance framework.

Although neither CRD VI nor the *Guidelines on internal governance* specify which functions should be included in the mapping of duties, it seems clear that the internal control functions – namely risk management, compliance and internal audit – together with all the requirements laid down in Article 76, should be duly reflected in that mapping. This means that:

- control functions must be independent of operational functions;
- internal control functions must have direct access to, and be able to report directly to, the management body in its supervisory function;
- where the nature, scale and complexity of the institution's activities justify allocating the risk management or regulatory compliance functions to a senior manager responsible for another area, that allocation must not give rise to conflicts of interest between the different areas of responsibility combined in that person; and
- the internal audit function must not be combined with any other business line or control function of the institution.

Moreover, neither CRD VI nor the *Guidelines on internal governance* establish a specific level of granularity for the document or provide a standardised template. In line with a principles-based approach, the Guidelines recognise that institutions should have ample scope for flexibility to determine its format and content, given that the mapping largely depends on the specific structure of each institution or group.

In addition to the mapping of duties, the new Article 88(3) also requires institutions to draw up, maintain and update individual statements of responsibilities setting out the roles and duties of all members of the management body in its management function, of senior management and of key function holders.

These statements should be concise and coherent, while sufficiently detailed to provide a proper understanding of the scope of the responsibilities assigned, and how they fit with the person's other functions and with the institution's organisational structure. They should include not only the responsibilities inherent in the position, but also any other responsibility conferred on the individual, such as their participation in relevant cross-cutting projects not strictly related to their business area.

The *Guidelines on internal governance* include an optional template for individual statements which, for each person, includes personal identification details and information about: (i) their role and time commitment; and (ii) the tasks or duties assigned, indicating, where applicable, which of them are shared with other persons.

Under CRD VI, both the individual statements of responsibilities and the mapping of duties must be made available to the competent authorities at all times and communicated to them upon request, including for the purposes of obtaining authorisation as a credit institution. The *Guidelines on internal governance* specify that the individual statement of responsibilities should be submitted to the supervisor for the purposes of the suitability assessment.

Some national frameworks are likely to adopt a more prescriptive approach than CRD VI, which establishes only a minimum level of harmonisation and explicitly affords Member States broad discretion. In Recital 54, it expressly provides that they may adopt or maintain stricter requirements – both in relation to the mapping of duties and the statement of responsibilities – where they consider this necessary.

Thus, in addition to expecting institutions to appropriately allocate the responsibilities inherent in key areas, some national frameworks are likely to specify certain additional responsibilities and require institutions to formally identify the individuals responsible for discharging them. This could be the case for certain functions regulated under other legislation, such as the control function for the management and oversight of information and communication technology (ICT) risk provided for in Regulation (EU) 2022/2554,⁵ or the anti-money laundering compliance function provided for in Directive (EU) 2015/849.⁶

This is the approach taken, for example, by the Central Bank of Ireland, which has defined a set of prescribed responsibilities (see annex) that institutions must allocate to specific individuals. While institutions retain flexibility to assign those responsibilities to the role holders they consider most appropriate in light of their organisational structure and business model, the designated individuals remain subject, in all cases, to the supervisor's suitability assessment. Similarly, the European Central Bank's *Draft guide on governance and risk culture* recommends that institutions explicitly allocate responsibility for the remediation and follow-up of audit weaknesses identified, and of supervisory requirements and recommendations.

2.2 The management body in its management function

As noted above, institutions will be required to prepare individual statements of responsibilities for each member of the management body in its management function. In this context, CRD VI expressly introduces the concept of the “management body in its management function”, as opposed to the ‘management body in its supervisory function’, which was already defined in the original version of the Directive.

5 [Regulation \(EU\) 2022/2554](#) of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014, (EU) No 909/2014 and (EU) 2016/1011.

6 [Directive \(EU\) 2015/849](#) of the European Parliament and of the Council of 20 de May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC.

The Directive expressly recognises the diversity of corporate governance models existing across Member States — one-tier, two-tier or a combination of both — and defines the management body adopting a functional approach, in order to encompass all these structures without imposing any one of them. From the outset, the Directive has acknowledged that all management bodies, irrespective of their structure, perform both executive and supervisory functions.

However, an examination of how the Directive has evolved since 2013 shows a progressive shift in regulatory focus across the management body's different functions, depending on the risks and priorities identified at each stage. Thus, the original 2013 version of the Directive placed particular emphasis on the management body's supervisory function, probably in response to the shortcomings in that function identified during the financial crisis.⁷

In contrast to this initial approach, CRD VI shifts regulatory attention more clearly towards the management function of the management body, consistent with a more active and individualised understanding of responsibility for managing credit institutions. This shift does not affect the collective responsibilities inherent in membership of the management body, but it does underline the need to identify more precisely the persons who effectively direct the institution and the functions they perform.

