
Policy Rule on Fitness 2012

Policy Rule of De Nederlandsche Bank N.V. and the Dutch Authority for the Financial Markets on the assessment of the suitability of policymakers under the Financial Supervision Act (*Wet op het financieel toezicht - Wft*), the Pensions Act (*Pensioenwet - Pw*), the Mandatory Occupational Pension Scheme Act (*Wet verplichte beroepspensioenregeling - Wvb*), the Act on the Supervision of Trust Offices (*Wet toezicht trustkantoren 2018 - Wtt*), the Anti-Money Laundering and Anti-Terrorist Financing Act (*Wet ter voorkoming van witwassen en financieren van terrorisme - Wwft*), Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU, Regulation (EU) No 236/2012, Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012, Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds, Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds and Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937 (Policy Rule on Fitness 2012)

De Nederlandsche Bank N.V. (DNB) and the Dutch Authority for the Financial Markets (AFM),

After consultation with the representative organisations, the Ministry of Finance and the Ministry of Social Affairs and Employment;

Having regard to Sections 3:8, 3:271, 4:3(4) of the *Wft* in conjunction with Section 2a of the Decree on Conduct of Business Supervision of Financial Undertakings (*Besluit Gedragstoezicht financiële ondernemingen - BGfo*), Sections 4:9(1) and 5:29(1) of the *Wft*; Article 27(1) and (4) of Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (CSDR); Article 27(1) and (2) of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 (EMIR); Section 106(1) to (3) of the *Pw*; Section 110c(1) to (3) of the *Wvb*; Sections 29 and 30 of the Decree implementing the *Pw* and the *Wvb*; Sections 17aa and 26.01 of the Decree on Prudential Rules for Financial Undertakings under the *Wft* (*Besluit prudentiële regels Wft - Bpr*); Section 10(1) of the *Wtt* and Section 23h(1) of the *Wwft*; Section 15(2) opening words and (a) of Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds EuSEF; Article 14(2) opening words and (a) of Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds (EuVECA) and Article 12(2) of Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937 (CSPR).

Resolve to adopt the following joint Policy Rule on Suitability 2023:

Chapter 1. – General provisions regarding the suitability assessment of policymakers

1.1. Definitions and terms

The terms in this Policy Rule have the same meaning as in the *Wft*, the *Pw*, the *Wvb* and the *Wtt*, and the derived secondary legislation, unless they are explicitly defined otherwise in this Policy Rule.

This Policy Rule does not apply to persons who qualify only as applicants for a declaration of no objection as referred to in Section 3:95(1) of the *Wft*. Those persons are to be assessed in terms of their reputation in accordance with Section 3:100(1)(b) of the *Wft*, taking into account the Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector, adopted by the Joint Committee of the European Supervisory Authorities EBA, EIOPA and ESMA. The assessment of reputation differs from the suitability assessment under this Policy Rule and concerns a different target group.

For this Policy Rule, the terms are defined as follows:

- a) *policymaker*: a person who must or can be assessed for suitability under the *Wft*, the *BGfo*, the *Bpr*, the *Pw* or the *Wvb*, the Decree implementing the *Pw* and the *Wvb*, the *Wtt* 2018, the *Wwft*, the CSDR, the EMIR, the EuSEF, the EuVECA or the CSPR;
- b) *collective*: two or more policymakers who together determine (or help to determine) the policy of the enterprise, including its day-to-day policy, or conduct joint supervision of the policy and general affairs of the enterprise;
- c) *competences*: skills, qualities and attitudinal aspects relevant to suitability for the task or position;
- d) *enterprise*: a financial enterprise, mixed financial holding company, financial holding company or insurance holding company having its registered office in the Netherlands, market operator, electronic money institution, pension fund, occupational pension fund, crowdfunding service provider as referred to in Article 2(1)(d) of the CSPR, data reporting service provider, holder of a dispensation as referred to in Section 4:3(4) of the *Wft*, central securities depository as referred to in Article 2(1)(1) of the CSDR, central counterparty as referred to in Article 2(1) of the EMIR, provider of exchange services between virtual and fiat currencies, custodian wallet provider or trust office;
- e) *supervisor*: DNB, the AFM;
- f) *customer*: consumer, client, member, former member, pension beneficiary and other beneficiary or investor;
- g) *enterprise in group A*: investment product provider; provider of exchange services between virtual and fiat currency; custodian wallet provider; settlement institution; bank; occupational pension fund; payment institution; central securities depository as referred to in Article 2(1)(1) of the CSDR; central counterparty; clearing institution; electronic money institution; risk acceptance entity; financial holding company; mixed financial holding company or insurance holding company having its registered office in the Netherlands; financial institution; reinsurer; credit union; life insurer; market operator; funeral expenses and benefits in kind insurer; pension fund; premium pension institution; non-life insurer; trust office or exchange institution;
- h) *enterprise in group B*: credit provider; manager of investment fund; manager of a UCITS; manager of a qualifying social entrepreneurship fund as referred to in Article 3(1) opening words and (b) of the EuSEF; manager of a qualifying venture capital fund as referred to in Article 3(1) opening words and (b) of the EuVECA; investment holding company; investment company; investment firm; depository or depository of a UCITS; crowdfunding service provider; data reporting service provider; UCITS; authorised agent or authorised sub-agent or pension depository;
- i) *enterprise in group C*: adviser, broker or reinsurance broker or holder of a dispensation as referred to in Section 4:3(4) of the *Wft*.

1.2. Suitability

1. Suitability consists of knowledge, skills and professional conduct. A policymaker's suitability should at least be clear from their education, experience, competences and ongoing professional conduct. Relevant competences to demonstrate suitability are set out in the annex to this Policy Rule.

Policyholders must demonstrate suitability in the following areas:

- A. **Management, organisation and communication**, including the management of processes, task areas and employees, having sight and control of long-term value creation, observance and enforcement of generally accepted social, ethical and professional standards, including the provision of timely, accurate and clear information to customers and the supervisor;
- B. **Products, services and markets in which the enterprise operates**, including relevant legislation and regulations and financial (and actuarial) aspects;
- C. **Sound and ethical operational management**, including the administrative organisation and internal control, the safeguarding of suitability and professional competence in an enterprise, the proper treatment of customers, risk management, compliance and outsourcing;
- D. **Balanced and consistent decision-making** that accords a central role to such factors as the interests of customers and other stakeholders, and the ability to make sound, objective and independent decisions and judgements in the fulfilment of tasks and responsibilities; and
- E. **Sufficient time**, including time to understand the activities of the enterprise, its main risks and the implications of the business and risk strategy, as well as sufficient time available in periods of significantly increased activity of the enterprise or of other entities in which the policymaker fulfils a position or secondary position.

2. For the purposes of the pre-appointment assessment of a policymaker of an enterprise as referred to in Chapter 2, the suitability requirements described in part 1.2.1 are elaborated in Chapter 2.

1.3. Assessment variables

The assessment of suitability should take account of:

- a) the position of a policymaker; and
- b) the type, size, complexity and risk profile of the enterprise.

1.4. Collective

If there is a collective, the suitability assessment should take account of the composition and functioning of the collective.

1.5. Assessment times

The supervisor assesses the suitability of a policymaker at various times, namely:

- a) before a policymaker takes office, at the time of an application for a licence or registration, or the proposed appointment of a new policymaker to an enterprise that is already licensed or registered; and
- (b) after a policymaker has taken office if there are facts and/or circumstances that constitute reasonable cause.

1.6. Information and antecedents

1. When assessing the suitability of a policymaker, the supervisor takes account of information and antecedents that have a bearing on such suitability.
2. Information and antecedents as referred to in part 1.6.1 will in any event mean:
 - a) the completed and signed assessment application form specified by the supervisor;
 - b) supervision information and antecedents, such as formal and informal supervisory measures;
 - c) the policy pursued by an enterprise and its results for the purposes of recruitment and selection and for periodic assessment of policymakers. This includes:
 - i) the policy documented by the enterprise, taking account of parts 1.2.1, 1.3 and 1.4;
 - ii) the job profile drawn up by the enterprise for the position for which a policymaker is to be assessed and the decision-making process (recorded in writing) concerning the selection of a policymaker, which should also show the considerations that have led to this outcome; and
 - iii) in so far as applicable, the periodic assessment (recorded in writing) of a policymaker by reference to the job profile and the position fulfilled, including the considerations that have led to this assessment;
 - d) other information to be supplied by the enterprise in so far as it may be relevant to the assessment of a policymaker's suitability;
 - e) other information, including the involvement of a policymaker in a suspension of payments or bankruptcy; and
 - f) information in the public domain.

1.7. Evaluation of information and antecedents

When evaluating the information and antecedents referred to in part 1.6, the supervisor will take account of the following factors:

- a) the connection between the act or acts underlying the information or antecedent and the other circumstances of the case;
- b) the interests that the law is intended to protect;
- c) the other interests of an enterprise and the policymaker concerned;

- d) the value to be attached to the information or antecedent;
- e) the age of the information or antecedent;
- f) the attitude of the policymaker towards the information or antecedent and/or their reasoning in this regard;
- g) the combination of available information and antecedents.

1.8. Cooperation between the AFM and DNB

1. Without prejudice to Sections 1:49 and 1:90 of the *Wft*, Section 205 of the *Pw*, Section 199 of the *Wvb*, Section 38 of the Decree implementing the *Pw* and the *Wvb*, Sections 56 and 58 of the *Wtt* and Section 22 of the *Wwft*, the AFM and DNB will make agreements in specific cases concerning their cooperation in assessing suitability and exchanging information and antecedents in cases where the enterprise concerned falls under the supervision of both supervisors.
2. A joint panel will be established to ensure the consistent application of this Policy Rule by the AFM and DNB. This joint panel will periodically evaluate assessments made on the basis of this Policy Rule. The findings of the joint panel will be used in the periodic evaluation of the Policy Rule as referred to in part 3.1.

Chapter 2. – Further provisions governing assessment of policymakers of enterprises in groups B and C

Section 1. General

2.1.1 Period when experience acquired

In the case of all enterprises in groups B and C, policymakers must have acquired general professional knowledge and specific professional knowledge no more than five years before the time of assessment. The suitability with regard to sound and ethical operational management and managerial and leadership skills must have been acquired no more than ten years before the time of assessment.

2.1.2 Application of Chapter 1

When policymakers of enterprises in groups B and C are assessed before taking office, the following parts of Chapter 1 will in any event be taken into account:

- a. assessment variables (part 1.3);
- b. collective (part 1.4);
- c. information and antecedents (part 1.6); and
- d. evaluation of information and antecedents (part 1.7).

Section 2. Credit provider; manager of an investment fund; manager of a UCITS; manager of a qualifying social entrepreneurship fund as referred to in Article 3(1) opening words and (b) of the EuSEF; manager of a qualifying venture capital fund as referred to in Article 3(1) opening words and (b) of the EuVECA; investment holding company; investment company; investment firm; depositary; depositary of a UCITS; crowdfunding service provider; data reporting service provider; UCITS; authorised agent or authorised sub-agent or pension depositary (group B)

2.2.1 Credit provider; manager of an investment fund; manager of a UCITS; investment holding company; investment company; investment firm (with the exception of a tied agent); depositary; depositary of a UCITS; crowdfunding service provider; data reporting service provider; UCITS; authorised agent or authorised sub-agent or pension depositary

1. A policymaker of a credit provider, manager of an investment fund, manager of a UCITS, investment holding company, investment company, investment firm (with the exception of a tied agent), depositary, depositary of a UCITS, crowdfunding service provider, data reporting service provider, UCITS, authorised agent or authorised sub-agent or pension depositary will be deemed to be suitable as referred to in part 1.2.1 upon taking office if they demonstrate at least:

- a. the managerial skills necessary for day-to-day policy;
- b. the leadership skills required in a hierarchical setting;
- c. general professional knowledge gained in a relevant work setting;
- d. specific professional knowledge gained in a relevant work setting; and
- d. suitability with regard to sound and ethical operational management.

The aspects referred to in a) to e) inclusive must have been gained over a period of at least two years' work experience, at least one year of which was a continuous period.

2. In addition to the provisions of 2.2.1.1, policymakers of investment firms and data reporting service providers must:

- f. be able to take sound, objective and independent decisions and make judgements in the fulfilment of their tasks and responsibilities; and
- g. have sufficient time, including time to understand the activities of the institution, its main risks and the implications of the business and risk strategy, as well as sufficient time available in periods of significantly increased activity of the enterprise or of other entities in which the policymaker holds a position or secondary position.

3. If a manager of an investment fund, a manager of a UCITS, investment company, investment firm (with the exception of a tied agent), depositary, depositary of a UCITS, crowdfunding service provider, data reporting service provider, UCITS, or authorised agent or authorised sub-agent employs at most six persons, including policymakers, and the required two years' work experience specified in 2.2.1(1) is not a reasonable requirement in view of the nature, size and complexity of the enterprise, the minimum requirements referred to in part 2.2.1(1)(a)(c)(d) and (e) may have been acquired in one year of continuous work experience. In that case the requirement in part 2.2.1(1)(b) is not assessed.

If the enterprise expands and becomes an enterprise employing more than six persons, the policymakers of this enterprise will be reassessed by reference to the criteria relevant to them in Chapter 2.

4. If an enterprise as referred to in part 2.2.1(1) has two or more policymakers, it is sufficient:

- a. for the assessment of the leadership skills (2.2.1.1.b) that at least two of the policymakers have such skills;
- b. for the assessment of the specific professional knowledge (2.2.1.1.d) and suitability with regard to sound and ethical operational management (2.2.1.1.e) that the members of the collective together have such skills, provided always that each policymaker in any event has either the specific professional knowledge or suitability with regard to sound and ethical operational management.

