



EUROPEAN CENTRAL BANK

BANKING SUPERVISION

Feedback statement on consultation comments regarding the Guide to fit and proper assessments

General comments

	Para	Comment	ECB analysis	Amendment
1		<p>A few respondents commented that harmonisation should only be possible within the limits of national constitutional principles, as the sovereignty of Member States is partially transferred to the EU.</p> <p>Furthermore, the ECB should not try to harmonise national law, such as corporate governance law, that has not been harmonised within the EU at level 1.</p>	<p>The fit and proper requirements for members of management bodies are harmonised at the European level by the CRD IV¹. This Directive, which provides a minimum level of harmonisation in terms of fit and proper assessment, is transposed into the legal framework of the Members States. This means that it is the national law that applies directly to credit institutions.</p> <p>The SSM Regulation² has conferred on the ECB specific tasks related to banking supervision, among them, ensuring that significant supervised entities comply with governance arrangements and fit and proper requirements. In carrying out this task, the ECB shall apply all relevant EU law, and where EU law is composed of Directives, it shall apply the national law transposing those Directives. Therefore, the ECB applies national law, taking into account all its specificities, when assessing the fitness and propriety of members of management bodies. The Guide to fit and proper assessments (hereinafter referred to as the “Guide”) does not introduce new rules or requirements and cannot in any way substitute the relevant legal requirements stemming either from applicable EU law or applicable national law.</p>	No change

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

Para	Comment	ECB analysis	Amendment
2	Several respondents commented that the ECB should not use the Guide to create new requirements for institutions.	The ECB is not creating new requirements, but harmonising the application of the regulatory requirements for assessing the suitability of members of the management bodies of significant credit institutions, as provided for by EU law. The objective of the Guide is to explain in greater detail the policies, practices and processes applied by the ECB when assessing the suitability of members of the management bodies of significant credit institutions, in order to ensure consistency in the assessments. The Guide does not introduce new rules or requirements and cannot substitute the relevant legal requirements stemming either from applicable EU law or applicable national law. Moreover, the supervisory policies explained in the Guide have been agreed on by the Supervisory Board of the ECB, in which both the ECB and the national competent authorities (NCAs) of the Member States participating in the Single Supervisory Mechanism (SSM) are represented.	No change
3	Some respondents were concerned that the Guide changes the powers of the NCAs.	The Guide does not change the powers of the supervisory authorities. The division of powers between the ECB and the NCAs is regulated by Articles 4 and 6 of the SSM Regulation.	No change

² Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions.

Para	Comment	ECB analysis	Amendment
4	<p>Several respondents commented on the relationship between the Guide and the EBA Guidelines:</p> <ol style="list-style-type: none"> 1. The EBA and ECB both create new regulatory requirements. An agreement between the EU institutions would be necessary to achieve the standardisation objectives. 2. It is not clear how the Guide relates to the EBA Guidelines on suitability. 3. The Guide should be aligned with the EBA Guidelines on suitability. 	<p>With the Guide, the ECB is not creating new requirements, but harmonising the application of EU law in the area of fit and proper assessments of members of the management bodies of significant credit institutions. The Guide should be kept distinct from the EBA Guidelines. Article 91(12) of the CRD IV mandates the EBA to develop guidelines on certain aspects related to governance. The EBA Guidelines aim at ensuring supervisory convergence and consistency in supervisory outcomes. The ECB does not replace the EBA in carrying out those tasks. When carrying out its supervisory tasks, the ECB takes into account the single rulebook, including the EBA Guidelines on suitability.</p> <p>The ECB, as a competent authority, needs to comply with the EBA Guidelines. Therefore, the alignment of the Guide with the EBA Guidelines has been ensured.</p>	Aligned
5	<p>Some respondents commented on the terms “management body”, “executive” and “non-executive”:</p> <ul style="list-style-type: none"> • “management body” does not take into account the differentiation between the management body in its supervisory function and the management body in its management function as made in some two-tier governance structures. • the terms “(executives)” and “(non-executives)” should be removed as it would lead to too far-reaching interpretations regarding permissible governance structures. 	<p>A new paragraph was added to clarify that the Guide follows, to the extent possible, the terminology used in the CRD IV and the EBA Guidelines on suitability. For example, the term “management body” applies to the bodies in all governance structures that have a management or supervisory function.</p> <p>The Guide does not advocate any particular governance structure and is intended to embrace all existing structures.</p> <p>The terms “executive” and “non-executive” reflect the definition of management body in Article 3 and paragraph 56 of the preamble of the CRD IV, and are used in the EBA Guidelines.</p>	Clarified