In this context, CRD VI explicitly incorporates the concept of the management body in its management function and includes the persons who effectively direct the institution, even where they are not members of that body.⁸ The new Article 3(1)(8a) of the Directive defines the management body in its management function as “the management body acting in its role of directing an institution and includes the persons who effectively direct the business of the institution.”

The *Guidelines on internal governance* confirm this interpretation, stating that “in Member States, where the management body appoints persons that effectively direct the business of the institutions, those persons belong in accordance with Article 3(1)(8a) of Directive 2013/36/EU to the management function of the management body and are therefore to be assessed for their suitability in line with Article 91 of this Directive” [...] and are also subject to the requirement to draw up an individual statement of responsibilities, under the terms set out in Article 88(3).⁹

7 According to the European Commission's *Green Paper on corporate governance in financial institutions and remuneration policies* (European Commission, 2010) “The financial crisis clearly shows that financial institutions' boards of directors did not fulfil their key role as a principal decision-making body. Consequently, boards of directors were unable to exercise effective control over senior management and to challenge the measures and strategic guidelines that were submitted to them for approval.”

8 It should be noted that the previous version of the Directive already included “the persons who effectively direct the business of the institution” within the definition of “management body”. Accordingly, CRD VI does not introduce this element for the first time, but rather articulates that earlier approach more clearly.

9 This interpretation is consistent with Spanish company law. In particular, Article 236(4) of the Limited Companies Law establishes that “where there is no permanent delegation of powers by the board to one or more chief executive officers, all provisions concerning the duties and responsibility of directors shall apply to the person who, whatever their title, has been entrusted with the company's highest management powers [...]”.

Accordingly, a combined reading of CRD VI and the Guidelines suggests that, where the management body confers powers belonging to the highest level of management on persons who do not formally sit on that body, those persons must be regarded as members of the management body in its management function. Although the Directive does not specify exactly which persons are referred to, it seems reasonable to understand this as including, for example, the general manager of a credit cooperative.

However, CRD VI does not appear to have been intended to strengthen individualised accountability for members of the management body when acting in their supervisory capacity.

This regulatory approach contrasts with that adopted in certain national legal frameworks, including Ireland's, where the legislator has considered it appropriate to expressly bring members of the management body acting in its supervisory function within the scope of the individual accountability regime.

Thus, the references in the Directive to specific responsibilities that should be assigned to the management body in its supervisory function appear to be aimed mainly at minimising the risk that those responsible for strategic oversight and control of the institution may be influenced by those who effectively direct the business. This objective must be achieved irrespective of the structure of the management body, whether one-tier or two-tier, although in one-tier systems achieving it will require specific solutions (see Box 1).

2.3 Senior management and key function holders

CRD VI's emphasis on members of the management body in its management function is accompanied by a broadening of the subjective scope of governance arrangements, by requiring institutions to draw up individual statements of responsibilities and document suitability assessments also for senior management and key function holders (Article 88(3)).

Before CRD VI, the Directive referred mainly, in addition to members of the management body, to senior management as the persons with ultimate responsibility for the day-to-day management of the institution. CRD VI takes a functional approach to also identify those who lead, oversee or control strategic areas, even where they do not formally occupy the position of senior managers.

Accordingly, CRD VI maintains the concept of senior management while introducing the category of key function holders, distinguishing between the two profiles as follows:

- senior management: the natural persons who exercise executive functions within an institution and are directly accountable to the management body but are not members of that body, and who are responsible for the day-to-day management of the institution under the direction of the management body (Article 3(1)(9); and

THE MANAGEMENT BODY IN ITS SUPERVISORY FUNCTION IN A ONE-TIER SYSTEM

Although the distinction between management and supervisory functions may appear easier to articulate in two-tier governance structures, one-tier systems must also establish appropriate mechanisms to ensure independence of judgement and the absence of conflicts of interest when the management body exercises the supervisory function. Since Directive 2013/36/EU requires certain tasks to be performed by the management body in its supervisory function, institutions should adopt specific and proportionate measures, taking into account not only the nature of the specific task to be performed, but also, where necessary, the size, structure and complexity of the institution.

In this context, based on an analysis of various sources and corporate governance practices, a number of organisational arrangements can be identified that may effectively strengthen the supervisory function in one-tier management bodies, without altering their single-body structure, including the following:

Composition of the body

Voluntarily configuring a body with a predominantly supervisory profile through a majority of non-executive directors. This approach is consistent with good governance recommendations applicable in various legal systems. For example, the Good Governance Code of the Spanish National Securities Market Commission recommends that, in listed companies, the board of directors should have a large majority of non-executive directors and that independent directors should generally represent at least half of the total number of directors.