2.2.2. Tied agent and manager of a qualifying social entrepreneurship fund as referred to in Article 3(1) opening words and (b) of the EuSEF and manager of a qualifying venture capital fund as referred to in Article 3(1) opening words and (b) of the EuVECA;

A policymaker of a tied agent, a manager of a qualifying social entrepreneurship fund as referred to in Article 3(1) opening words and (b) of the EuSEF and a manager of a qualifying venture capital fund as referred to in Article 3(1) opening words and (b) of the EuVECA will be deemed to be suitable as referred to in part 1.2.1 upon taking office if they demonstrate, as a minimum, general and specific professional knowledge gained during at least:

- a. one year of work experience in the case of a tied agent;
- b. two years of work experience in the case of a manager of a qualifying social entrepreneurship fund as referred to in Article 3(1) opening words and (b) of the EuSEF or a manager of a qualifying venture capital fund as referred to in Article 3(1) opening words and (b) of the EuVECA.

2.2.3. Further requirements

In addition to the minimum requirements set out in parts 2.2.1 and 2.2.2, the supervisor may, if there is

reasonable cause, decide to conduct a further assessment of the suitability of a policymaker of an enterprise referred to in the aforementioned parts by reference to the requirements set out in part 1.2.1.

Section 3. Advisers, brokers and reinsurance brokers; holders of a dispensation as referred to in Section 4:3(4) of the *Wft* (group C)

2.3.1 Advisers, brokers and reinsurance brokers; holders of a dispensation as referred to in Section 4:3(4) of the *Wft*

1. A policymaker of an adviser, broker or reinsurance broker or a holder of a dispensation as referred to in Section 4:3(4) of the *Wft* will be deemed to be suitable as referred to in part 1.2.1 upon taking office if they demonstrate:
 - a. the managerial skills necessary for policy, including day-to-day policy; and
 - b. the leadership skills in a hierarchical setting.
2. A policymaker of a broker or adviser in investment products or a holder of a dispensation as referred to in Section 4:3(4) of the *Wft* will be deemed to be suitable as referred to in part 1.2.1 at the time of taking office if, in addition to the requirements of 2.3.1.1, they demonstrate:
 - c. general professional knowledge; and
 - d. specific professional knowledge.
3. The skills and knowledge in the first and second paragraphs must have been acquired over at least two years, including a continuous period of at least one year. The skills and knowledge in the first and second paragraphs must have been acquired in a relevant work setting.
4. If an enterprise as referred to in part 2.3.1 has two or more policymakers, it is sufficient for the assessment of the leadership skills in a hierarchical setting if one of those policymakers shows that they possess such skills.
5. If a holder of a dispensation as referred to in Section 4.3(4) of the *Wft* has two or more policymakers, it is sufficient, for the purposes of assessing the specific professional knowledge as referred to in part 2.3.1.2.d, that such knowledge is available to them collectively.

2.3.2. Small advisers, brokers and reinsurance brokers

1. This article does not apply to an investment product broker or adviser and a holder of a dispensation as referred to in Section 4:3(4) of the *Wft*.
2. A policymaker of an adviser, broker or reinsurance broker employing at most six persons, including the policymakers, will be deemed to be suitable as referred to in part 1.2.1 upon taking office if they demonstrate:
 - a. managerial experience gained over a period of at least one year in a work setting relevant to the enterprise;
 - b. a higher vocational (HBO or HBO+) certificate from an education programme relevant to the enterprise and at least one year of relevant work experience acquired in the last 10 years;
 - c. a higher vocational (HBO or HBO+) certificate and at least two years of relevant work experience acquired in the last 10 years, including a continuous period of one year; or
 - d. seven years of work experience in a work setting relevant to the enterprise. During these seven years, two years' work experience must have been acquired in the last 10 years, including a continuous period of one year.
3. Notwithstanding part 1.4, the collective of enterprises as referred to in this article will in no case be assessed at the outset with regard to the composition and functioning of the collective.
4. If the enterprise subsequently expands and becomes an enterprise employing more than six persons, the policymakers of this enterprise will be reassessed against the criteria relevant to them in Chapter 2.

2.3.3. Further requirements

In addition to the minimum requirements set out in parts 2.3.1 and 2.3.2, the supervisor may, if there is reasonable cause, decide to conduct a further assessment of the suitability of a policymaker of an enterprise referred to in those parts by reference to the requirements set out in part 1.2.1.

Chapter 3. – Final provisions

3.1. Evaluation

This Policy Rule will be periodically evaluated.

3.2. Repeal

The Expertise Policy Rule 2011 (Government Gazette 2010, 20810) is hereby repealed.

3.3. Entry into force

This Policy Rule enters into force on 1 July 2012. If the Government Gazette in which this Policy Rule appears is published after 2 July 2012, this Policy Rule will enter into force with effect from the day after the date of publication of the Government Gazette in which it appears and will have retroactive effect to 1 July 2012.

3.4. Short title

This Policy Rule must be cited as: Policy Rule on Fitness 2012.

This Regulation and the accompanying explanatory notes will be published in the Government Gazette.

Amsterdam, 8 March 2023

*S.J. Maijoor
De Nederlandsche Bank N.V.,*

Amsterdam, 8 March 2023

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Annex – Competences in alphabetical order (belonging with part 1.2.1)

- a) *Adaptability*: the ability to respond in a timely and appropriate manner to expected and unexpected changes and translate them into adjustments in the enterprise. Is able to adapt the leadership style as the situation requires.
- b) *Authenticity*: is consistent in word and deed and behaves in accordance with their own stated values and beliefs. Communicates openly about their intentions, ideas and feelings, fosters a climate of openness and honesty and informs the supervisor of the actual situation while acknowledging risks and problems.
- c) *Decisiveness*: takes timely and well-informed decisions by acting promptly or by committing to a particular course of action, for example by expressing their views and not procrastinating.
- d) *Communication skills*: is capable of conveying a message in an understandable and acceptable manner and in an appropriate form. Focuses on clarity, transparency and actively giving and receiving feedback.
- e) *Helicopter view*: Has the breadth of vision to look beyond their own area of responsibility. Can distinguish essential issues from secondary issues and identify connections. Is able to see the bigger picture and determine the approach or steps to be taken, particularly when material risks arise that may jeopardise the continuity of the enterprise.
- f) *Customer and quality-oriented*: focuses on providing quality and, wherever possible, finding ways of improving it. Specifically, this means withholding consent for the development and marketing of products and services and for capital expenditure on, for example, products, office buildings or participating interests in circumstances where they are unable to gauge the risks sufficiently owing to a lack of understanding of the architecture, basic principles or assumptions. Identifies and examines the wishes and needs of customers and acts accordingly, ensures that customers incur no unnecessary risks and ensures the provision of accurate, complete and balanced information for customers. A transparent sales process, careful service provision and appropriate advice play a central role in this regard. In doing so, is mindful of the fact that delivering quality involves more than just complying with laws and regulations.
- g) *Leadership*: provides direction and guidance for a group, develops, maintains and encourages teamwork, motivates and develops the available staff. Ensures that staff have the professional competence to achieve a particular goal. Identifies and reveals common interests in a manner designed to build consensus while pursuing the negotiating objectives. Possesses self-knowledge based on continuous reflection/self-reflection and assessment by stakeholders and others. Applies this reflection/self-reflection to desired improvements and changes. Is receptive to criticism and provides scope for critical debate. Encourages a compliance-aware and inclusive corporate culture and a healthy risk culture.
- h) *Learning ability*: the ability to absorb new information and then apply it effectively for the organisation or in their own performance. It is also about applying existing knowledge and being able to reflect on and willing to learn from mistakes made.
- i) *External awareness*: Is well informed about relevant financial, economic, social and other developments at national and international level that may be of importance to the organisation and its operational management and about the interests of external stakeholders and is able to put this information to effective use.
- j) *Organisational awareness*: Monitors developments, power relationships and attitudes within the organisation. Also takes into account the interests of the internal stakeholders and is able to put this information to effective use.
- k) *Independence*: is autonomous in their conduct, has the courage to take and defend their own position in relation to others (and any sectional interests) in the interest of the enterprise. Takes an objective and critical stance. Recognises and anticipates potential conflicts of personal and business interests. Holds to their own views under pressure, when the task so requires.
- l) *Persuasive power*: is capable of influencing the views of others by exercising persuasive powers and using natural authority and tact. Is capable of standing firm.
- m) *Judgement*: is capable of weighing up data, interests and different courses of action and coming to a logical, *realistic and reasoned* judgement, *conclusion or opinion*. Examines, recognises and understands the essential elements and issues.
- n) *Capacity for teamwork*: is aware of the group interests and makes a contribution to the common result. Is able to function as part of a team.
- o) *Strategic acumen*: is capable of developing a realistic vision of future developments and translating this into long-term objectives by means of strategic planning, for example by applying

scenario analysis. In doing so, takes proper account of risks to which the enterprise is exposed and takes appropriate measures to control them.

- p) *Stress resistance*: is able to perform consistently, even when under great pressure and in times of uncertainty.
- q) *Responsibility* Is engaged and committed to the organisation. Understands the internal and external interests, weighs them carefully from the perspective of individual (and collective) responsibility; acts accordingly and accounts for actions. Invites openness and honesty both internally and externally, including informing the supervisor of relevant circumstances in a timely and accurate manner. Shows learning ability. Is aware that their actions affect the interests of stakeholders and society as a whole.
- r) *Chairing meetings*: is capable of chairing meetings efficiently and effectively. Monitors the quality of the decision-making. Is able to create an open and inclusive atmosphere in which everyone can participate on an equal footing and diversity is embraced. Is aware of other people's duties and responsibilities, presents challenges and fosters mutual cooperation.

This list of competences (a to r inclusive) is not intended to be either cumulative or exhaustive.

EXPLANATORY NOTES

General

(b) General notes and reading guide

1. Objective

The objective of this Policy Rule is to clarify what the supervisor understands by 'suitability' and which aspects are taken into account in assessing the suitability of a policymaker. This Policy Rule also clearly states when policymakers can or should be assessed and what information and antecedents the supervisor should take into account in such an assessment.

2. Intended effect

The Policy Rule is intended to ensure that policymakers in the financial sector are aware or more fully aware of their duties and public responsibility and exhibit this awareness in their actions.

The Policy Rule does not purport to allocate the legal obligations of enterprises to individual policymakers, but it does seek to instil in individual policymakers the notion that they are duty-bound to see that the enterprise fulfils those obligations.

If in a licence application – or, where applicable, a registration application – the supervisor considers that a policymaker is not suitable, the licence – or registration – cannot be granted. If an assessment concerns a new appointment of a policymaker in a licensed – or, where applicable, a registered – enterprise and the supervisor finds the prospective policymaker unsuitable, the nomination of the intended policymaker will be rejected.

Suitability, unlike trustworthiness (propriety), refers to the relevant function of the policymaker. In principle, when a policymaker moves to a different post, a reassessment will take place within the meaning of part 1.5(a). Furthermore, when facts or circumstances change, it may be necessary to reassess the suitability of a policymaker who has already been assessed, as referred to in part 1.5(b) of the Policy Rule. Such a reassessment is conducted when the supervisor believes there is reasonable cause. When examining a 'reasonable cause', the supervisor will assess various factors, such as the seriousness of the facts and circumstances, engagement, the degree of culpability, the imputability, the social impact and the duration/recurrence. When examining the reasonable cause, the supervisor will be particularly mindful of settlements with, fines imposed on or convictions of a financial enterprise.

The supervisor may issue an instruction. An instruction requires the enterprise to adopt a prescribed course of action within a specific time limit set by the supervisor. An example is the nomination of a new policymaker. The supervisor may also issue an instruction for the dismissal of a policymaker.

3. Reason for 2022 evaluation

Since 2012, this Policy Rule has been periodically evaluated in accordance with part 3.1 of the Policy Rule.

In 2022, the AFM and DNB evaluated the content of the Policy Rule in accordance with part 3.1 of the Policy Rule. The evaluation of the Policy Rule on Fitness consisted of two parts:

1. The evaluation of the cooperation arrangements between the AFM and DNB for suitability assessments and exchanges of information and antecedents in the case of an enterprise supervised by both supervisors. In accordance with part 1.8 of the Policy Rule, a joint DNB-AFM panel periodically reviews assessments based on this Policy Rule. On the basis of the evaluation, the panel sees no grounds to amend the cooperation arrangements;
2. A public consultation on the amended Policy Rule. Market participants provided input on the changes proposed by the AFM and DNB.

4. Basic criteria for suitability assessment

The basic criteria applied in this Policy Rule are:

- Suitability is a continuous requirement.
- The enterprise is responsible for appointing (and retaining) suitable policymakers.
- The enterprise must verify the suitability of its policymakers and convince the supervisor of it. This Policy Rule provides the enterprise with various tools to achieve this.
- Policymakers must be suitable having regard to the obligations imposed on enterprises by law and by European and other regulations¹.
- By law the supervisor has its own responsibility for assessing the suitability of policymakers. The supervisor bases its judgement on the requirements and basic criteria set out in this Policy Rule.

5. Scope

This Policy Rule applies to the policymakers (within the meaning of this Policy Rule) of all enterprises covered by the *Wft*, *Pw*, *Wvb*, *Wtt*, *Wwft*, EMIR, EuSEF, EuVECA, CSPR or CSDR. These are enterprises supervised by either DNB or the AFM, or jointly by both. The definition of policymaker in this Policy Rule includes all persons whose suitability can or must be assessed under the *Wft*, *BGfo*, *Bpr*, *Pw*, *Wvb*, *Wtt*, *Wwft*, EMIR, EuSEF, EuVECA, CSPR or CSDR (see also the notes to part 1.1). The Policy Rule applies to all these policymakers.

If the ECB has exclusive competence to decide on the suitability of a policymaker, it is in principle not bound by the provisions of this Policy Rule when doing so.

When assessing the suitability of a policymaker in any of the sectors covered by the revised [EBA/ESMA Guidelines](#) effective as of 31 December 2021 on the assessment of the suitability of members of the management body and key function holders of banks and investment firms and the ESMA Guidelines of 19 December 2017 on the management body of market operators and data reporting service providers, the AFM and DNB will, in addition to the provisions of this Policy Rule, apply the relevant provisions of these Guidelines.