Para	Comment	ECB analysis	Amendment
6	<p>Timelines of fit and proper assessments:</p> <p>Some respondents asked for an indication of the duration of the assessments. Other respondents asked for further harmonisation of the procedure and timelines, as this would be essential to create efficient processes and a level playing field.</p>	<p>Several factors can have a material impact on the overall processing time: (i) the complexity of the assessment (e.g. the profile, role and position of the person being assessed); (ii) the need to conduct an interview; (iii) the incompleteness of the file and the need to suspend or interrupt the assessment pending the submission of additional information by the supervised entities, and the delays in receiving those documents, particularly in jurisdictions where the assessment is conducted on an ex post basis (i.e. after the appointees are appointed).</p>	No change
7	<p>A few respondents stated that the ECB must respect the fundamental principles that the EU should protect, and even promote, the right of commercial freedom of enterprise and the right to property (including voting rights).</p>	<p>The ECB performs its tasks in accordance with relevant EU law and the general principles stemming from it.</p>	No change

Chapter 1 Legal framework

	Para	Comment	ECB analysis	Amendment
8	1.2	Several respondents commented on the application by the ECB of national law beyond the scope of the CRD IV (such as company law), e.g. national soft law, national uncodified legal principles and case law. Some also asked for clarification that when there is a conflict between the Guide and applicable national laws, the latter will always prevail.	<p>In accordance with Article 4(3) of the SSM Regulation, when carrying out the tasks conferred on it by that Regulation, which includes fit and proper assessments, the ECB shall apply binding national legislation implementing directives in the performance of its tasks, the ECB and this Guide should not interfere with the different governance structures used across Member States under national corporate law.</p> <p>As Article 4(3) of the SSM Regulation only relates to binding national legislation, there is no legal basis for the ECB to apply non-binding national soft law, national uncodified legal principles and case law. However, the ECB applies uncodified legal principles stemming from EU law.</p>	No change
9		A few respondents suggested deleting the sentence in brackets "(e.g. the choice between ex ante supervisory approval of an appointment or ex post notification of an appointment to the supervisor)" as it would indicate the introduction or a preference of the ECB for an ex ante assessment approach.	The sentence relates to one of the aspects on which the CRD IV has remained silent. The Guide does not advocate any particular governance structure and is intended to cover all governance structures.	No change

Chapter 2 Organisation within the SSM

No comments received.

Chapter 3 Principles

	Para	Comment	ECB analysis	Amendment
10		<p>Primary responsibility of credit institutions</p> <p>“All information necessary”: the ECB should introduce clarification and practical tools in order to avoid uncertainties regarding the responsibility to provide “all information necessary”.</p>	<p>The efficiency of the process will be enhanced when institutions provide all necessary information at the time of the notification. This would limit the need to subsequently ask for additional information.</p> <p>Institutions need to notify their NCA using national forms where available. The Guide now includes a footnote with the link to the page on the ECB’s website where a list of national forms and the “Fit and Proper questionnaire”, which is a practical tool introduced by the ECB, can be found. National forms will be aligned with this questionnaire (content over form) by June 2017.</p>	Clarified
11		A few respondents commented on the “own due diligence” of institutions in that they could only make a plausibility check of information provided by the respective candidates and not provide a full criminal investigation.	Institutions have the primary responsibility to ensure the suitability of the members of its management bodies at all times. The Guide does not provide any guidance on how the assessment by the supervised entities should be done.	No change
12		Some respondents requested the ECB to expressly consider those organisations in which the methods of nominating individuals do not allow the entity to conduct an ex ante evaluation of the suitability of the candidate and to clarify the procedure to be adopted in cases where only an ex post evaluation of the nominated individual is possible.	The ECB has to apply national law and therefore the national assessment approach. In cases such as those described in the comment, the institution is required to conduct the assessment of the appointee as soon as practical and at least within the national legal deadline, if applicable.	No change
13		According to a few respondents, the Guide suggests that the ECB could request different information from that requested by the EBA.	The Guide is aligned with the EBA Guidelines. However, while applying the regulatory requirements in practice, the ECB may further clarify or detail the information that needs to be provided under the EBA Guidelines.	No change
14		A few respondents asked whether “individual” includes legal persons.	When national law requires fit and proper assessments of legal persons, the term “individual” includes such legal persons.	No change