Abstention by executive directors from supervisory decision-making

For certain decisions directly linked to the supervisory function, executive directors may abstain from participating in the deliberation and vote in order to preserve the body's independence of judgement. This approach is set out, for example, in Article 529 septies of the Spanish Limited Companies Law — applicable to listed

companies — for the appointment of the lead independent director.

Establishment of specialised committees composed exclusively of non-executive directors

The Directive encourages the establishment of committees to support the management body in the exercise of specific supervisory functions. In particular, it requires institutions classified as significant under national law to establish certain advisory committees, composed of non-executive directors, namely: (i) the risk committee (Article 76(3)); (ii) the nomination committee (Article 88(2)); and (iii) the remuneration committee (Article 95). In addition to these committees, all public-interest companies — including credit institutions — are required to have an audit committee.

Nothing prevents credit institutions from establishing additional committees to support the management body, such as a regulatory compliance committee. However, insofar as their purpose is to strengthen independence of judgement and avoid conflicts of interest in the exercise of the supervisory function by the management body itself, it seems reasonable for such committees to meet certain minimum requirements, including being composed exclusively of non-executive members with appropriate knowledge and experience.

Furthermore, under the principle of proportionality, the Directive allows different responsibilities to be combined within the same committee. Thus, for example, in the case of institutions not classified as significant under national law, audit and risk functions may be combined in a single committee (Article 76(3)). The European Banking Authority's *Guidelines on internal governance* also state that, where risk and nomination committees are established in non-significant institutions, they may be combined.

Similarly, institutions have discretion to assign additional functions to the committees regulated by that Directive. In practice, some institutions assign oversight of regulatory compliance to the audit committee or to the risk committee.

- key function holders: the persons who have significant influence over the direction of an institution but are not members of the management body, including the heads of internal control functions and the chief financial officer, where those heads or that officer are not members of the management body (Article 3(1)(9a)).

The Directive thus defines senior management essentially by reference to reporting lines and executive responsibility, whereas the status of key function holders is determined based on the nature and relevance of the functions performed for the management and control of the institution.

Although every senior manager should be understood, by definition, to be a key function holder,¹⁰ the question remains as to whether the key functions performed by senior management are confined to operational functions or also encompass control functions.

Both the definition of senior management itself – referring to executive functions and day-to-day management – and the first subparagraph of Article 76(6) – requiring internal control functions to be independent of both the management body in its management function and of senior management – seem to suggest that the category of senior management referred to in the Directive is limited to the most senior officers responsible for operational areas.

However, the second subparagraph of Article 76(6) – by providing that the heads of internal control functions shall be “independent senior managers” – allows for a different interpretation: not only those responsible for operational functions, but also those responsible for control functions may, or in some cases must, qualify as senior management.¹¹

In the same vein, some key function holders will be senior managers, while others may belong to middle management. This interpretation also appears to be supported by the *Guidelines on internal governance*, which indicate that, for the purposes of the statement of responsibilities, where a person qualifies both as senior management and as a key function holder, that person should be treated as senior management.

3 Suitability assessment regime

The recognition of key function holders, in addition to members of the management body, as relevant persons within the governance framework established by CRD VI has also entailed a review of the suitability assessment framework.

10 Pursuant to Article 92(2) of the Directive, for the purposes of remuneration policies, for example, all members of the management body and senior management are included in the categories of staff whose professional activities have a material impact on the institution's risk profile.

11 This latter interpretation is reinforced by Article 76(5), which requires that internal control functions “have sufficient authority, stature, resources and access to the management body”, thereby assuming a level of responsibility and organisational positioning typical of senior management.

Prior to the amendments introduced by CRD VI, the Directive had two significant gaps:

- the Directive required both the institution and the supervisor to assess the suitability of members of the management body, but contained no reference to the suitability assessment of key function holders. In some national legal systems, the suitability assessment regime also included certain individuals in addition to members of the management body. In Spain, for instance, the regime was based mainly on hierarchical criteria and applied to “managing directors and similar officers”.¹² Moreover, the European Central Bank’s (ECB) competence to assess this group was limited to cases where the national law of the country in which the credit institution was established provided for supervisory assessment;¹³ and
- the Directive did not specify in detail how and when supervisors should conduct their assessments. Although the previous EBA and ECB guidelines on suitability assessments provided guidance on this matter, significant differences across Member States remained. For example, some national authorities may assess the suitability of members of the management body only after a significant period has elapsed since their appointment (ex post), whereas in other Member States supervisors carry out this assessment before the appointment (ex ante).

To address these shortcomings, CRD VI amended Article 91, on the suitability assessment of members of the management body, and introduced a new Article 91a, on the suitability assessment of key function holders. The aim is to put in place a consistent and predictable suitability framework that fosters supervisory convergence, strengthens trust among competent authorities and gives institutions greater legal certainty.