The revised [EBA/ESMA Guidelines](#) effective as of 31 December 2021 on the assessment of the suitability of members of the management body and key function holders of banks and investment firms expressly provide that risks include those related to money laundering and terrorist financing, as well as environmental, social and governance risk factors. The AFM and DNB endorse this determination. In the opinion of the AFM and DNB, this determination applies to all sectors. Where the suitability assessment relates to risks (and risk control), these also include these specific risks and risk factors in the assessment. The assessment takes into account:

- the policymaker's position;
- the nature, size, complexity and risk profile of the enterprise where the policymaker works;
- the composition and functioning of the collective.

This does justice to the differences between the various types of policymakers and enterprises operating in the financial sector. From the supervisor's perspective, there are no overriding reasons for admitting further variation in the interpretation of the requirements, with the exception of the specific suitability criteria for key function holders of pension funds and premium pension institutions that DNB has published on Open Book on Supervision.

The suitability requirement is enshrined in the following legal provisions:

Supervisor	Act	Relevant provisions	Standard
DNB	Financial Supervision Act (<i>Wft</i>)	Sections 3:8; 3:100(1b); 3:271	The day-to-day policy is determined by persons who are fit to conduct the business of the financial or other enterprise
AFM	Financial Supervision Act (<i>Wft</i>); Decree on Conduct of Business Supervision of Financial Undertakings (<i>BGfo</i>)	Section 4:3(4) in conjunction with Section 2a of the <i>BGfo</i> ; 4:9(1);	The day-to-day policy is determined by persons who are fit to conduct the business of the financial or other enterprise. The day-to-day policy of the holder of a dispensation as referred to in Section 4:3(4) of the <i>Wft</i> for brokers raising or obtaining access to repayable funds from the public is

¹ the suitability assessment takes account of the guidelines drawn up by the European supervisory authorities and applied in supervisory practice by both the AFM and DNB.

Supervisor	Act	Relevant provisions	Standard
		Section 5:29(1) of the <i>Wft</i>	determined by persons who are suitable for the conduct of the holder's business.
AFM	Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds (EuSEF)	Article 15(2) opening words and (a)	The persons who actually manage qualifying social entrepreneurship funds are known to be sufficiently trustworthy and experienced, including with regard to the investment strategies pursued by the manager of a qualifying social entrepreneurship fund.
AFM	Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds (EuVECA)	Article 14(2) opening words and (a)	The persons who actually perform the business activities relating to the management of qualifying venture capital funds are known to be sufficiently trustworthy and experienced, including with regard to the investment strategies pursued by the manager of a qualifying venture capital fund.
AFM	Regulation (EU) No 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business, and amending Regulation (EU) No 2017/1129 and Directive (EU) 2019/1937 (CSPR)	Article 12(2)(I)	The persons responsible for managing the prospective crowdfunding service provider are known to be trustworthy and to have sufficient knowledge, skills and experience to manage the prospective crowdfunding service provider;
DNB	Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 (EMIR)	Article 27(1) and (2)	The senior management of a CCP must be sufficiently trustworthy and experienced to guarantee the sound and prudent operational management of the CCP. The members of the board of a central counterparty, including independent members, must have a good reputation and appropriate experience in financial services, risk management and clearing services.
AFM	Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (CSDR)	Article 27(1) and (4)	The executive board of a CSD is sufficiently reputable and experienced to ensure the sound and prudent operational management of the CSD. The management body consists of suitable members who are known to be sufficiently trustworthy and have an appropriate combination of skills, experience and knowledge of the entity and of the market. The non-executive members of the management body set a target for the representation of the under-represented gender in the management body and outline a policy to increase the number of representatives of the under-represented gender in order to meet the target. The target, the policy and its implementation will be made public.
DNB	Pensions Act (<i>Pw</i>), Mandatory Occupational Pension Scheme Act (<i>Wvb</i>), Decree implementing the <i>Pw</i> and the <i>Wvb</i>	Section 106(1) to (3) of the <i>Pw</i> ; Section 110c(1) to (3) of the <i>Wvb</i> ; Sections 29 and 30 of the Decree implementing the <i>Pw</i> and the <i>Wvb</i>	The policy is determined or codetermined by persons who are fit to conduct the business of the pension fund and the occupational pension fund. The internal supervision of a pension fund by a review committee is conducted by persons fit to conduct such supervision. The risk management, internal audit and actuarial functions in a pension fund are exercised by persons fit to perform those functions.
DNB	Act on the Supervision of Trust Offices 2018 (<i>Wtt</i>)	Section 10(1) of the <i>Wtt</i> 4	The suitability of members of the executive and supervisory boards of a trust office, persons who determine or codetermine the policy of the trust office and persons who have a qualifying holding in the trust office is beyond doubt.
DNB	Anti-Money Laundering and Anti-Terrorist Financing Act (<i>Wwft</i>)	Section 23h(1)	The policy of a provider as referred to in Section 23b is determined or codetermined by persons who are fit to provide the services of that provider. If a body within that provider has been entrusted with the oversight of the provider's policy and general affairs, such oversight must be exercised by persons who are fit to exercise it.

6. Proportionate application of the suitability requirements

The supervisor has divided enterprises into three groups on the basis of criteria such as the size of the supervision population, the nature, size, complexity and risk profile of an enterprise, the type of products or services offered by an enterprise and the type of supervision (prudential or conduct) relevant to an enterprise. The groups are as follows: A, B and C:

- Group A: providers of investment products; providers of exchange services between virtual and fiat currency; custodian wallet providers; settlement institutions; banks; occupational pension funds; payment institutions; central counterparties; central securities depositories as referred to in Article 2(1)(1) of the CSDR; clearing institutions; electronic money institutions; risk acceptance entities; financial holding companies; mixed financial holding companies or insurance holding companies having their registered office in the Netherlands; financial institutions; reinsurers; credit unions; life insurers;

market operators; funeral expenses and benefits in kind insurers; pension funds; premium pension institutions; non-life insurers; trust offices or exchange institutions.—

- Group B:
credit providers; managers of an investment fund; managers of a UCITS; managers of a qualifying social entrepreneurship fund as referred to in Article 3(1) opening words and (b) of the EuSEF; managers of a qualifying venture capital fund as referred to in Article 3(1) opening words and (b) of the EuVECA; investment holding companies; investment companies; investment firms; depositaries or depositaries of a UCITS; crowdfunding service providers; data reporting service providers; UCITS; authorised agents or authorised sub-agents or pension depositaries;
- Group C:
Advisers, brokers or reinsurance brokers or holders of a dispensation as referred to in Section 4:3(4) of the *Wft*.

The above division of enterprises into groups means that the suitability requirements included in Chapter 1, part 1.2, can be applied proportionately and at the same time provides an assurance that policymakers in different types of enterprises will be assessed in a consistent manner.

7. Structure and arrangement of the Policy Rule

Chapter 1 – General provisions regarding the suitability assessment of policymakers

Chapter 1 sets out the general framework for the suitability of policymakers. It sets out the principle-based² criteria for the definition of the term 'suitability' (part 1.2), the assessment variables (part 1.3), the composition and functioning of the collective (part 1.4), the assessment times (part 1.5), the use and assessment of information and antecedents (parts 1.6 and 1.7) and cooperation with regard to the suitability assessment by the supervisor (part 1.8).

Policymakers of all enterprises – irrespective of the group of which they form part – must comply with the principle-based criteria in Chapter 1, part 1.2.

Chapter 2 – Further provisions governing assessment of policymakers of enterprises in groups B and C

In the case of policymakers of the enterprises in groups B and C, the assessment is performed on the basis of rule-based criteria before they take office. For these policymakers Chapter 2 implements part 1.2.1. The other parts of Chapter 1 remain fully in force.

In principle, policymakers of enterprises in groups B and C are assessed before they take office on the basis of Chapter 2 in fulfilment of part 1.2.1, unless the supervisor sees grounds – e.g. the size, risk profile or type of activities of the enterprise – for a more extensive assessment, i.e. by reference to part 1.2.1 (see also the example provided in the notes to parts 2.6 and 2.9).

Chapter 3 – Final provisions

Chapter 3 contains final provisions on the evaluation of the Policy Rule, the repeal of the AFM's and DNB's existing Policy Rule on Fitness 2012, the entry into force of this new Policy Rule on Suitability 2023 and the short title.

8. Which requirements apply to which policymaker at which time?

The table below is a schematic representation of the relevant provisions applicable before a policymaker takes office (part 1.5.a) and after a policymaker takes office (part 1.5.b) for the three groups of enterprises.

² Principle-based criteria are criteria that specify an objective rather than setting out detailed requirements and how they must be complied with.

Assessment times → ↓ Enterprises	Before policymaker takes office	After policymaker takes office, if reasonable grounds exist
Group A investment product providers; providers of exchange services between virtual and fiat currency; custodian wallet providers; settlement institutions; banks; occupational pension funds; payment institutions; central securities depositories as referred to in Article 2(1)(1) of the CSDR; central counterparties; clearing institutions; electronic money institutions; risk acceptance entities; financial holding companies; mixed financial holding companies or insurance holding companies having their registered office in the Netherlands; financial institutions, reinsurers; credit unions; life insurers; market operators; funeral expenses and benefits in kind insurers; pension funds; premium pension institutions; non-life insurers (licensed); trust offices or exchange institutions	Chapter 1	Chapter 1
Group B credit providers; managers of investment funds; managers of UCITS; managers of qualifying social entrepreneurship funds as referred to in Article 3(1) opening words and (b) of the EuSEF; managers of qualifying venture capital funds as referred to in Article 3(1) opening words and (b) of the EuVECA; investment holding companies; investment companies; UCITS, investment firms; depositaries or depositaries of a UCITS; crowdfunding service providers; authorised agents or authorised sub-agents; pension depositaries; or data reporting service providers	Minimum requirements of Chapter 2, Sections 1 and 2, in fulfilment of part 1.2.1. If there are reasonable grounds, assessment of requirements of part 1.2.1. Other parts of Chapter 1 remain fully in force.	Chapter 1
Group C Advisers, brokers or reinsurance brokers; holders of a dispensation as referred to in Section 4:3(4) of the <i>Wft</i> .	Minimum requirements of Chapter 2, Sections 1 and 3, in fulfilment of part 1.2.1. If there are reasonable grounds, assessment of requirements of part 1.2.1. Other parts of Chapter 1 remain fully in force.	Chapter 1

b) Explanatory notes on each chapter

Chapter 1 – General provisions regarding the suitability assessment of policymakers

1.1 Definitions and terms

Policymaker

The Policy Rule defines the policymaker as a person whose suitability must be assessed on the basis of a supervisory act, decree or regulation on which this Policy Rule is based (*Wft, Pw, Wvb, Wtt, Wwft, Bpr, BGfo, EMIR, EuSEF, EuVECA, CSPR and CSDR*), provided the supervisor sees grounds to do so. The notion of policymaker in this Policy Rule differs from that used in the various supervisory laws. In this Policy Rule, the notion of policymaker extends to all persons who are required to be suitable for the purposes of the above-mentioned supervisory law, decree or regulation.

Under the aforementioned supervisory laws and regulations, the definition of policymakers covers a wide range of persons with different types of positions, ranging from executive board members, supervisory board members, day-to-day policymakers (who define the policy and take decisions for the day-to-day operations of the business) and co-policymakers (such as members of a stakeholder body as referred to in the *Pw* and the *Wvb*) of the enterprise through to persons working under the responsibility of a bank, credit union or insurer, who hold a management position directly below the level of policymakers and are responsible for natural persons whose activities could materially affect the risk profile of the bank, credit union or insurer (second level), and key function holders and members of the review committee referred to in the *Pw, Wvb* and *Bpr*.

It should be noted that qualification as a policymaker or co-policymaker, including with responsibility for day-to-day matters, as set out in the above supervisory laws and regulations, is determined by the actual situation, irrespective of the title of the position. The question is whether the person actually determines the enterprise's policy and decision-making. Persons who are not directors may also have such influence that they actually determine or codetermine the policy, including with regard to day-to-day matters. In order to determine the group of persons to be assessed, it will therefore be necessary to look not only at

the legal structures but also at those who have a real influence on policymaking. For example, a director of a pension office could, in practice, qualify as a co-policymaker.

The suitability requirements are applied proportionately, taking into account, for example, the position of the policymaker (see also the notes to part 1.3).

Collective

The Policy Rule uses the term 'collective'. This is broader than the term 'collegiate management', which means that the directors share ultimate responsibility for the enterprise. In the case of the 'collective', the group of persons to be assessed is determined not only by reference to legal structures but also by reference to the persons who actually influence policymaking.

1.2 Suitability

The notion that not only knowledge but also skills and professional conduct are essential qualities for a policymaker in the financial sector is not new. Even in the past, policymakers were assessed in terms of their knowledge and experience and how they applied it in practice.

By defining suitability in this way, the supervisor aims to state even more explicitly than in the past that each of the three elements – knowledge, skills and professional conduct – is essential in assessing the suitability of a policymaker. Policymakers must continuously demonstrate in practice – through their conduct – that they apply their knowledge and skills appropriately and carefully and conduct themselves in a professional manner. The performance of a policymaker in practice and day-to-day operations is the litmus test for suitability. A policymaker has primary responsibility in an enterprise for the application of the conduct and prudential standards by the enterprise. In this way a policymaker sets an example for an enterprise.

Knowledge, skills and professional conduct

Knowledge is about what someone knows and what substantive insight they have gained (the 'what'). Skills indicate what someone can do and what they can accomplish in specific situations, for example in negotiating processes, during ('bad news') interviews and in the course of decision-making (the 'how'). Skills and knowledge can, in principle, be learned, for example during training sessions or *on the job*. Conduct comes from inside a person and is influenced by external factors. It is determined by character and by the standards and values of both the person concerned and those around them. Insofar as this relates to the duties and responsibilities of a policymaker of an enterprise, it also applies to professional conduct. These are the personal qualities and actions that reflect the attitude or style both in the workplace and in the boardroom and in relation to customers, the supervisor and other stakeholders. To some extent professional conduct too can be learned.