	Para	Comment	ECB analysis	Amendment
15		<p>Proportionality and case-by-case assessment</p> <p>Further explanation on the application of the proportionality principle to the suitability of the members of the management body has been requested by some respondents. Others stated that the aim of harmonisation does not leave room for proportionality.</p>	<p>The principle of proportionality always applies. The aim of harmonisation and ensuring consistency in assessments (creating a level playing field) does not imply a “one-size-fits-all approach” and does not affect the application of the proportionality principle.</p> <p>The application of the proportionality principle is based not only on the size of the entity, but also on the nature, scale and complexity of the activities, and on the specific functions to be carried out. As proportionality requires a case-by-case assessment, it is not possible to define the specific requirements in general for each case.</p> <p>Proportionate application of the suitability criteria cannot lead to a lowering of the suitability standards, but can result in a differentiated approach to the assessment procedure or the application of suitability criteria. Some examples have been added for clarification.</p>	Clarified
16		<p>Principles of due process and fairness</p> <p>Confidentiality should be underlined and guaranteed by the ECB.</p>	<p>An explicit reference to confidentiality has been added to Principle 5.</p>	Added

Chapter 4 Scope

	Para	Comment	ECB analysis	Amendment
17		<p>Several respondents presumed that or asked whether the Guide also applies to fit and proper assessments of key function holders. Some commented on the legal basis of such assessments.</p>	<p>The scope of the Guide is limited to the fit and proper assessment of members of management bodies. The section on scope has been moved to the first page to clarify this.</p>	Clarified

Para	Comment	ECB analysis	Amendment
18	A few respondents asked for clarification on the scope of the institutions, especially whether it also applies to subsidiaries not subject to the CRD IV, as is the case in the EBA Guidelines.	As clarified in the Guide, the scope of institutions covers all those under the direct supervision of the ECB (see Article 6(4) of the SSM Regulation). The scope of the “CRD institutions”, as used in the EBA Guidelines, is broader.	No change

Chapter 5.1 Experience

Para	Comment	ECB analysis	Amendment
19	<p>Many respondents showed their concern regarding the requirement contained in the Guide that “All members of the management body are expected to possess, as a minimum, basic theoretical banking experience relating to...”.</p> <p>Main comments:</p> <p>(i) This knowledge should be required on a collective basis, not by each individual member of the management body.</p> <p>(ii) This requirement would hinder diversity in the management body.</p>	<p>Article 91(1) of the CRD IV requires members of the management body to be suitable individually. Article 91(7) of the CRD IV includes the requirement on collective suitability.</p> <p>The ECB agrees that diversity within the management body of the institutions is important and that persons outside the banking or financial sector may be part of the management body of the institutions. This has been better clarified in the Guide. However, they must all have (or acquire through training) a minimum level of theoretical banking experience in order to properly fulfil their functions.</p>	Clarified
20	Many respondents pointed out that there is a need to appoint IT experts as members of the management body.	This need is noted by the ECB and IT has been included as a relevant area to be taken into account when assessing experience (in line with the EBA Guidelines).	Added