3.1 Persons subject to assessment

Two levels of review are established:

- all institutions must ensure at all times that members of the management body (Article 91(1)) and key function holders (Article 91(1a)) have the required suitability to perform their duties; and
- applying the principle of proportionality and without prejudice to the supervisor’s ability to request and review the institution’s assessments at any time, the supervisor shall in any event assess:
 - members of the management body in all institutions (Article 91(1f)), and

¹² Defined in Article 6(6) of Law 10/2014 of 26 June 2014 on the regulation, supervision and solvency of credit institutions.

¹³ See *Additional clarification regarding the ECB’s competence to exercise supervisory powers granted under national law* (ECB SSM/2017/0140), 31 March 2017.

- the chief financial officer and the heads of internal control functions in large institutions¹⁴ (Article 91a(5)).

3.2 Suitability assessment procedure

Institutions must assess individuals before they take up their positions and subsequently on a periodic basis (Article 91(1a) and Article 91a(2)).

For newly appointed individuals, the timing of the supervisory assessment shall be as follows:

- As regards members of the management body, the Directive does not amend the regimes in Member States where an ex ante supervisory assessment was already required;¹⁵ these will continue to apply. In such cases, institutions must always notify the supervisor of any new appointments before the individuals concerned take up their positions.

By contrast, in Member States where the supervisor is notified and conducts its assessment ex post, that is, after the member has taken up the position, the general rule, according to the *Guidelines on suitability*, will be to notify the supervisor no later than 15 days after the appointment. However, CRD VI introduces an exception for large institutions located in Member States with an ex post assessment regime. In those cases, large institutions must submit to the supervisor the suitability application for the chair of the management body in its supervisory function and for the members of the management body in its management function at least 30 days before they take up their positions (Article 91(1d)).

As Recital 49 of CRD VI states, the ex ante suitability application is useful because it allows supervisors to begin their analysis and take measures before the member takes up the position. Although CRD VI does not require the supervisor to issue its decision before the appointment – which may give rise to the need to remove a member who is not suitable, or to a situation in which the management body as a whole fails to meet the collective suitability requirements – the early submission of the application enables the supervisor to take preventive action. Such measures may include preventing the prospective member from taking up the position until sufficient information is available, or engaging in close dialogue where there are doubts as to

14 Article 91a(5) defines large institutions as: a) EU parent institutions that qualify as large institutions; b) parent institutions in a Member State that qualify as large institutions; except where they are affiliated to a central body; c) central bodies that qualify as large institutions or that supervise large institutions affiliated to them; d) stand-alone institutions in the Union that qualify as large institutions; e) large subsidiaries, as defined in Article 4(1) point (147) of Regulation (EU) 575/2013; f) parent financial holding companies in a Member State, etc.

15 As indicated in Recital 49 of CRD VI: "Due to the risks posed by large institutions resulting in particular from potential contagion effects, the competent authorities of Member States in which the supervisor's suitability assessment is carried out after the member has taken up the position in the management body, in accordance with national law, should be notified without undue delay as soon as there is a clear intention to appoint a member of the management body in its management function or the chair of the management body in its supervisory function".

their suitability, in order to ensure that the person is – or becomes – suitable by the time they take up the position.

- As regards the supervisory assessment of the chief financial officer and the heads of internal control functions in large institutions, the applicable regime will be that of the legal system of the Member State concerned (ex ante or ex post). For these assessments, in accordance with the *Guidelines on suitability*, the notification must be submitted before the individual takes up the position (ex ante) or no later than 15 days after the appointment (ex post).

In any event, the supervisor must consider setting a maximum period for concluding the assessment¹⁶ (Article 91(1j) and Article 91a(6)). According to the *Guidelines on suitability*, this period should not exceed four months or, if the period has been suspended, a maximum of six months after receipt of the notification. The same guidelines also state that, in the case of large institutions, such an extension should occur only in exceptional circumstances.

Furthermore, as regards the reassessment of suitability, CRD VI broadens the scope previously provided for in the Directive, which was limited to cases where there were reasonable grounds to suspect money laundering or terrorist financing. Specifically, CRD VI provides that institutions must reassess the suitability of members of the management body – and, in the case of large institutions, of the chief financial officer and the heads of internal control functions – where they become aware of any new facts or circumstances that could affect their suitability, informing the supervisor without undue delay. Similarly, where the supervisor becomes aware of significant changes to the information concerning the suitability of the members of the management body, they shall reassess their suitability (Article 91(1h) and Article 91a(6)). In these cases, CRD VI does not provide for the supervisor to consider setting a maximum period for the supervisory assessment.

3.3 Assessment criteria

The suitability criteria are set out in Table 1.