It is not easy to draw a clear line between the three elements of suitability. Nor is it necessary. What is important is that the individual elements – knowledge, skills and professional conduct – are complementary: a person who has extensive knowledge of the operation of financial products but is not able to convey or generate this knowledge within an enterprise and/or to customers is not a suitable policymaker. The same is true of a person who does have the right knowledge and skills but is disinclined to make every effort to act in the interests of the enterprise, for example due to nonchalance, negligence or carelessness. The amount of time that the policymaker has available to perform their duties can also play a role. The policymaker may consider other things more important, may appear disloyal and may be seemingly insufficiently committed to the enterprise. They have the knowledge and capacity but not the will.

Demonstration of suitability

Suitability can be demonstrated, for example, by means of training, relevant work experience and competences. Certificates must in any event be submitted as proof of educational qualifications. Given the pace of change in the financial markets, training and experience should not be outdated. *Relevant* work experience means experience gained in a work environment that is largely similar to or has sufficient

points in common with the type of enterprise and the type of position in which a policymaker wishes to work. Competences may also have been gained elsewhere.

Competences that are regarded as relevant are listed in the annex. These competences are not cumulatively related and do not apply exhaustively. This means that competences other than those mentioned in the annex may be used to demonstrate suitability. It is up to the enterprise to show, together with the policymaker, what competences the policymaker possesses and how they apply them.

The supervisor expects a policymaker to have certain competences and also to demonstrate them in the performance of their duties. A policymaker need not possess all competences simultaneously or to an equal extent. In order to demonstrate competences, an enterprise may, for example, carry out an assessment of the policymaker.

Which competences are important for demonstrating suitability depends partly on a policymaker's position, the nature of the responsibilities and the relevant context. Hence it may be difficult for some of the competences – at least as described in the annex – to be combined in the person of a single policymaker. Having regard to the assessment variables and the composition and performance of the collective, the competences a policymaker needs may differ from job to job and from enterprise to enterprise. See also the notes to parts 1.3 and 1.4.

If the supervisor decides that an interview with a policymaker is necessary in order to establish their suitability, it will assess whether the picture that the enterprise has presented of this suitability is consistent with the picture that emerges from the interview, possibly in combination with any supervision information and antecedents that are available in relation to the enterprise or policymaker concerned.

Areas of suitability

A policymaker must have knowledge and skills and demonstrate professional conduct in various fields. Accordingly, a policymaker must have suitability in the following areas:

- A. **Management, organisation and communication**, including managing processes, task areas and employees, having sight and control of long-term value creation, and observing and enforcing generally accepted social, ethical and professional standards, including the provision of timely, accurate and clear information to customers and the supervisor.

A policymaker must not only have knowledge of management, organisation and communication, but also possess the necessary skills. These skills can be demonstrated, for example, by the competences referred to in the annex.

It is important that a policymaker is able to assess proposals, actions and opinions of staff and external advisers. Policymakers can also gauge the value of proposals, practices and conduct of their fellow policymakers. Professionalism in relation to management, organisation and communication is focused mainly on the observance and enforcement of social, ethical and professional standards as set out in corporate governance codes and codes of conduct and the observance and enforcement of internal rules and applicable laws and regulations.

If customers are to have confidence in the financial markets, it is essential for them to receive timely, clear and accurate information. For many members of pension funds, occupational pension funds and premium pension institutions, the pension is a complex financial product. Understanding the importance of clear communication on pensions and the pension fund, as well as the premium pension institution, is therefore essential. In addition, it is important that the supervisor receives timely, clear, accurate and full information. This is a key condition for the continuity of the exercise of supervision. Without information it is impossible for the supervisor to have a full picture of the potential risks associated with an enterprise. Both knowingly supplying false information (presenting matters in a way that does not correspond to reality) and unknowingly supplying false information (not understanding the true situation) to customers or the supervisor can affect the suitability of a policymaker. Similarly, a failure to supply information (or timely information) to customers or the supervisor may adversely affect the level of suitability.

Example

Polymakers of an enterprise failed to inform the supervisor in good time of recent incidents, such as non-compliance with the liquidity requirement, financing problems in relation to a property and, more generally, events posing a threat to the continuity of the enterprise. Moreover, the supervisor asked the enterprise several times whether there might be business continuity risks for the enterprise in view of the negative market developments. On each occasion this question was answered in the negative by all the policymakers. Recently, the enterprise also supplied incorrect information to the supervisor on several occasions. It is therefore no longer beyond doubt that the supervisor is being kept informed by the enterprise in a correct and reliable manner. Such events form part of the supervision record of the enterprise. The supervisor takes this into account when assessing the suitability of the policymakers of the enterprise.

There must also be sufficient knowledge in the management body about the effects of climate change and the relevant sustainability regulations applicable in the financial sector. It is important that policymakers, making up the senior level of the institution, embed climate and environmental risks in the governance, strategy, risk appetite and risk management framework. Among other things, the supervisor expects prospective sole or joint policymakers to have knowledge of these risks, the relevant laws and regulations and how they may affect the institution. It also assesses whether they have sufficient competences to properly assess these risks and include them in decision-making, such as a helicopter view, environmental awareness and strategic direction. The supervisor applies this expectation proportionately, taking into account the specific post, the nature, size, complexity and risk profile of the institution and the composition and performance of the collective.

B. Products, services and markets in which the enterprise operates, including relevant laws and regulations and financial (and actuarial) aspects.

A policymaker of an enterprise is responsible for ensuring that there is sufficient suitability at all levels of the enterprise in relation to products, services and markets in which an enterprise operates, so that it complies with both the prudential requirements and the conduct of business supervision requirements. A policymaker is expected to assume responsibility and account for both of these aspects. This means, first of all, that policymakers must themselves be suitable. For example, a knowledge of the technical aspects of insurance is essential for an insurer. A policymaker is therefore expected to have sufficient knowledge of all aspects of insurance, such as new business development, pricing, investment, reinsurance and IT. Second, policymakers must ensure that this suitability is embedded within the organisation (see also the notes to C below), for example through lifelong learning for staff. The pension is a financial product. Therefore, a policymaker of a pension fund, occupational pension fund or premium pension institution must have sufficient knowledge to adequately understand asset management, pension schemes, pricing and insurance/reinsurance as well as the relevant laws and regulations in these areas. To the extent that enterprises are subject to conduct of business supervision, an enterprise is also expected, for the purpose of its duty of care towards customers, to have knowledge not only in relation to the products, services and markets, but also knowledge of which products are appropriate for which target group of customers and to use that knowledge in the development and distribution of products.

C. Sound and ethical operational management, including the administrative organisation and internal control, the safeguarding of suitability and professional competence³ in an enterprise, the proper treatment of customers,⁴ risk management, compliance and outsourcing.

Sound and ethical enterprises with a focus on the long-term interests of the enterprise are essential to safeguard financial stability. Partly for this reason, it is essential that enterprises ensure sound and ethical operational management. Responsibility for this lies primarily with the policymakers of the enterprise concerned.

To ensure that suitability is embedded within the enterprise, an enterprise should have a recruitment and selection policy and a policy for the periodic assessment of all its staff (including the policymakers) as part

³ In accordance with Section 4:9(2) and (3) of the *Wft*, the provisions of this Policy Rule on professional competence apply only to financial service providers and investment firms.

⁴ In accordance with Section 4:14(2)(b)(3) of the *Wft*, the provisions of this Policy Rule concerning the proper treatment of customers apply only to managers, investment funds, UCITS, investment firms, depositaries, data reporting service providers or pension depositaries.

of its sound and ethical operational management. It should also be able to identify a possible lack of suitability at an early stage and take appropriate measures to remedy or compensate for the situation. Part of this policy is the use of job profiles in the recruitment and selection process and in periodic reviews (see also the notes to part 1.6.2.c).

A policymaker must be fit to ensure that the enterprise guarantees sound and ethical operational management. They must therefore be suitable (and constantly apply that suitability) in relation to matters such as the segregation of duties, clear division of responsibilities, frameworks and guidelines, administrative organisation and internal control, proper records of the decision-making process, crisis measures and plans, compliance with internal and external laws or rules, maintaining the requisite insurance (including professional liability insurance), measures to ensure that the organisation is 'in control' of outsourcing, adequate risk management, customer satisfaction, suitability safeguards and, in so far as financial service providers and investment firms are concerned, professional competence within the enterprise.

A suitable policymaker is therefore capable of providing a reasoned answer to the following types of question (the list is not exhaustive): How do you ensure that the administrative organisation remains adequately geared to the growth of the business? How have you ensured that the internal control process is focused on obtaining a reasonable degree of assurance about the achievement of the organisation's objectives? How is risk management designed? Is the independence of the risk management function guaranteed? Are the correct risks identified and, if so, is there a proper spread of risk over time and throughout the business? Are scenario analyses used in this connection? Are proper measures in place at all levels of the organisation to ensure suitability and, in the case of financial service providers and investment firms, professional competence? How is the 'four-eyes principle' applied? Does the decision-making process allow for sufficient consideration of alternatives? How does the enterprise avoid conflicts of interest when taking decisions? How does the production and distribution process ensure that the products are appropriate for specific customer groups and that these customers receive proper information and treatment?

An enterprise must ensure adequate and structural risk management. Policymakers must be suitable in relation to risk management activities and the embedding of the risk management function in the enterprise, so that they are able to identify and recognise risks in good time in order to manage or mitigate them. An essential part of risk management is the use of stress tests with scenario analyses. External awareness, a helicopter view and judgement are important competences in risk management, for example.

Since the management body plays a crucial, active role in the business strategies and IT risk management, and is entirely responsible for it, it is not only important that it is technically competent to take on that responsibility and takes decisions that are auditable by the supervisor, but also that it maintains its knowledge and skills in order to understand and assess IT risks and their impact on the financial enterprise's operations.

A policymaker must also have an understanding of outsourcing. Many enterprises outsource business to third parties, including ICT service providers. For example, many pension funds and occupational pension funds outsource activities such as asset management and administration to third parties. It is important that the policymakers are 'in control' with regard to those parties' operations and mitigate the outsourcing risks. This will require them, among other things, to have knowledge of third-party products so they can assess independently, without influence from the third party, whether those products are in the interests of the enterprise and stakeholders.

It is important that policymakers have sufficient knowledge, experience and skills with regard to climate and environmental risks to assess the institution's exposure to these risks, and are able to take balanced decisions on them. This is part of sound and ethical operational management. As these risks are relatively new, complex and diverse, building suitability within the collective, as well as individually where relevant, is particularly important.

In addition to the above cases, a policymaker must also be fit to ensure that the enterprise has control of integrity risks, including with regard to laws on money laundering and terrorist financing, conflicts of

interest, criminal offences and violations of the law, customer due diligence and socially unacceptable conduct.

Examples

Operating in a controlled manner in financially difficult times should not in any event lead to new risks being incurred solely for the purpose of covering existing risks, whether temporarily or otherwise. Instead, it should provide for a permanent solution. Investing private assets in order to make up temporarily for a financial shortfall is an example of a solution that does not qualify as permanent in any circumstances. If certain undesirable events have occurred – for example temporary resolution of continuity problems by transferring assets from related businesses – an enterprise must take steps to improve the structure and operation of its risk management in order to avoid a repetition of such events in the future.

A policymaker of an enterprise is found to be insufficiently capable of identifying and eliminating potential risks (before they materialise). For example, in his dealings with customers and the supervisor, he is repeatedly too optimistic about the result of negotiations. He also fails to keep a proper record of oral agreements (made both internally and with banks about the financing) and is too trusting. By acting inappropriately, the policymaker exposes the enterprise and its customers to unnecessarily high risk. Even after the supervisor has stressed to the policymaker the importance of taking urgent measures, he ultimately fails to identify and manage the principal risks. It is also found that the policymaker is still not always recording and confirming agreements in writing.

- D. **Balanced and consistent decision-making** that accords a central role⁵ to the interests of customers and relationships with other stakeholders and the ability to make sound, objective and independent decisions and judgements in the fulfilment of tasks and responsibilities.

In their day-to-day operations, enterprises have to deal with customers and many different stakeholders, such as shareholders, the supervisor and society as a whole, each having divergent interests. To safeguard the interests of the customers and stakeholders and comply with the obligations of due care, a policymaker must be capable of carefully weighing the different interests and making an objective, independent judgement and decision. To ensure balanced and consistent decision-making within the enterprise, a policymaker is expected to be suitable in the following areas (the list is not exhaustive):

- giving due consideration to all interests involved;
- keeping a written record of the outcome of decision-making;
- stating clearly on what grounds a decision has been taken;
- carrying out a risk analysis with input from the various stakeholders;
- informing customers and stakeholders about the matters of most relevance to them that affect the decision-making process;
- making clear choices, setting reasoned objectives and showing that due consideration has been given to alternatives;
- acting consistently in line with stated objectives and choices; and
- taking a reasoned decision to depart from an existing decision in changed circumstances.

- E. **Sufficient time**, including time to understand the activities of the institution, its main risks and the implications of the business and risk strategy, as well as sufficient time available in periods of significantly increased activity of the enterprise or of other entities in which the policymaker fulfils a position or secondary position.

Policymakers are required to perform their tasks properly. They must show loyalty. They must identify with the enterprise and have a sense of commitment. Policymakers must be able to devote sufficient time to the performance of their duties in the enterprise, despite any other positions or secondary positions and taking into account possible periods of significantly increased activity of the enterprise.⁶ The time that a policymaker can devote to their duties may be influenced by a number of factors. Whether a policymaker has sufficient time available is assessed on a case-by-case basis and taking into account the

⁵ See also 'De 7 elementen van een integere cultuur: beleidsvisie en aanpak gedrag en cultuur bij financiële ondernemingen 2010-2014 (The seven elements of an ethical culture: policy vision and approach in relation to conduct and culture at financial enterprises 2010-2014), DNB, November 2009.

⁶ Management and Supervision Act, Sections 2:9, 2:132a, 2:140, 2:142a, 2:242a, 2:250, 2:252a, 2:297a, 2:297b and 2:397 of the Dutch Civil Code, Section 3:17 of the *Wft*, Section 106a of the *Pw*, Article 91 of the Capital Requirements Directive (CRD IV) and Section 35a of the Decree implementing the *Pw* and the *Wvb*

assessment variables (part 1.3), with a qualitative assessment being made and, where appropriate, a quantitative assessment.