Para	Comment	ECB analysis	Amendment
21	Many respondents interpreted the thresholds for the presumption of experience as fixed thresholds that need to be met in every case and commented that this would mean that many appointees would not be suitable.	This point has been clarified in the Guide. Furthermore, a paragraph has been included to explain the rationale behind the two-stage assessment (efficiency and a reduction in the length of assessment periods). At Stage 1, the appointee's experience is assessed against the thresholds at which sufficient experience is presumed. Even If these thresholds are not met, the appointee can still be considered suitable, but in such cases a further assessment needs to be conducted.	Clarified
22	Several respondents stated that experience gained in the public/academic sector should also be taken into account.	The Guide now clarifies that the experience of members of the management body in its supervisory function includes experience gained in the public/academic sector, depending on the position held.	Added
23	Several respondents raised the issue of potential discrepancies between the EBA Guidelines and the ECB Guide.	"Auditing and accounting" has been added to the list of basic theoretical experience required of the members of the management body in order to bring the Guide into line with the EBA Guidelines.	Added
24	Many respondents drew the ECB's attention to certain particular requirements under the relevant national law that may not be respected by the current drafting of the Guide (e.g. number of years of experience requested for certain position, the need to appoint staff representatives).	Please refer to comment 8 on the application of national law under "Legal framework" above.	No change

Chapter 5.2 Reputation

	Para	Comment	ECB analysis	Amendment
25		Many respondents commented on “Even if the conclusion is in favour of the appointee, the supervisor may question the underlying circumstances of the proceedings.” Comments received suggested this was in breach of the presumption of innocence and also undermined the Court’s decision.	<p>The ECB has amended the wording to clarify that, although the competent authority will accept the decision of the judicial authority in concluded proceedings, the underlying circumstances of the proceedings may be relevant for the assessment. An example of when the competent authority would review the underlying circumstances of concluded proceedings has also been added for clarity.</p> <p>The reference to the “presumption of innocence” has been deleted to avoid confusion.</p>	Clarified
26		Many respondents commented on the involvement of the individual in the particular proceedings, in particular stating that it would be unfair or irrelevant to take into account facts if the individual was not a member of the management body at the time of the corporate offence.	The ECB has clarified that proceedings are relevant if the appointee was a member of the management body at the relevant time held another position associated with the case or was involved in the subject of the proceedings at the time in question.	Clarified
27		Several respondents commented on the type of proceedings which would be relevant to reputation and suggested that minor offences should not be notified to the competent authority.	A reference to minor incidents has been included, as the cumulative effect of minor incidents may have an impact on the appointee’s reputation. This is in line with the provisions of the EBA guidelines on suitability.	Clarified
28		A few respondents asked for clarification on when notification of proceedings should be provided.	The ECB has clarified that the competent authorities should be informed of proceedings at the time of the initial application or that proceedings should be brought to the supervisor’s attention as a new fact immediately if the individual is already in the position.	Clarified
29		A few respondents requested that insights into the applicant’s conduct should be included.	The word “insights” has been added to the minimum set of information required.	Added

Para	Comment	ECB analysis	Amendment
30	A few respondents suggested that the minimum set of information to be provided should be divided into pending and concluding proceedings.	It is not considered necessary to include a division between pending/concluded proceedings, as the current list covers both circumstances and the information can be tailored to the particular circumstances of the case.	No change
31	A few respondents suggested that clarity should be provided on what information is time-barred and no longer relevant and suggested limiting the period of relevance to five years.	It is not considered necessary to include this, as the draft EBA Guidelines on suitability provide guidance on this point. The relevant time period is also determined by the particular nature of the proceedings and is best determined on a case-by-case basis.	No change
32	A few respondents suggested that it would be appropriate to specify that the burden of providing information on pending investigations is on the appointee via suitable self-certification.	The supervised entity has the ultimate responsibility for providing this information, which it should obtain from the appointee or via other sources.	No change

Chapter 5.3 Conflicts of interest

Para	Comment	ECB analysis	Amendment
33	A few respondents commented that the sentence “Adversely affects the interests of the supervised entity” should be deleted, as it lacks clarity.	This sentence provides sufficient clarification on when there is a conflict of interest. The table of the situations that are presumed to create a material conflict of interest provides further explanation.	No change
34	Some respondents suggested clarifying that a material conflict of interest can only exist if such a conflict would also exist under national law (in particular corporate law).	Not all national laws provide the same definition or categories of conflicts of interest. The ECB aims to provide a harmonised and consistent implementation of the single rulebook within the SSM. The table of situations that are presumed to create a material conflict of interest is without prejudice to national law.	No change