In addition to the suitability criteria themselves, certain aspects of corporate governance closely linked to the selection process must also be taken into account. For example, diversity and gender balance in the management body must be considered, in accordance with the obligation to have a specific policy in this area (Article 91(8)). Likewise, as regards the heads of the compliance function or the risk management function, where they simultaneously perform other functions within the institution, it must be assessed whether they have sufficient time to perform all those functions properly (Article 76(6)). Similarly, it must be verified that the chair

¹⁶ In Spain, Article 29(2) of Royal Decree 84/2015 of 13 February 2015 implementing Law 10/2014 of 26 June 2014 on the regulation, supervision and solvency of credit institutions states that the suitability assessment shall be conducted by the Banco de España or, where applicable, the ECB, within three months as of the date of notification of a new appointment.

Table 1
Suitability criteria

Criterion	Management body	Key function holders	Additional observations
Sufficient knowledge, skills and experience	✓	✓	In addition, the management body as a whole shall possess adequate collective knowledge, skills and experience to be able to understand the entity's activities and the associated risks.
Good repute and integrity	✓	✓	The supervisor, on a risk-sensitive basis, may consult the supervision authority responsible for the supervision of anti-money laundering and counter terrorist financing.
Independence of mind	✓		Not to be confused with the principle of "being independent".
Sufficient time	✓		There is a limit on the number of directorships a member of the management body of an entity regarded as significant within a Member State, in light of its size, internal organisation, and the nature, scale and complexity of its activities, may hold simultaneously.

SOURCE: Devised by authors.

of the management body in its supervisory function does not exercise simultaneously the functions of a chief executive officer within the institution (Article 88(1)(e)).

If, as a result of its internal assessment, the institution concludes that a person does not meet the established criteria, it shall ensure that this person does not take up the position – or is removed from it – or shall take the necessary measures to ensure that they become suitable (Article 91(1c) and Article 91a(3)).

Likewise, if the supervisor considers that a person does not meet the established requirements, it must have the necessary powers to prevent that person from taking up the position, to order his or her removal or to require institutions to take the appropriate remedial measures (Article 91(1i) and Article 91a(6)). These measures may take the form of conditions, obligations or recommendations.

All the changes in this section effectively help simplify the European regulatory framework by incorporating into binding legislation criteria and practices that had previously been developed mainly in EBA supervisory guidelines. This regulatory clarification is particularly relevant for banking groups operating in several Member States, as it reduces interpretative fragmentation.

Furthermore, from the perspective of the Single Supervisory Mechanism, raising these criteria and practices to the level of binding legislation allows for a more predictable, more homogeneous and shorter assessment procedure, reducing the need for ad hoc developments.

However, differences will still remain between supervisors that conduct ex ante assessments and those that conduct ex post assessments, since, as explained above, neither CRD VI nor the *Guidelines on suitability* harmonise the timing of the supervisory assessment. The only requirement is that large institutions located in Member States with an existing ex post regime

submit to the supervisor the application for the suitability assessment of the chair of the management body in its supervisory function and of the members of the management body in its management function before their appointment, although the supervisor may complete the assessment after the appointment.

The people subject to assessment may also vary, as some supervisors may require assessing the chief financial officer and the heads of internal control functions in institutions that are not classified as large, or may require certain responsibilities to be assigned to specific individuals (prescribed responsibilities) and may consider it necessary to assess those individuals at the time of their appointment.

4 Other instruments: duty of responsibility and compliance with standards of behaviour

In addition to the organisational instruments and suitability requirements discussed above, the Directive includes other mechanisms that help foster a culture of responsibility and transparency. These include, on the one hand, whistleblowing systems, which allow staff to report misconduct or breaches internally or externally without fear of retaliation and, on the other, remuneration policy requirements aimed at aligning the incentives of managers and employees with prudent and sustainable risk management.

Without prejudice to the foregoing, individual accountability regimes also include a set of obligations that have a direct bearing on individual conduct. These instruments – which exist in some national legal systems and are partially reflected in European supervisory guidelines – seek to ensure that those exercising management, supervisory or control functions act with the diligence, integrity and professional standards expected of them, and that they take the necessary measures to prevent, detect and remedy deficiencies within their area of responsibility.

The first such instrument is the duty of responsibility. In Ireland, for example, a specific legal duty of responsibility applies to persons subject to ex ante fitness and probity assessment by the supervisor.¹⁷ Within the scope of the responsibilities assigned to them, those persons must take all reasonable steps which, having regard to the specific circumstances of the case, may be expected of them to prevent the institution from breaching its legal and regulatory obligations.

When determining whether an individual has failed to comply with this duty of responsibility, the Central Bank of Ireland assesses:

17 The provision applies to members of the management body, without distinguishing between executive, non-executive and independent directors. However, it is recognised that non-executive and independent directors do not participate in the management and control of the institution in the same way as executive directors. Their responsibilities are more limited and linked to corporate governance, supervisory and control functions. They are therefore not expected to assume executive responsibilities, and the reasonable steps required of them are assessed in that context.