Qualitative assessment

Qualitative factors determining how much time a policymaker can devote to their duties include:

- the size and circumstances of the entities in which the policymaking position is carried out and the nature, scale and complexity of the activities;
- the place or country where the entities are established;
- other professional or personal obligations and circumstances (e.g. a lawsuit involving the policymaker);
- the travel time required for the position;
- the number of planned meetings of the bodies involved in the policymaking process;
- the time for the necessary induction and training; and
- the nature of the specific position and the responsibilities of the policymaker (e.g. a specific role as a CEO or chairperson, or membership of a commission or committee).

When assessing whether the policymaker to be appointed will be able to devote sufficient time to the performance of their duties, the enterprise should also take into account the need for continuous education and development as well as the need for a buffer to cover unforeseen circumstances. Unexpected circumstances include not only crises relating to the enterprise (or other entities where the decision-making position is performed), but also circumstances that might have an unexpected effect on the time to be spent (for example an acquisition or lawsuit).

Quantitative assessment

The quantitative assessment is based on the number of functions of the policymaker and – to the extent applicable to the policymaker and the enterprise – the limits set out in laws and regulations apply:

- Dutch Civil Code, Sections 2:132a, 2:142a, 2:242a and 2:252a
- Capital Requirements Directive (CRD IV), Article 91
- Markets in Financial Instruments Directive (MiFID II), Article 45
- Pensions Act, Section 106a, and Mandatory Occupational Pension Scheme Act, Section 110ca (full-time equivalent score or FTE score)

In addition to the legal limits, the quantitative assessment also looks at the actual hours devoted to the positions or secondary positions. The supervisor may carry out a detailed examination of the policymaker's actual availability based on the reported actual time devoted to all positions and secondary positions fulfilled or to be fulfilled by the policymaker.

Information to be provided

The enterprise must supply all relevant and necessary information to the supervisor to demonstrate that the policymaker has sufficient time to fulfil the position. This must include at least the following information:

- an enterprise's specification of the time to be devoted to the position; and
- a full list of positions and secondary positions drawn up by the policymaker (including any associated responsibilities, such as membership of a commission or committee) and the estimated time to be devoted to each position or secondary position.

The supervisor will request the necessary information using the available digital request forms. The supervisor can request additional information to assess whether a policymaker has sufficient time available.

Suitability is a continuous requirement. Changes in the policymaker's available time must be made known to the enterprise in a timely manner, in response to which the enterprise can take measures if necessary. Examples of changes in available time are the acceptance of new positions or secondary positions and personal circumstances such as long-term illness or caring for third parties.

Examples

The number of board positions that a policymaker of a significant institution may hold under the CRD IV is limited to one executive board position combined with two non-executive board positions,

or four non-executive board positions. Not all positions and secondary positions are included in the CRD IV standard, such as, for example, membership of a supervisory board of a cultural institution or membership of a committee of a public body or a professional association. These positions and secondary positions may, however, have an impact on the policymaker's total available time and will be taken into account in the assessment. A policymaker of a significant institution may therefore fulfil the CRD IV standard but on the basis of the actual time devoted to all positions and secondary positions, including those that are not covered by the CRD IV standard, not have sufficient time to fulfil the position(s) properly and thus fail to satisfy the suitability requirements.

If a pension fund director's FTE score is above 1.0, they should surrender a position or secondary position to ensure that the FTE score is a maximum of 1.0. It should be noted that not all positions and secondary positions of the policymaker are included in the FTE score, such as for example full-time employment or membership of the supervisory board of a comprehensive school or housing association. Nevertheless, these positions or secondary positions may affect the total available time and as such will be included in the assessment. A pension fund director with a low FTE score but with a number of other positions and secondary positions may not therefore have sufficient time to fulfil the position(s) properly on the basis of actual time use.

The five areas of policymaker suitability (A to E) referred to above are *cumulative*. The list of areas is not exhaustive, however. This means that areas other than those referred to above may be taken into account in assessing the suitability of a policymaker.

1.3 Assessment variables

The assessment variables mean that a proportionate degree of suitability as referred to in part 1.2.1 is required. Given these variables, the supervisor makes a decision based specifically on the situation and context. For example, a sole trader who provides financial services is assessed differently from the CFO of a large bank or insurance company or the director of a pension fund or occupational pension fund. It also follows that a person who is judged suitable by the supervisor for a given position will not automatically be judged suitable for another position, whether or not in the same enterprise.

Different variables are taken into account in assessing the suitability of a policymaker. These concern (a) the position that a policymaker will hold and (b) the nature, size, complexity and risk profile of the enterprise.

Position of a policymaker

The position of a policymaker is an important variable in assessing the required suitability. When considering the type of position, the supervisor distinguishes first of all between policymakers who are involved in carrying on the day-to-day operations, such as a director, and policymakers who are more remote or even have a non-executive role, such as a supervisory board member. It then examines what the position entails and the description of the duties and powers of the policymaker. For example, a Chief Risk Officer (CRO) is expected to have in-depth knowledge of risk management. The same is true of a CFO in respect of financial matters relevant to the enterprise. In the case of a sole trader, the owner must generally be suitable in all these fields. Moreover, the activities performed by a policymaker play a role in assessing the required suitability. For example, the suitability required for a financial service provider who is mainly engaged in providing consultancy services differs from that of a policymaker who has no direct contact with customers. Likewise, the suitability required for the director of a pension fund or occupational pension fund differs from that of the director of a pension fund or occupational pension fund with a complex investment portfolio. Similarly, an elected director of a mutual insurance company may be expected to have a different suitability from that of a professional director of a mutual insurance company.

For certain positions, such as the chairperson of a collective or the policymaker responsible for risk management, more emphasis will be placed on competences of particular importance to the performance of the duties concerned. In the case of a chairman, for example, such competences would be the capacity to chair meetings and provide strategic guidance and in the case of a risk manager independence and persuasive powers.

Another example is that under the *Wwft*, within the collective of day-to-day (and other) policymakers, a policymaker is responsible for complying with the requirements arising from the *Wwft*. This policymaker must have the requisite knowledge, skills and professional conduct to assume this responsibility.

Considerations relating to the nature, size, complexity and risk profile of an enterprise

The precise nature of the suitability requirements may vary between enterprises and also between sectors. This means that the required suitability may differ from policymaker to policymaker. At each assessment time, policymakers of enterprises in group A and, subject to prior authorisation, policymakers of enterprises in groups B and C must fulfil the suitability requirements of the five areas A to E as referred to in part 1.2. However, the means of compliance with these suitability areas depends on the nature, size, complexity and risk profile of an enterprise.

The nature of an enterprise determines particularly the substantive suitability needed in respect of products, services and markets in which an enterprise operates. For example, policymakers of a pension fund, occupational pension fund or pension insurer need a knowledge of pensions and the financial aspects associated with the management of pension plan assets and insurance, whereas an adviser on pension products needs above all a knowledge of pensions.

The size of an enterprise in relation to the risk profile has an important bearing on the level of suitability as referred to in part 1.2.1, areas A to E. This size influences the level of suitability that a policymaker is required to have in various ways. Size can relate to various aspects such as (the list is not exhaustive):

- the number of staff: the larger the number of staff, the more exacting are the requirements in relation to areas A (management, organisation and communication) and E (sufficient time);
- the assets managed by an enterprise: the larger the assets, the more exacting are the suitability requirements in relation to areas B (products, services and markets in which the enterprise operates) and C (sound and ethical operational management);
- the social aspect: the greater the number of customers, the more important areas D (balanced, independent and consistent decision-making), A (management, organisation and communication) and E (sufficient time) become

At the same time, the more prominent and complex the risk profile, the greater is the required level of suitability. For example, a complex corporate structure (such as a company with various subsidiaries) requires a very high level of suitability in relation to all suitability areas. A policymaker of a financial holding company needs to be suitable in relation to both the holding company and its subsidiaries, whereas a policymaker of the subsidiary needs to be suitable only in relation to the subsidiary.

In addition, a policymaker in a small enterprise without a collective (where no division of duties is therefore possible) must be able to manage the entire operational management process independently. This will also be taken into account in the suitability assessment.

Since the supervisor, when assessing a policymaker, must take account of the assessment variables and the composition and performance of the collective (as explained in part 1.4), a single suitability assessment will not always be sufficient, for example in the case of a person who holds supervisory board memberships with various entities of a company or cooperative.

1.4 Collective

The supervisor assesses the suitability of individual policymakers, not the suitability of the board or any other collective consisting of all the policymakers. Where two or more policymakers decide policy together, the composition and performance of this collective are taken into account in the assessment of the suitability of individual policymakers. In order to bear joint responsibility, each policymaker must be individually suitable, which is not to say that they must all be equally suitable. Policymakers must complement one another. When policymakers who function (or will function) as part of a collective are assessed, importance is also attached to competences that have a bearing on their ability to function in a collective, such as authenticity, loyalty, power of persuasion, communication skills, independence and capacity for teamwork. To obtain more information, a Board Review Process (self-assessment) can be a useful instrument in an enterprise.

A more varied spread of specific knowledge and skills is possible within a collective. For example, since a Chief Executive Officer (CEO) must be able to make a critical assessment of the performance of the CFO, this requires suitability in this field (knowledge, skills and professional conduct). Naturally, however, the CFO must have more specific knowledge and skills, including in relation to finance.

'Collegiate' management, joint responsibility and the consequent liability are basic principles of Dutch company law. However, the assessment of an individual policymaker's suitability concerns something different. The supervision legislation under public law is based on the suitability of the individual policymaker that enables them to bear individual and collective responsibility.

The composition of the collective is also important in situations in which one or more policymakers retire. The retirement of a policymaker does not automatically mean that the other policymakers cease to be suitable. However, a new policymaker must possess the right complementary suitability having regard to the new composition of the collective. If that is not the case, the supervisor may ask the enterprise to indicate how it proposes to fill the suitability gap. In the absence of a satisfactory answer the supervisor may call the enterprise to account. Where necessary, this may mean that the proposed appointment of a new policymaker cannot proceed. It may also mean that one or more of the policymakers already in office are judged to be insufficiently suitable given the new composition and task allocation of the collective.

Diversity in the collective

The supervisor encourages diversity in the collectives. Differences in knowledge, experience, age, gender and professional and geographic background ensure a broad outlook and different perspectives. This contributes positively to the governance of the enterprise as a whole. In its review process, the supervisor therefore takes into account the importance of diversity, including persons who do not have a prominent background in the financial sector but who have specific and needed expertise and can undergo the assessment successfully – partly depending on the composition of the collective. In such a case, suitability is assessed on the basis of the following aspects:

- the policymaker has sufficient basic knowledge of areas A to E of part 1.2. This shows that the policymaker has a sufficient understanding of the enterprise's activities to fulfil the intended position effectively.
- sufficient specific (and general) professional knowledge is guaranteed in the relevant collective as a whole.

The enterprise and the policymaker must substantiate the above-mentioned aspects as fully as possible – for example by means of a job profile or a description of the vision and considerations with regard to the governance of the enterprise. The supervisor must make a comprehensive assessment. This means it makes a difference whether a policymaker is nominated for a position with a specific role (chairperson) or for a different type of position. The policymakers in the collective must also complement each other well and have sufficient general and specific knowledge of all the different aspects that are relevant to the enterprise.

Example

A candidate is nominated as a supervisory board member at a major insurer. The documentation supplied shows that the candidate is expected to contribute specific IT expertise that the supervisory board lacks. The candidate's CV clearly shows that he has this specific expertise. He has no experience in the financial sector, and this is acknowledged in the documentation. The file describes what the candidate has already done to gain basic knowledge of the sector, the enterprise and technical aspects of insurance. The file also indicates the members of the collective that have this knowledge and how it is safeguarded. In addition to meetings with the chairpersons of the executive and supervisory boards, the candidate has also had discussions with the chairperson of the risk & audit committee, the CFO and the CRO. He is also following an internal training programme focusing on risk management, Solvency II and legislation. He will complete this training within six months. The candidate has also attended two meetings of the supervisory board as an observer, prior to which he reviewed the documentation for the meeting and discussed it with the actuary and the risk manager, among others. The other supervisory board members have extensive financial and insurance knowledge. There are no special circumstances in the enterprise. Despite not having a background in the financial sector and provided they comply with the other suitability areas, this candidate is suitable.

Specific diversity requirements under laws and regulations

When making new appointments to their supervisory boards, Dutch listed companies must ensure that these comprise at least one-third men and one-third women. The diversity quota in Section 2:142b of the Dutch Civil Code means that the supervisor will not approve an appointment that contravenes this legal provision.

The revised [EBA/ESMA Guidelines](#) effective as of 31 December 2021 on the assessment of the suitability of members of the management body and key function holders of banks and investment firms include tighter diversity requirements. DNB and the AFM apply these guidelines in the sectors falling within the scope of the guidelines.

Under the ESMA Guidelines on the management body of market operators and data reporting service providers, market operators are required to introduce a recruitment and diversity policy, in accordance with the nature, scale and complexity of their business, to ensure that a wide range of qualities and competences are taken into account when recruiting members of the management body. To this end, it must set specific diversity targets.

1.5 Assessment times

The supervisor carries out assessments at various times: (a) before a policymaker takes office upon the application for a licence or registration or upon the appointment of a new policymaker to an existing enterprise, and (b) after a policymaker has taken office as part of the ongoing supervision. The nature of these different times can result in a different type of assessment.

When suitability is assessed at the time of granting a licence, the assessment is essentially a snapshot. However, the suitability requirement laid down by law is a continuing requirement. The longer a policymaker has been in post, the more information becomes available to assess whether they are suitable for the position. When an assessment is made before a policymaker takes office, the supervisor often has little or no relevant information on the candidate and their performance in the enterprise to which they are to be appointed.

Before a policymaker takes office

The main feature of this suitability assessment is that an enterprise applying for a licence or registration or intending to appoint a new policymaker is required to submit data evidencing the suitability of the person concerned. It is possible that a policymaker may already be known to the supervisor, in which case the information and antecedents in the possession of the supervisor may also be used (part 1.6).