Para	Comment	ECB analysis	Amendment
35	Several respondents requested clarification on the relationship between the concepts of conflicts of interest and independence of mind, and alignment of the Guide with the EBA Guidelines on this point.	<p>The relationship between the two concepts is described in the EBA Guidelines. The ECB follows these concepts (see also comment 5).</p> <p>The relationship between the concept of conflicts of interest and the concept of independence of mind has been clarified.</p>	Clarified
36	<p>Many respondents requested clarification on how conflicts of interest are assessed within a group, e.g. if members of a management body of a parent company are also a member of the management body of one or more subsidiaries.</p> <p>Some respondents stated that having positions at both the parent and the subsidiary level does not constitute a conflict of interest, nor does it indicate a lack of independence. In addition, they pointed to the right of the parent company to nominate members of the management body in its supervisory function in its subsidiaries, which should not be prohibited or restricted.</p>	<p>As stated before, the Guide does not interfere with the governance structures of supervised entities.</p> <p>Conflicts of interest relate to the requirement of independence of mind, which applies to all members of the management body. It should be distinguished from the requirement regarding independence of members of the management body in its supervisory function.</p> <p>If conflicts of interest arise, they should be prevented or adequately mitigated or managed. Only if they cannot be prevented, mitigated or managed adequately, will a person be considered not to fulfil the requirement.</p> <p>The wording has been altered to provide better clarification of the above.</p>	Clarified
37	Several respondents requested clarification that only material conflicts of interest which cannot be mitigated or otherwise managed should be disclosed. Some also asked for clarification that “disclosure” means “communicate to the supervisor”.	<p>All conflicts of interest must be disclosed, i.e. communicated to the competent authority. The term disclosure has been clarified and more clarification has been provided on the different steps in assessing conflicts of interest.</p> <p>The supervised entity must carry out a detailed assessment of the situation, and if it considers the conflict of interest to be material, it shall adopt measures to prevent, manage or mitigate it and must explain these to the competent authority in a “Conflict of interest statement”.</p> <p>The competent authority assesses the adequacy of the assessment and of the measures taken. If it deems the measures to be inadequate, a condition could be imposed (if applicable) or the member would be deemed not suitable.</p>	Clarified

Para	Comment	ECB analysis	Amendment
38	<p>Many respondents did not consider it necessary for supervised entities to perform a detailed assessment of the situation or adopt measures to manage or mitigate the conflict of interest if national law requires them to adopt certain measures. Therefore, they proposed deleting the two bullet points on page 15 of the draft Guide.</p>	<p>The first bullet point (performing a detailed assessment of the particular situation) is always necessary, irrespective of the existence of national law prescribing which measures should be taken. The second bullet point is only relevant if national law does not require specific measures to be undertaken.</p>	No change
39	<p>Many respondents asked for clarification on the sentence “the presence of shareholder representatives in the management body is accepted”. Others commented that the shareholding threshold of 1% should be omitted from the Guide or it should be explicitly stated that such a threshold does not prevent member credit institutions’ representation in the banking groups’ central institutions or parent entity’s representative’s nomination in the subsidiary institution.</p>	<p>Text has been added to clarify that being a shareholder (unless less than 1% of the shares is held) is one of the situations that is presumed to create a material conflict of interest. It is up to the institution to provide information clarifying that there is no material conflict of interest. Even if there were a material conflict of interest, this <i>per se</i> does not prevent a person from being a member of the management body if the conflict of interest can be adequately prevented, managed or mitigated.</p> <p>Conflicts of interest should be distinguished from the requirement to have a sufficient number of independent members in the management body.</p>	Clarified
40	<p>Many respondents pointed out that promotional banks are created to pursue public policy objectives and that, as a consequence, the membership of persons in political positions in the supervisory boards of promotional banks in itself should not be considered to lead to a conflict of interest. Some also suggested extending the sentence “the presence of shareholder representatives in the management body is accepted” to include members of the management body in its supervisory function of promotional banks.</p>	<p>Text has been added to clarify that holding a position with high political influence is one of the situations that is presumed to create a material conflict of interest. It is up to the institution to provide information clarifying that there is no material conflict of interest. Even if there were a material conflict of interest, this <i>per se</i> does not prevent a person from being a member of the management body if the conflict of interest can be adequately prevented, managed or mitigated.</p> <p>Conflicts of interest should be distinguished from the requirement to have a sufficient number of independent members in the management body.</p>	Clarified