- the responsibilities assigned to the person, by reviewing both the mapping of duties and the statement of responsibilities. It may also consider other sources of information, such as organisational charts, minutes of meetings, emails or interviews with the supervisor;
- the reasonable steps taken by the individual to comply with their obligations in that role and at that time. For these purposes, the law takes into account, among others, the following circumstances:
 - the nature, scale and complexity of the institution’s business;
 - the functions assigned to the person and the level of knowledge and experience that could reasonably be expected of a person performing those functions; and
 - the actual level of knowledge and experience of the person concerned.

The second instrument used to strengthen the individual accountability culture is the obligation for members of the management body and senior management – and even all staff – to adhere to a code of conduct. In general, these standards include: (i) acting honestly and with integrity; (ii) acting with due diligence; (iii) cooperating in good faith and without delay with supervisors; and (iv) acting in the best interests of customers and treating them fairly and professionally.

In some Member States, such as Ireland and the Netherlands, there is a legal obligation to adhere to a code of conduct.

The Central Bank of Ireland requires every person performing a key function to comply with standards of behaviour. This also entails that institutions are required to train the staff subject to those standards and to document how compliance with them is ensured. The Central Bank of Ireland may reassess a person’s fitness and probity if it considers that he or she has failed to comply with those standards, or may even impose a sanction on that person. This is an obligation distinct from the duty of responsibility and applies to a broader group of individuals.

Meanwhile, in the Netherlands¹⁸ a professional oath is required. This is an oral and written declaration by which the person taking the oath undertakes to follow a set of moral and ethical principles in the exercise of their profession. The supervisor reviews its application in practice. The oath must be taken by all managers and employees in the banking sector.

CRD VI does not incorporate either of these two instruments, although the *Guidelines on internal governance* partially reflect them:

- As regards the duty of responsibility, the Guidelines strengthen the supervisory expectation that every person with responsibilities should take reasonable steps to prevent or remedy issues within their remit. The Guidelines establish that “an individual is found to not be

¹⁸ For further information, see De Nederlandsche Bank. (2024). [How to bring the professional oath to life in daily practice](#), and Dutch Authority for the Financial Markets (n.d.). [Oath or affirmation](#).

fulfilling their duties listed in their individual statement if an issue is detected in one of their duties or areas for which they are responsible, and the individual has not taken the actions that could reasonably be expected from them to prevent the issue from occurring or continuing to occur once brought to their attention. The institution should take appropriate measures to ensure that all individuals appropriately fulfil their duties, and the individuals should be able to demonstrate to the supervisor upon request that they have taken all actions in their position that could reasonably be expected from them.”

During the public consultation on the Guidelines, several credit institution associations criticised this approach, arguing that it de facto placed the burden of proof on individuals, going beyond the mandate of the Directive and creating legal uncertainty owing to the use of imprecise and potentially subjective concepts. They also warned that it could be interpreted as a basis for sanctioning breaches not provided for in the Directive and requested its deletion.

- As regards the code of conduct, the Guidelines recommend that institutions’ management bodies draw up and adopt codes of conduct or similar instruments, and ensure and monitor staff compliance with those standards.

Without prejudice to the implications this may have in other areas, it appears that obligations expressly laid down in legislation and those contained only in supervisory guidelines are not perceived in the same way by the persons concerned. In the former case, individuals internalise them as formal duties that form an integral part of their personal accountability framework. By contrast, obligations arising solely from EBA guidelines are more likely to be perceived as supervisory expectations whose scope depends to a greater extent on the supervisor’s interpretation.

5 Sanctioning powers

Having analysed the preventive instruments established by the Directive to strengthen accountability, it is also necessary to consider the sanctioning powers applicable to natural persons, which complement the individual accountability framework.

As regards natural persons, Article 65 of the Directive already recognised broad investigatory powers for supervisors and the right to request information from a wide range of individuals, including any person belonging to a credit institution. It also provided for the possibility of imposing penalties both on members of the management body of credit institutions and on other natural persons, provided they are responsible for the breach under national law.¹⁹

¹⁹ In the case of Member States participating in the Single Supervisory Mechanism, and without prejudice to the power of any competent authority belonging to it to initiate proceedings on its own initiative under national law in respect of functions not conferred on the European Central Bank (ECB), the ECB may require those authorities to open sanctioning proceedings against a natural person performing functions in a significant credit institution. The ECB may also make such a request in respect of less significant institutions where there are breaches of ECB regulations or decisions imposing obligations on those institutions vis-à-vis the ECB.

In line with the changes described in the preceding sections, CRD VI has introduced clarifications to the sanctions regime applicable to natural persons. In particular, senior management and key function holders are expressly included among the persons who may be subject to sanctions for infringements of the national provisions transposing the Directive and of Regulation (EU) No 575/2013 or of decisions taken by a competent authority on the basis of those provisions or that Regulation. They may be sanctioned with administrative pecuniary penalties of up to €5 million or up to twice the amount of the profits gained or losses avoided. The supervisor may also adopt other measures, such as removal from office or a public statement identifying the person concerned.