If the policymaker moves to a different policymaking position within the same enterprise, that constitutes an assessment time as referred to in part 1.5.a. In such a case the supervisor expects the enterprise to notify it in good time of changes in the division of duties between the policymakers and to complete an application form specified by the supervisor to request an assessment of this policymaker.

Example

The CRO of an enterprise succeeds the CFO upon his retirement. As a result, this policymaker's position and duties change considerably, as do the suitability requirements. The supervisor is notified by the enterprise of this change and receives a signed application form from the enterprise requesting an assessment of the new CFO. The supervisor assesses the policymaker's suitability for the position, partly having regard to the changed assessment variable: 'position of the policymaker' (part 1.3.a) and the changed composition of the collective (part 1.4). This assessment will focus on the suitability aspects that are of greater relevance to a CFO – for this enterprise, having regard to the composition and performance of the collective – than to a CRO. Examples are knowledge of relevant laws and regulations, the financial aspects and outsourcing. To show that the CRO is also suitable as a policymaker/CFO, the enterprise may, for example, use the list of competences included in the annex to the Policy Rule.

After a policymaker has taken office

The *Wft*, *Pw* and *Wvb*, *Wtt*, *Wwft*, *BGfo*, *Bpr*, EMIR, EuSEF, EuVECA, CSPR and CSDR provide that the suitability of policymakers must be beyond doubt. Nonetheless, ongoing supervision does not involve the standard or periodical assessment of policymakers' suitability. Instead, this suitability is reassessed only if facts and circumstances provide reasonable cause. Reasonable cause is a matter for the judgement of the supervisor and may exist, for example, where there is a change in the composition of a collective or a failure to appoint a successor to a departing policymaker or if the supervisor has doubts about the performance of one or more policymakers (the list is not exhaustive).

In practice, the supervisor will rely on signals indicating a need to assess whether the suitability of a policymaker is sufficient. Such signals may be very varied. For example, there may be an unforeseen decline in profits, fast growth of the enterprise, concerns about sound and ethical operational management, concerns about the business model or the corporate culture, concerns about compliance, a merger or acquisition, international expansion of the business activities, outsourcing of work or core tasks, the marketing of harmful products or the supply of incorrect, unclear or misleading information, consistent failures to respond (or respond in time) to the supervisor's requests for information, inability to pay the auditor, poor accounting records, high staff turnover, complaints from customers about careless service or repeated infringements of laws and regulations. When examining the reasonable cause, the supervisor will be particularly mindful of settlements with, fines imposed on or convictions of a financial enterprise. Any of these signals may prompt a reassessment of the suitability of a policymaker or of one or more policymakers in the collective as part of the ongoing supervision.

It is impossible to say in advance whether a reassessment will be confined to one policymaker or be extended to include several members of the collective. This will depend on the specific situation and on the event prompting the reassessment. If there are concerns about the corporate culture, for example, it is likely that several members of the collective will be reassessed. However, if there are concerns about specific activities of an enterprise (e.g. a specific product, service or market) for which one policymaker in the collective is responsible, the reassessment will probably be confined to the policymaker concerned.

If the supervisor initiates a reassessment, the focus will be on the actual performance of the policymaker concerned in practice. For example, how has the policymaker applied their knowledge and skills and do the decision-making and the structure of the operational management testify to a professional approach? In carrying out the reassessment, the supervisor uses factual evidence collected over a particular period (pattern of action), so the reassessment is less of a snapshot.

The supervisor may notify an enterprise and policymaker about the reassessment and share the findings of the reassessment with them. Based on the findings, the supervisor will decide whether a measure is necessary and, if so, what measure would be most effective. In some cases the supervisor may specify a period within which the observed shortcomings must be remedied and require that compensatory measures are taken during this period, for example participation in a training programme or the appointment of an additional policymaker or interim policymaker. Conceivably, an observed shortcoming may also be remedied by calling in external assistance. An example would be the appointment of an independent compliance officer to work temporarily in the enterprise in order to examine and, where necessary, adjust all procedures. The supervisor may also require an enterprise itself to draw up a plan of action setting out when and what specific measures will be taken to prevent any repetition in the future.

The revised [EBA/ESMA Guidelines](#) effective as of 31 December 2021 on the assessment of the suitability of members of the management body and key function holders of banks and investment firms expressly provide that risks include those related to money laundering and terrorist financing, as well as environmental, social and governance risk factors. Suspicion that money laundering or terrorist financing has taken place or is taking place is also specifically included as a reasonable cause for reassessment. If members of the management body do not comply with Article 91(1) of the CRD.

If an assessment as referred to in part 1.5.b finds that a policymaker is unsuitable, the supervisor may issue an instruction to dismiss the policymaker concerned and, possibly, appoint a new policymaker within a specified period.

Reassessment and the relationship between the criteria in part 1.2.1 and Chapter 2

Chapter 2 provides that where the suitability requirements specified in part 1.2.1 are assessed in relation to policymakers of enterprises in groups B and C before they take office, this should be done on a proportionate basis (i.e. an assessment as referred to in part 1.5.a). This does not mean that the *requirements* are less onerous, but that the *assessment* is implemented differently, partly for practical reasons (see also the general notes, sections 6 and 7). The principle-based criteria in Chapter 1 form the basis of the suitability assessment. This applies to every policymaker of every enterprise. It goes without saying, therefore, that any reassessment is also based on Chapter 1, since in practice a reassessment focuses on the performance of a policymaker.

1.6 Information and antecedents

Enterprises have the responsibility to select and retain suitable policymakers and the supervisor has the responsibility to establish the suitability of a policymaker on the basis of sufficient and reliable information. In the opinion of the supervisor, it is not desirable for a proposed appointment to be announced prior to the suitability assessment by the supervisor. The basic principle is that an enterprise should convince the supervisor of the suitability of its existing and prospective policymakers.

In assessing the suitability of a policymaker, the supervisor uses various information sources, including:

- a. *the assessment application form specified by the supervisor*, truthfully completed and signed by the enterprise, including information obtained by the supervisor from the persons named as references on the form;
- b. *supervision information and antecedents*: including formal and informal supervision measures such as a 'normative' interview and a proposal to take a formal measure. If a policymaker changes position or moves to a different enterprise, the supervisor may use information obtained in relation to the previous position when assessing their suitability for the new position.
- c. *the policy* (processes and procedures) of an enterprise that forms the basis for recruitment and selection and periodic or individual assessments of suitability. This policy and its results form part of an enterprise's communication with the supervisor about the suitability of its policymakers. A good (and well-documented) policy and effective implementation can be of assistance in demonstrating suitability.

Part of this policy is the use of job profiles in the recruitment and selection of policymakers and their periodic assessment. The results of assessments can be helpful in this connection and are also a welcome source of information for the supervisor.

It is advisable that the parts of this Policy Rule, national and European laws and regulations on suitability that set out the basic principles and interpret the notion of suitability are used by an enterprise as a guide for drawing up the policy on recruitment and selection and assessments of policymakers or for critically reviewing and making any necessary adjustments to the policy. It is recommended that a written record be made when a policymaker is selected. Ideally, this record should contain not only the selection decision but also the considerations leading to the appointment, including any agreements about improving suitability.

The supervisor recommends that an enterprise carries out periodic (preferably annual) assessments of the performance of its policymakers in practice. In such periodic assessments the performance of a policymaker should preferably be viewed in the light of the position that they hold and the job profile on the basis of which they were appointed. The periodic assessment should demonstrate the suitability of the policymaker by reference to specific, practical examples. It is advisable to keep a written record of periodic assessments. Ideally, the record should contain not only the final assessment but also the considerations leading to it, including any agreements on improving suitability.

Where there is a collective, it is important for the enterprise to ensure that the recruitment & selection and assessment processes take into account the composition and performance of the collective and the role that an individual policymaker plays or will play in the collective in practice;

- d. *other information to be supplied by the enterprise* to the extent relevant to the assessment of a policymaker's suitability. This could include information demonstrating that the policymaker has sufficient time to fulfil the position.
- e. *other information.* Information on matters such as a policymaker's involvement in a suspension of payments or bankruptcy. The importance attached to antecedents differs if they are also used to assess integrity. In the case of a suitability assessment, the criterion is the extent to which the involvement of the policymaker in a suspension of payments or bankruptcy is evidence of a lack of suitability on the part of the policymaker. By contrast, antecedents are used in an integrity assessment primarily to determine the integrity of the policymaker. In this sense, therefore, integrity and suitability assessments are complementary. The aim of both a suitability and an integrity assessment is to ensure the integrity and stability of the financial markets and bolster confidence in them; and
- f. *information in the public domain:* for example, information from other supervisors, ministries, the Dutch Securities Institute (DSI) or the commercial register of the Chamber of Commerce.

Information requests

The information referred to above is generally already available to the enterprises concerned (e.g. the policy on recruitment & selection and assessment of policymakers and a job profile). The supervisor does not therefore expect any increase in compliance costs as a result of providing this information. An enterprise needs to supply this information only with the assessment application form. If an enterprise does not have this information, it may demonstrate suitability in some other way.

The supervisor is authorised to request the information necessary for the suitability assessment (pursuant to Section 4:2(2) of the General Administrative Law Act (Algemene wet bestuursrecht – *Awb*).

1.7 Evaluation of information and antecedents

The available information and antecedents are used and evaluated by the supervisor when assessing suitability. Various factors as listed in part 1.6 a) to f) play a role in this connection. Not all information and antecedents 'count' in the same way. For example, failure to publish financial statements in time is an offence and may be attributable to a lack of suitability (possibly indicating that policymakers have insufficient control). Failure to prepare the financial statements is a much more serious offence, however. In such a case there is not only a lack of transparency but also an absence of adequate operational management.

In terms of content, part 1.6 is comparable to Section 9 of the *Bpr* and Section 16 of the *BGfo* concerning the assessment of integrity.

The assessment of antecedents does not automatically lead to the conclusion that a policymaker is unsuitable. The supervisor will evaluate the available information and antecedents in conjunction with each other. This may also mean that although certain information or a certain antecedent does not in itself warrant a finding that the policymaker is unsuitable, the combination and/or pattern of information and/or antecedents nonetheless warrants a finding that a policymaker lacks sufficient suitability. The importance and age of the information or other antecedent play an important role in this regard. As complete a picture as possible of the performance of a policymaker is obtained from the complete overview of the available information and antecedents.

The combination of the information and antecedents also sheds light on the pattern of acts or omissions of a policymaker and may positively or negatively affect the judgement. In the latter case, a combination of antecedents and other information may lead to a judgement that a policymaker is not (or no longer) suitable or needs to improve a particular element of their suitability. Nevertheless, the existence of even a single antecedent can lead to a judgement that the policymaker does not meet the suitability requirements.

The assessment of the information or antecedents may involve, for example, actions performed by the policymaker concerned in the conduct of their professional activity. If the policymaker has various

antecedents, the information or antecedent to be assessed must be viewed in the light of the combination and/or the pattern of information of antecedents.

Another factor taken into account when evaluating information or antecedents concerns the interests that the law seeks to protect. For this purpose the law means the *Wft*, *Pw*, *Wvb*, *Wtt*, *Wwft* and derived secondary legislation.

The importance of the information or antecedent indicates the extent to which that information or antecedent will prevent the policymaker from performing their duties in an appropriate manner. Whether a policymaker consistently acts in a manner indicative of a lack of suitability and to what extent more information or antecedents are available regarding such acts are less important factors in this assessment.

The importance to be attached to the information or antecedent decreases over time. In view of the time difference between the origin of the information or antecedents and the time at which the suitability assessment takes place, less importance is attached in principle to old information and antecedents when assessing suitability.

With regard to the 'attitude and reasoning' factor, the supervisor considers a 'correct' attitude and 'plausible/credible and detailed' reasoning on the part of the enterprise and the policymaker concerned to be positive points. From the attitude, reasoning and explanation of a person subject to assessment it is possible to infer how that person evaluates the information, whether they understand that the information can shed light on their ability to act in an appropriate manner and whether they have learned from any consequences.

A special category of information also plays a role in the assessment of attitude, namely failure to disclose relevant information to the supervisor (on the assessment application form specified by the supervisor). Such failure constitutes a supervisory antecedent. Information withheld in this way may be discovered by the supervisor from other sources. *Failure to disclose* information will therefore always play a separate role in the assessment of the suitability of a policymaker, particularly in relation to professional conduct that is an element of suitability.

1.8 Cooperation

The part of the Policy Rule dealing with cooperation applies notwithstanding the provisions of statutory rules and the covenant between the AFM and DNB on cooperation and coordination in the field of supervision, regulations and policy, on national and international consultations and other tasks of common interest relating to the implementation of the *Wft*, *Pw*, *Wvb*, *Wtt*, *Wwft*, EMIR, EuSEF, EuVECA, CSPR and CSDR. Since prudential supervision and conduct of business supervision run to some extent in parallel, it is important for the AFM and DNB to coordinate their efforts and work together when assessing suitability. The formulation of joint policy, such as this Policy Rule, is an important basis for this. If the suitability of a policymaker of an enterprise is a matter to be assessed in practice by both the AFM and DNB, the AFM and DNB will enter into agreements in specific cases about cooperation and exchanges of information relating to the assessment.

In order to ensure uniform and consistent application of this Policy Rule, the two supervisors will hold periodic consultations on pending and completed suitability assessments. A joint panel of the AFM and DNB will meet regularly for this purpose in order to discuss various cases (both relatively simple and more complex assessments). This joint panel is also primarily responsible for assessing whether the Policy Rule should be modified on the basis of the cases discussed.

Chapter 2 – Further provisions governing assessment of policymakers of enterprises in groups B and C prior to their taking office

Section 1. General

Introduction and schematic overview

Part 1.5 sets out the different assessment times. These are: (a) before a policymaker takes office at the time of application for a licence or the proposed appointment of a new policymaker to an enterprise that already has a licence or is registered and (b) after a policymaker has taken office.

Chapter 2 describes the suitability requirements for assessments under part 1.5.a. of policymakers (prior to their taking office) of enterprises in groups B and C. If there is cause to do so, when assessing suitability prior to the date on which the policymaker takes office, the supervisor may assess suitability for both groups by reference to part 1.2.1 in addition to the requirements set in Chapter 2.

The suitability requirements referred to in part 1.5.a. for policymakers of enterprises in groups B and C are set out schematically in the tables below.

Schematic overview of elaboration of part 2.2 (suitability) for policymakers of enterprises in group B for assessment as referred to in 1.5.a (before policymaker takes office)

Group B	Management skills required for day-to-day management	Leadership skills in a hierarchical setting	General professional knowledge	Specific professional knowledge	Suitability with regard to sound and ethical operational management
Credit provider; manager of an investment fund; manager of a UCITS; investment holding company; investment company; investment firm (with the exception of a tied agent); depositary and depositary of a UCITS; crowdfunding service provider; data reporting service provider; UCITS; authorised agent or authorised sub-agent or pension depositary (2.2.1)	Two years' work experience, at least one year continuous	Two years' work experience, at least one year continuous	Two years' work experience, a least one year continuous in a relevant work setting	Two years' work experience, a least one year continuous in a relevant work setting	Two years' work experience, at least one year continuous
Small manager of an investment fund; manager of a UCITS; investment company; investment firm with the exception of a tied agent, depositary, depositary of a UCITS; crowdfunding service provider, data reporting service provider, UCITS, or authorised agent or authorised sub-agent (2.2.1.3) <i>Enterprise as referred to in 2.2.1.3 with six or fewer persons, including policymakers</i>	One year's continuous work experience	N/A	One year's continuous work experience	One year's continuous work experience	One year's continuous work experience
Collective policymaking (2.2.1.4) <i>Enterprise as referred to in 2.3.1 with two or more policymakers</i>	Each policymaker	At least two policymakers	Each policymaker	Collectively, but each policymaker possesses either the specific professional knowledge or the suitability in respect of sound and ethical operational management	
Tied agent (2.2.2)	N/A	N/A	One year's work experience	One year's work experience	N/A
Manager of a qualifying social entrepreneurship fund as referred to in Article 3(1) opening words and (b) of the EuSEF and manager of a qualifying venture capital fund as referred to in Article 3(1) opening words and (b) of the EuVECA (2.2.2)	N/A	N/A	Two years' work experience	Two years' work experience	N/A

In group B, policymakers of investment firms and data reporting service providers must also meet additional requirements regarding 'independence' and 'sufficient time' in accordance with the Joint EBA/ESMA Guidelines on the assessment of the suitability of members of the management body and key

function holders and ESMA Guidelines on the management body of market operators and data reporting service providers.

Schematic overview of elaboration of part 2.3 (suitability) for policymakers of enterprises in group C as referred to in 1.5.a (before policymaker takes office)

Group C	Management skills required for day-to-day management	Leadership skills in a hierarchical setting	General professional knowledge	Specific professional knowledge	Suitability with regard to sound and ethical operational management
Adviser, broker or reinsurance broker (2.3.1)	Two years' work experience, a least one year continuous in a relevant work setting	Two years' work experience, a least one year continuous in a relevant work setting	N/A	N/A	N/A
Collective policymaking adviser, broker or reinsurance broker (2.3.1.3) <i>Enterprise as referred to in 2.3.1.1 with two or more policymakers</i>	Each policymaker	One of the policymakers	N/A	N/A	N/A
Investment product adviser and/or broker; holder of a dispensation as referred to in Section 4:3(4) of the Wft (2.3.1)	Two years' work experience, a least one year continuous in a relevant work setting	Two years' work experience, a least one year continuous in a relevant work setting	Two years' work experience, a least one year continuous in a relevant work setting	Two years' work experience, a least one year continuous in a relevant work setting	N/A
Collective policymaking adviser and/or investment product broker (2.3.1.1) <i>Enterprise as referred to in 2.3.1.1 with two or more policymakers</i>	Each policymaker	One of the policymakers	Each policymaker	Each policymaker	N/A
Collective policymaking holder of a dispensation as referred to in Section 4:3(4) of the Wft (2.3.1.1) <i>Enterprise with two or more policymakers</i>	Each policymaker	One of the policymakers	Each policymaker	One of the policymakers	N/A
Small advisers, brokers or reinsurance brokers as referred to in 2.3.2 <i>Enterprise as referred to in 2.3.2.2 with up to six persons, including policymakers</i>	<ul style="list-style-type: none"> • 1 year of managerial experience in a relevant work setting; • a higher vocational (HBO or HBO+) certificate from an education programme relevant to the enterprise and at least one year of relevant work experience gained within the last 10 years; • a higher vocational (HBO or HBO+) certificate and at least two years' work experience acquired in a relevant work setting over the past ten years, at least one year of which was a continuous period; • seven years of work experience in a work setting relevant to the enterprise. During these seven years, two years' work experience must have been acquired in the last 10 years, including a continuous period of one year. 		N/A	N/A	N/A

2.1.1 Period when experience acquired

In the case of the suitability assessment with regard to general and specific professional knowledge, policymakers must have acquired the experience or knowledge no more than five years before the assessment. This part of the suitability is subject to changes in the market and/or regulations and rapidly becomes outdated. For this reason the supervisor considers that knowledge or experience gained more than five years previously is not sufficiently current to be considered applicable and relevant. For suitability in respect of managerial and leadership skills and operational management, the knowledge or experience and the supporting evidence must date from no more than ten years before the time of assessment. Knowledge and skills of this kind are less likely to become outdated as a result of changes in the market or regulations. The supervisor still sets a maximum period within which the experience must have been gained, however, as skills are only usable if they have been applied over a given period and in the not too distant past.

2.1.2 Size of enterprise

The supervisor can verify the suitability of a policymaker in relation to the size and growth of the enterprise concerned. For example, the supervisor may reassess the suitability of policymakers of a small enterprise once it expands and has a staff of more than six persons. For this purpose, the supervisor includes in that enterprise's licence a requirement to obtain approval in the event of an expansion beyond six persons. This provision gives these policymakers the possibility of acquiring leadership skills in a hierarchical setting. They can fulfil this Policy Rule's requirement for leadership skills in a hierarchical setting over the passage of time (two years).

Example

An enterprise has only two policymakers and no other staff. Since the policymakers do not satisfy the requirement of two years' leadership experience in a hierarchical setting, a licence is issued subject to the condition that the enterprise must notify the supervisor if it wishes to expand its workforce beyond six persons. If the enterprise grows and has a staff of more than six persons, it must notify the supervisor. The policymakers will then be reassessed in the light of the minimum requirements of two years' work experience, at least one of which must be continuous.

2.1.3 Application of Chapter 1

Where policymakers of enterprises in groups B and C are assessed before they take office, Chapter 1 otherwise applies in full. This means, for example, that in the case of an assessment of managerial skills or the relevant work setting in which the work experience must be gained, the assessment variables such as the intended position and the type of enterprise are taken into account.

Section 2. Credit provider; investment holding company, manager of an investment fund; manager of a UCITS; manager of a qualifying social entrepreneurship fund as referred to in Article 3(1) opening words and (b) of the EuSEF; manager of a qualifying venture capital fund as referred to in Article 3(1) opening words and (b) of the EuVECA; investment company; investment firm; depositary or depositary of a UCITS; crowdfunding service provider; data reporting service provider; UCITS; authorised agent or authorised sub-agent or pension depositary (group B)

2.2.1 Credit provider; investment firm (with the exception of a tied agent); manager of an investment fund; investment holding company; manager of a UCITS; investment company; depositary; depositary of a UCITS; crowdfunding service provider; data reporting service provider; UCITS; authorised agent or authorised sub-agent or pension depositary

This part elaborates the suitability requirements included in part 1.2.1 for policymakers of enterprises in group B. The requirements specified in the opening words of this part are minimum requirements.

a. Managerial skills

Managerial skills necessary to determine day-to-day policy properly. Assessing these skills involves examining the work experience that has been gained and that is useful for managing an enterprise, taking into account the level of work experience, the role and the degree of responsibility within the enterprise. Examples are responsibility for cross-department matters, duties requiring organisational skills and the role within an enterprise, or a combination of these. Managerial skills may also be evident from the responsibility assumed by a policymaker, for example in independent entrepreneurship or as a director, for example, of a foundation, association or cooperative. By contrast, leadership skills are always gained by being in charge of a number of staff.

Examples

A policymaker has acted as a long-term replacement for a director and performed all their duties but has never been registered as a director.

In their work in finance and human resources, a policymaker was responsible for the post-merger integration of the merged businesses and in that role gained experience of formulating strategy, drafting policies, implementing those policies and accounting for the results.

A policymaker was a self-employed entrepreneur with staff and in that capacity had to deal with licensing problems, record-keeping and formulating HR policies.

A policymaker was a director of a sports or school association and gained experience of formulating a strategy, drafting policies, implementing them and evaluating the outcome prior to reporting on them in annual accounts or at a general meeting. In doing so, he weighed the interests and ensured robust reporting of the decision-making process. The managerial role is commensurate with the intended role as day-to-day policymaker.

A policymaker has worked in their role as an internal supervisor on a board. For example, the policymaker was a member of the supervisory board of an educational or healthcare institution.

b. Hierarchical leadership skills

Providing leadership in a hierarchy involves knowing from experience how to discharge the responsibilities and exercise the powers necessary to manage an organisational unit.

Examples

Some months ago a policymaker sold his audit firm. He founded the firm and managed it for 25 years. Under his leadership the firm grew from one to three branches. Eventually he was in charge, directly and indirectly, of 50 people and was responsible for the department's strategy, planning and budget. He has thus demonstrated that he fulfils the hierarchical leadership and managerial skills requirements.

A policymaker gained leadership experience by acting as a team leader for three years. In his case the job involved managing staff and providing input for their assessments. He had limited signing powers and the executive board conducted the assessment interviews. This policymaker does not therefore have hierarchical leadership experience.

Another policymaker worked as a fund manager for five years. In this capacity he was responsible for managing assets worth €100 million. The fund manager took independent investment decisions within his mandate, but did not manage staff, was not involved in the departmental budget and had only limited responsibilities for matters outside his fund. He does not therefore fulfil the requirements for hierarchical leadership or managerial skills.

A policymaker demonstrates the ability to take decisions on the appointment of staff and on their responsibilities, training and assessment. Hierarchical leadership skills should be distinguished from functional leadership skills. A functional leader does not, for example, have ultimate responsibility for staff and often does not conduct assessment interviews independently. Hierarchical leadership skills are less relevant to the policymaker of a small enterprise. Both the managerial and the leadership skills may be gained in a non-financial enterprise.

c. General professional knowledge

General suitability is deemed to include general knowledge of the financial markets, financial products and financial services relevant to an enterprise and the statutory supervision framework applicable to an enterprise. This can be demonstrated on the basis of sufficient work experience or training.

d. Specific professional knowledge

Specific professional knowledge means suitability in relation to the services required in order to perform the work of an enterprise. The required suitability is determined in part by the nature of an enterprise. Where a management company performs management activities for various types of investment funds, a policymaker's suitability may be considered valid for particular types of investment fund, provided policymakers collectively are suitable in respect of all the different types of investment funds concerned.

e. Suitability with regard to sound and ethical operational management

A policymaker must be suitable with regard to sound and ethical operational management. The sound and ethical operational management also includes monitoring and controlling financial and IT risks. The knowledge and experience may have been gained in a non-financial enterprise, but must be related to the nature of the enterprise in which the policymaker will work. Factors that will be taken into account in the assessment include the size of the enterprise where the experience was gained, the position in which the policymaker gained their experience and the complexity of the enterprise concerned. The experience must be appropriate to the enterprise to which the policymaker is to be appointed and the position they will hold.

The revised [EBA/ESMA Guidelines](#) effective as of 31 December 2021 on the assessment of the suitability of members of the management body and key function holders of banks and investment firms are of importance in assessing suitability with regard to the sound and ethical operational management of policymakers of investment firms. With regard to risks, it is expressly stated that these also include those related to money laundering and terrorist financing, as well as environmental, social and governance risk factors. Suspicion that money laundering or terrorist financing has taken place or is taking place is also specifically included as a reasonable cause for reassessment. If members of the management body do not meet the requirements laid down in Article 91(1) of Directive 2013/36/EU, the competent authorities can remove them from the management body (part 194).

A policymaker must have gained the knowledge and skills described above during two years' work experience, at least one of which was a continuous period. During these two years, relevant knowledge and skills must have made up a substantial part of the policymaker's work. For example, if only a few hours a week were taken up with hierarchical leadership duties, a two-year period may be considered too short.

As noted, the work experience for the general and specific professional knowledge must have been gained in a relevant work setting.

Investment firms and data reporting service providers

In accordance with ESMA Guidelines on the managing body of market operators and providers of data reporting services and the EBA/ESMA Guidelines on the assessment of the suitability of members of the management body and key function holders, additional requirements apply to policymakers of investment firms and data reporting service providers.⁷

f. Independence of mind

A policymaker must be independent of mind. This means they must be able to take sound, objective and independent decisions and make judgements in the fulfilment of tasks and responsibilities. The ESMA Guidelines on the management body of market operators and providers of data reporting services and the EBA/ESMA Guidelines on the assessment of the suitability of members of the management body and key function holders describe the criteria for assessing 'independence of mind'.

g. Sufficient time

Policymakers are required to perform their tasks properly. They must show loyalty, identify with the enterprise and have a sense of commitment. Policymakers must be able to devote sufficient time to the performance of their duties in the enterprise, despite any other functions or secondary functions and taking into account possible periods of significantly increased activity of the enterprise or of other entities in which they fulfil a position or secondary position. The time that a policymaker can devote to their duties may be influenced by a number of factors. The assessment of whether a policymaker has sufficient time is both a quantitative assessment, in which the applicable legal limits must in any case be complied with, as well as a qualitative assessment. In addition to the legal limits, the quantitative assessment also looks at the actual hours devoted to the positions or secondary positions. The enterprise must supply all relevant and necessary information to the supervisor to demonstrate that the policymaker has sufficient time to fulfil the position(s). The supervisor may carry out a detailed examination of the policymaker's actual availability based on the reported actual

⁷ Both DNB and the AFM have stated that they will apply the said guidelines in their supervision.

time devoted to all positions and secondary positions fulfilled or to be fulfilled by the policymaker. Suitability is a continuous requirement. Changes in the policymaker's available time must be made known to the enterprise in a timely manner, in response to which the enterprise can take measures if necessary. Examples of changes in available time are the acceptance of new positions or secondary positions and personal circumstances such as long-term illness or caring for third parties.