In addition, CRD VI empowers supervisors to impose periodic penalty payments not only on institutions but also on individuals, of up to €50,000. These penalty payments consist of an obligation to pay per day of breach until compliance with the relevant obligation is restored, for a maximum period of six months. They are not punitive in nature and are therefore compatible with other possible sanctions. Periodic penalty payments thus reinforce the principle of individual accountability by acting as a mechanism to compel individuals to comply with the order issued.

However, as noted above, the Directive does not specifically include the duty of responsibility or the obligation to adhere to a code of conduct and therefore does not provide for a specific sanctions regime linked to these instruments, unlike in Ireland.

Indeed, the Central Bank of Ireland may impose sanctions, including fines, on persons who breach both the conduct standards and the duty of responsibility. It may therefore take action against individuals who have breached these statutory obligations, rather than only for their participation in breaches committed by the regulated entity.

Although CRD VI has not expressly incorporated the duty of responsibility or, consequently, a sanctions regime applicable to breaches of that duty, this does not prevent supervisors from adopting other types of measures against the individuals concerned. In this respect, the reassessment of suitability is a relevant tool: if the supervisor concludes that a person no longer meets the requirements needed to properly perform their functions and responsibilities, it may ultimately order that person's removal from office. This is a strictly supervisory – not punitive – power, which serves as an effective individual accountability mechanism.

Similarly, even though the Directive does not establish adherence to a code of conduct as an obligation that is independently subject to sanctions, any serious indication that a person has failed to act in accordance with high standards of conduct should be taken into account by the supervisor as a relevant factor for the assessment of that individual's good repute, as established in the *Guide to fit and proper assessments*.

6 Conclusions

The reforms introduced by CRD VI represent a significant step forward in building a stricter and more harmonised regulatory framework for governance and individual accountability in the

European Union (EU). The obligation to document the allocation of responsibilities, draw up statements of responsibilities and periodically assess the suitability of key function holders strengthens transparency and provides supervisors with more effective tools to prevent and remedy deficiencies in management. Most of these measures are preventive in nature: they seek to ensure that individuals are aware of their specific responsibilities and can be held accountable for their decisions.

Although many of the elements that make up the individual accountability framework were already included in the European Banking Authority guidelines, their express incorporation into the Directive marks a qualitative change: they move from supervisory soft law criteria to becoming binding rules. This reflects European lawmakers' intention to reinforce their binding and homogeneous nature and to consolidate individual accountability as a structural pillar of the corporate governance framework.

At the same time, CRD VI is aligned with the EU objective of moving towards a simpler and more predictable regulatory framework that reduces unnecessary administrative burdens – particularly for smaller institutions – and facilitates supervisory work, thereby contributing to a more efficient application of the rules. In this respect, CRD VI incorporates into positive law criteria that had previously appeared only in supervisory guidelines, harmonises the suitability regime (thereby reducing fragmentation across Member States) and more clearly defines the group of persons subject to assessment. It also allows for a proportionate approach by not requiring a specific level of granularity either in the document setting out the allocation of responsibilities or in the statements of responsibilities,²⁰ and by limiting the supervisory suitability assessment to holders of certain key functions in large institutions. This is complemented by the clarification of the sanctions regime applicable to natural persons, which strengthens the predictability of supervisory action by expressly identifying senior management and key function holders as persons who may be subject to sanctions, as well as by introducing periodic penalty payments as an additional pressure mechanism.

However, because CRD VI establishes only minimum requirements and allows a degree of flexibility, differences in the interpretation and application of these provisions will persist across Member States. Some of these divergences reflect pre-existing situations that CRD VI has not fully harmonised, such as the possibility of maintaining ex post supervisory suitability assessments. A substantial part, however, will depend on the decisions adopted at national level in relation to aspects such as:

- the level of detail required in the document setting out the allocation of responsibilities and in individual statements of responsibilities, including the possible specification of additional responsibilities;
- the extension of the supervisory assessment to the chief financial officer and the heads of internal control functions of institutions not classified as large;

²⁰ It should be borne in mind that, although the *Guidelines on internal governance* provide a template statement, that template is not mandatory.

- the expansion of the perimeter of key function holders subject to supervisory assessment beyond the chief financial officer and the heads of internal control functions; and
- the establishment of a duty of responsibility or an obligation to adhere to a code of conduct.

In short, although CRD VI incorporates many of the elements characteristic of individual accountability regimes, the flexibility it leaves for national implementation means that its practical deployment will progress at different speeds within the EU, resulting in accountability models that may be more or less demanding. Although a greater degree of harmonisation would have been desirable, this appears difficult to achieve given the fragmentation of existing national frameworks. Thus, the reform recognises the desirability of moving towards greater harmonisation, but in practice gives priority to national flexibility as a necessary condition for integrating the rules into legal and supervisory systems that remain diverse.

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Table A.1
Prescribed responsibilities (Central Bank of Ireland)

General prescribed responsibilities

Responsibility for the firm's performance of its obligations under the Senior Executive Accountability Regime.
Responsibility for the firm's performance of its obligations under the Fitness and Probity Regime (including certification).
Responsibility for embedding the conduct standards throughout the firm.
Responsibility for leading the development of the firm's culture (including conduct, by the Board as a whole), including the implementation of effective conflicts of interest policies and procedures in relation to consumer protection risk.
Responsibility for adopting the firm's culture in the day-to-day operation of the firm.
Responsibility for overseeing the development of, and embedding positive culture, consumer protection and conduct risk into, the firm's remuneration policies and practices.
Responsibility for ensuring that action is taken to prevent further harm or detriment to customers where the firm becomes aware that a decision or action taken or failure to act has caused harm or detriment to customers.
Responsibility to adequately consider the impact of key business initiatives and strategic decisions and to ensure that any necessary changes are made to such initiatives/decisions prior to their implementation to avoid any harm to customers.
Responsibility for safeguarding the independence of the internal audit function and for oversight of the function and the Head of Internal Audit.
Responsibility for safeguarding the independence of the compliance function and for oversight of the function and the Head of Compliance.
Responsibility for safeguarding the independence of the risk function and for oversight of the function and the Chief Risk Officer.
Responsibility for leading the development and monitoring implementation of effective policies and procedures for succession planning, induction, training and professional development of all members of the Board.
Responsibility for ensuring the independence, autonomy and effectiveness of the firm's policies and procedures on whistleblowing.
Responsibility for monitoring implementation of effective policies and procedures for succession planning, induction, training and professional development of staff.
Responsibility for developing and maintaining the firm's recovery plan, the accurate and timely reporting of all information required for recovery and resolution purposes, the implementation of measures necessary to achieve the operationalisation of recovery and resolution strategies, and for overseeing the internal processes regarding their governance, including the coordination of the entity's compliance in those respects.
Responsibility for managing the firm's internal stress-tests and ensuring the accuracy and timeliness of information provided to the Central Bank of Ireland for the purposes of stress-testing.
Responsibility for the Board's development and maintenance of the business model.
Responsibility for managing the calculation and maintenance of the firm's capital, funding and liquidity.
Responsibility for managing the firm's treasury management functions and associated risks.
Responsibility for ensuring accuracy, completeness and timely production and submission of the firm's financial reports and regulatory returns.
Responsibility for developing structures and mechanisms to oversee, monitor, and assess the appropriateness and performance of the firm's outsourcing framework including outsourcing arrangements and associated outsourcing risks.
Responsibility for managing the anti-money laundering/countering the financing of terrorism ('AML/CFT') function, including the development, implementation and oversight of a robust AML/CFT framework including effective systems and controls.
Responsibility for the firm's compliance with client asset requirements.
Responsibility for oversight and governance of the development, design and distribution of products, review of products and sale and post-sale arrangements to ensure fair customer outcomes.
Responsibility for the development and implementation of Information and Communication Technology (ICT) strategy; ensuring the efficient and secure operation of ICT systems; oversight of delivery of ICT projects; and management and development of ICT resources.
Responsibility for leading the development of a framework for and monitoring the implementation of the conduct requirements including ensuring accuracy, completeness and timely production and submission of the firm's conduct information.
Responsibility for developing an internal audit charter, developing a risk based audit plan with appropriate and timely actions and reporting taken in relation to audit findings.
Responsibility for managing the firm's approach to identifying, assessing and managing climate-related and environmental risks.
Responsibility for overseeing the adoption of the firm's policy on diversity and inclusion.

SOURCE: Central Bank of Ireland (2023b).

Table A.2

Sector or circumstance-specific responsibilities**Credit institutions**

Responsibility for overseeing the credit granting process for new, renewal and refinancing of existing credits, providing challenge in relation to all aspects of current and proposed credit risk exposures, providing comprehensive and timely information to senior management and credit committee on the firm's adherence to policies, guidelines, procedures and limits.

Circumstance-specific responsibilities

Where the firm carries out proprietary trading, responsibility for the firm's proprietary trading activities.

Where the firm does not have a CRO, responsibility for the compliance of the firm's risk management systems, policies and procedures.

Where the firm outsources its internal audit function, responsibility for taking reasonable steps to ensure that every person involved in the performance of that function is independent from the persons who perform external audit.

Where the firm has established a specific steering committee to address regulatory matters, responsibility for managing the operation of the committee and for providing comprehensive and timely reporting to senior management and to the Board.

SOURCE: Central Bank of Ireland (2023b).

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