Small enterprises

This exception is intended to impose proportionate requirements on relatively non-complex, small-scale enterprises. Less experience than the required two years is necessary for the management of such enterprises. In the case of a small enterprise, i.e. an enterprise with up to six staff including policymakers, as referred to in part 2.2.1.3, it is therefore sufficient if the required knowledge and skills have been gained during one year's continuous work experience. It has been found in practice that the requirement of leadership skills in a hierarchical setting can be too restrictive for a small enterprise. An exception is therefore made in this respect for small enterprises, for which only managerial skills are required, alongside operational management requirements and professional knowledge. It is also possible, for example in the case of a director with only non-complex activities, that somewhat less in-depth experience of compliance is necessary.

This exception is not available to credit providers, investment holding companies and pension depositaries. Credit providers offer products which are inherently more complex, which they create internally and which are generally aimed at vulnerable consumers. An investment holding company is a financial institution having one or more subsidiaries that are mainly or exclusively investment firms or financial institutions. Investment holding companies must comply with prudential regulations for investment firms at the consolidated level. The directors of an investment holding company (and the members of the supervisory board, if any) must be fit to perform this task. This has been a legal requirement since 26 June 2021. Pension depositaries have the important task of holding pension assets. Pension is an important income component for the basic necessities of life. It is therefore appropriate to assess policymakers of a credit provider, an investment holding company and a pension depositary by reference to the usual initial requirements.

Collective

A division of duties between policymakers of enterprises referred to in part 2.2.1.1 is possible. In this regard the supervisor draws a distinction between knowledge and skills that are essential for each policymaker and knowledge and skills that the board must already possess to a sufficient extent. For example, policymakers must in any event have gained two years' experience (including one continuous year) of hierarchical leadership skills. All policymakers must in any event have gained two years' experience (including one continuous year) of managerial skills and all policymakers of the enterprises listed in part 2.2.1 must have general professional knowledge. In addition, policymakers of the enterprises referred to in part 2.2.1 must have specific professional knowledge and suitability in respect of operational management, but it is not necessary for each individual director to possess such knowledge and skills individually.

When the suitability of policymakers is assessed, the basic principle is that the persons who determine day-to-day policy should all be suitable. This means, for example, that not all policymakers need to have hierarchical leadership experience, as long as at least two policymakers fulfil this condition. If one of these policymakers is no longer present, the remaining policymakers must make up for the lost suitability. This means that the suitability of the remaining policymakers must be reassessed to determine whether they collectively still have adequate suitability. If this proves not to be the case, this will mean that the relevant policymakers are no longer sufficiently suitable. This situation may be remedied by appointing a new policymaker who at least possesses the lost suitability, or by ensuring that the incumbent policymakers have gained experience in that area since they were approved. The supervisor must be notified of any proposed change to the policymaker collective (including retirement).

Example

An enterprise has two policymakers and seven employees. One of the policymakers is due to retire in two years' time and wants to arrange his succession in advance. One of the female staff would like to take over his share of the business and is nominated as policymaker by the investment firm. Owing to

the small size of the firm and the flat organisational structure, she has not gained any leadership experience. However, she has been responsible for drawing up the annual plan and the corporate strategy, has managed an asset management portfolio for many years and thus has specific professional knowledge. As a result, she meets the requirements for a third policymaker despite the fact that she can only show managerial experience.

Separation of risk management function and operational services

The functional and hierarchical separation of the risk management function from the operational services, including portfolio management, must be guaranteed up to the governing body in accordance with Article 42 of Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council⁸. Therefore, for managers of investment funds and investment companies without an external manager, the responsibility for the risk management function in the collective must be hierarchically separate from the responsibility for operational services and portfolio management.

2.2.2 Tied agent and manager of a qualifying social entrepreneurship fund as referred to in Article 3(1) opening words and (b) of the EuSEF and manager of a qualifying venture capital fund as referred to in Article 3(1) opening words and (b) of the EuVECA

In the case of a tied agent, the manager of a qualifying social entrepreneurship fund and the manager of a qualifying venture capital fund, the person concerned can demonstrate suitability as referred to in part 1.2.1 if they are able to demonstrate, as a minimum, general and specific professional knowledge.

In the case of a tied agent, the holder of the licence bears full responsibility for the services provided by the tied agent. It is logical, therefore, that responsibility for operational management rests with the central enterprise. In view of the nature of the activities, however, it is important for the agent to have and apply professional knowledge, which is to be demonstrated by at least one continuous year of relevant work experience.

Article 15(2) opening words and (a) of the EuSEF Regulation and Article 14(2) opening words and (a) of the EuVECA Regulation state that the persons who actually manage the business activities relating to the management of qualifying venture capital funds or social entrepreneurship funds must be sufficiently experienced with regard to the investment strategies pursued by the manager of a qualifying venture capital fund or social entrepreneurship fund, which is to be demonstrated by at least two years of (relevant) work experience. Within the collective, the relevant subjects on which knowledge is necessary may compensate for each other. For example, not every individual needs to have actual experience of venture capital specifically, but will need to have generic experience of fund management.

2.2.3 Further requirements

If there is reasonable cause, the suitability may be assessed not only on the basis of the minimum requirements but also by reference to part 1.2.1.

Examples

A policymaker fulfils the minimum requirements for knowledge, skills and experience, but in the past has failed to ensure proper compliance as a policymaker of another enterprise. In this case the supervisor may also take into account the experience and competences of this policymaker in respect of operational management.

If it is found that a policymaker has supplied incorrect information to one or more customers in the past, the supervisor is entitled to assess the experience and competences of the policymaker, for example their ability to manage the organisation in accordance with ethical and professional standards.

⁸ 83/26 Official Journal of the European Union 22.3.2013 EN

Section 3. Adviser, broker and reinsurance broker; holder of a dispensation as referred to in Section 4:3(4) of the *Wft* (group C)

2.3.1 Adviser, broker and reinsurance broker; holder of a dispensation as referred to in Section 4:3(4) of the *Wft*

A policymaker of an adviser, broker or reinsurance broker or a holder of a dispensation as referred to in Section 4:3(4) of the *Wft* is suitable within the meaning of part 1.2.1 if they have managerial and leadership skills.

a. Managerial skills

In the case of managerial skills necessary to determine day-to-day policy properly, an assessment is made of the work experience that has been gained and is useful for managing an enterprise, taking into account the level of work experience, the role in the enterprise and the degree of responsibility in the enterprise. Examples are responsibility for cross-department matters, duties requiring organisational skills and the role within an enterprise. Managerial skills may also be evident from the responsibility assumed by a policymaker, for example in independent entrepreneurship. By contrast, leadership skills are always gained by being in charge of a number of staff.

Example

A candidate for a position as policymaker is currently an account manager at a firm of insurance brokers. An account director is an example of a type of position in which no managerial skills are usually gained. Although account directors have their own portfolio and responsibility for their own account, this is insufficient to demonstrate the managerial skills that a policymaker must have. Managing and maintaining external (or internal) contacts with customers is not sufficient in itself. Candidates must instead show that they have had responsibility beyond the management of their own portfolio, for example responsibility for the budget and/or financial statements of the enterprise where they work and responsibility for the strategic decisions within the enterprise. Another candidate for a position as policymaker is an agent or adviser who is employed by a financial service provider and has his own portfolio in his role as agent. Although the agent provides advice independently, responsibility for the policy to be pursued, the strategy and the budget lies with the financial service provider as the employer.

b. Hierarchical leadership skills

Leadership in a hierarchical setting involves a policymaker knowing from experience how to discharge the responsibilities and exercise the powers necessary to manage an organisational unit. It is important for a policymaker to demonstrate that they have the skill to take decisions on the appointment of staff and on their responsibilities, training and assessment. A policymaker gains these skills in a work setting that is relevant to the enterprise where they will work. This is the case in any event when the experience has been gained in a financial firm. The experience must be appropriate to the enterprise in which the policymaker will work and the position they will hold.

In addition, Section 4:9(2) of the *Wft* specifies how professional expertise must be guaranteed in the enterprise of a financial service provider. Section 4:9(3) opening words and Section 5 subsection j° ff. of the *BGfo* defines the professional requirements for the performance of duties in a financial service provider.

c and d. General and specific professional knowledge

There is no supplementary legal framework specifying the professional requirements to be met by investment product brokers and advisers and by policymakers of a holder of a dispensation as referred to in Section 4:3(4) of the *Wft*. For this reason, this part specifically states that they must be able to demonstrate specific and general professional knowledge.

Collective

This part is based on the principle that in a group of enterprises as referred to in part 2.3.1.1 duties involving leadership skills may be divided. At least one policymaker must have gained hierarchical leadership skills over a period of two years, including a continuous period of one year. The other policymakers must in any event have gained managerial skills over a period of two years, including a continuous period of one year.

For policymakers of a holder of a dispensation as referred to in Section 4:3(4) of the *Wft*, it is sufficient if one of the policymakers has specific professional knowledge.

Example

An enterprise gives notice of the appointment of two new policymakers. One policymaker has 15 years' experience as the manager of a department in an insurance company. This qualifies as hierarchical leadership and managerial experience. The other policymaker has five years' experience as a customer relations officer at the same insurance company and has been responsible in that capacity for overseeing a large cross-department project involving new strategy and planning for the insurance company. This does not qualify as hierarchical leadership experience because the policymaker has not managed an organisational unit or taken decisions on the appointment of staff. It does qualify as managerial experience, however, because he was responsible for determining new day-to-day policy, strategy and planning for the insurer. As the first policymaker has both skills and the second has only managerial skills, they jointly meet the requirements specified for the management.

2.3.2 Small advisers, brokers and reinsurance brokers

A small adviser, broker or reinsurance broker within the meaning of this article is an enterprise employing six or fewer people, including the policymaker(s). Policymakers of such an enterprise are considered suitable if they fulfil one of the conditions set out in part 2.3.2:

- a) managerial experience gained over a period of at least one year in a work setting relevant to the enterprise;
- b) possession of a higher vocational (HBO or HBO+) certificate from an education programme relevant to the enterprise and at least one year of work experience in a work setting relevant to the enterprise gained in the last 10 years;
- c) possession of a higher vocational (HBO or HBO+) certificate and at least two years' work experience in a work setting relevant to the enterprise gained in the last 10 years, including a continuous period of at least one year. The higher vocational (HBO or HBO+) certificate entitles the holder at least to a bachelor's degree or the equivalent awarded before the introduction of the bachelor and master system. An education programme of a higher vocational level of professional and intellectual attainment is therefore not sufficient if it does not carry the entitlement to such a degree.
- d) • seven years of work experience in a work setting relevant to the enterprise. During these seven years, two years' work experience must have been acquired in the last 10 years, including a continuous period of one year.

In view of the specific requirements that a policymaker of a small adviser, broker or reinsurance broker must fulfil, there is no scope for the suitability assessment to be considered at the outset, taking into account the composition and functioning of the collective.

The higher vocational (HBO or HBO+) certificate from an education programme relevant to the enterprise must have focused specifically on financial services. Other, more generic education programmes are not sufficient to benefit from this exception.

The knowledge gained with relevant higher vocational (HBO or HBO+) certificates assumes a minimum level of knowledge and intellectual ability but usually barely covers the practice of financial services. The additional requirement of one or two years' work experience in financial services as well as the higher vocational (HBO or HBO+) certificate, coupled with acquired knowledge, thus ensures important competences, skills and professional conduct relevant to the independent management of a financial enterprise. Since relevant higher vocational (HBO or HBO+) certificates are focused on financial services, only one year's relevant work experience is required instead of two. Relevant work experience may also have been gained during the higher vocational (HBO or HBO+) programme through an internship in a relevant company, such as a financial service provider.

The continuous work experience may have been gained in different positions.

Examples

If a policymaker of a broker with only one policymaker and two employees cannot meet the requirement of two years' managerial and hierarchical leadership experience, it is sufficient to have,

for example, a higher vocational (HBO) certificate in Psychology, provided that the policymaker has at least two years' work experience (one of them continuous) in a work setting relevant to the provision of financial services, such as a retail bank or mortgage adviser.

If the requirements of part 2.3.2 are fulfilled, a licence will be granted subject to the restriction that the enterprise does not employ more than six staff. If the broker wishes to expand and employ a staff of more than six, it must notify the supervisor. The policymakers will then be reassessed in the light of the minimum requirements of two years' work experience, at least one of which must be continuous.

2.3.3 Further requirements

If the circumstances provide reasonable cause, the assessment may be based on the requirements set out in part 1.2.1 in addition to those of parts 2.3.1 and 2.3.2.

See the notes to part 2.3 for a practical example.

Chapter 3 – Final provisions

3.1 Evaluation

As explained in part 1.8, a joint panel of the AFM and DNB monitors the application of this Policy Rule to ensure consistency. This panel will also identify any problems in the assessment. The Policy Rule will be periodically evaluated, partly on the basis of the panel's findings.

3.2 Repeal

The Expertise Policy Rule 2011 of DNB and the AFM dated 15 December 2012, which has been in force since 1 January 2011 (Government Gazette 2010, 20810), is repealed with effect from the entry into force of this new Policy Rule on Fitness 2012.

3.3. Entry into force

This Policy Rule enters into force on 1 July 2012. If the Government Gazette in which this Policy Rule appears is published after 2 July 2012, this Policy Rule will enter into force with effect from the day after the date of publication of the Government Gazette in which it appears and will have retroactive effect to 1 July 2012.

3.4 Short title

This part 3.4 provides the short title of this Policy Rule and requires no further commentary.

De Nederlandsche Bank N.V.

Dutch Authority for the Financial Markets