Para	Comment	ECB analysis	Amendment
41	Some respondents requested the deletion of the words “perceived (i.e. in the mind of the public)”.	The use of these words is in line with the EBA Guidelines. Although a perceived conflict of interest cannot always be predicted, it can quite often be expected. Perceived conflicts of interest could also create reputational risk and affect trust in the supervised entity and the banking sector as a whole.	No change
42	Many respondents requested the deletion of the table with detailed examples of material conflicts of interest and to leave this to national discretion.	The prevention of conflicts of interest is a requirement under the CRD IV. Without prejudice to national law, the Guide aims to harmonise the application of this requirement. The examples provide transparency on the ECB’s policies regarding conflicts of interest.	No change
43	Several respondents requested clarification that the conflicts of interest as stated in Table 1 can be mitigated.	Table 1 includes situations that are presumed to create material conflicts of interest. Whether this is the case should be determined on the basis of a case-by-case assessment. This has been clarified in the Guide. Further clarification has also been provided on the different steps in assessing conflicts of interest.	Clarified
44	Several respondents stated that the table describing situations creating material conflicts of interests should be applied in line with national law requirements regarding the obligatory approval of certain transactions by the body.	As stated in the Guide, the table is without prejudice to national law.	No change
45	Some respondents suggested expressly stating that a “personal loan” contains not only housing and other consumer credit, but also loans granted for professional purposes (such as loans for entrepreneurs/sole proprietors).	The word “personal” relates to the liability of the appointee. The purpose for which the loan is used is not relevant.	No change
46	Several respondents commented that the €100,000 threshold is too low for performing loans and suggested raising the threshold to €500,000 or deleting it and focusing on the creditworthiness of the appointee.	The threshold was increased to €200,000. Only performing loans under this amount do not need to be disclosed.	Changed

Para	Comment	ECB analysis	Amendment
47	A few respondents asked for clarification on the term “non-preferential”.	An explanation has been added for clarification.	Clarified
48	Some respondents requested the insertion of a “significance” threshold with regard to personal conflicts of interest similar to the threshold for commercial relationships.	The word “significant” has been added.	Changed
49	A few respondents suggested that all performing loans should be considered as not material, irrespective of whether they are secured or unsecured, as people with excellent creditworthiness would have no problem at all switching to another bank.	If appointees have unsecured loans there is a higher risk of a conflict of interest than if they have secured loans. The suggestion was therefore not accepted.	No change
50	A few respondents suggested replacing the two-year period for professional conflicts of interest with “over the last years”.	The ECB aims to harmonise the application of the suitability assessment criteria. The suggested phrase “over the last years” is unclear and would not contribute to the goal of harmonisation.	No change
51	Regarding financial conflicts of interest, some respondents commented that the phrase “any of the supervised entity’s clients” is an extremely wide and unspecific concept. The same comment was made regarding the phrase “financial interest in any of the supervised entity’s competitors”.	The situations included in the table are presumed to be material. However, the assessment of the specific case by the competent authority may lead to the conclusion that some or all relationships with clients or competitors are not material.	No change
52	A few respondents commented that being a party in legal proceedings is not a conflict of interest per se as there may be legal proceedings that go against the supervised entities. Therefore, it would be necessary to also take the circumstances into account.	The situations included in the table are presumed to be material. However, the assessment of the specific case by the competent authority may lead to the conclusion that based on the underlying circumstances, the legal proceedings are not material.	No change

Chapter 5.4 Time commitment

	Para	Comment	ECB analysis	Amendment
53		The ECB was requested to expressly include that companies set up for the sole purpose of managing the private economic interests of the appointee are considered to be “entities that do not pursue predominantly commercial objectives within the meaning of Article 91(3) of the CRD IV” and that they therefore do not count.	More clarity has been provided on the concept of “entities that do not pursue predominantly commercial objectives”, which include companies set up for the sole purpose of managing the private economic interests of the appointee provided that they do not require any day-to-day management by the member of the management body. This is in line with the EBA Guidelines.	Added
54		Counting of directorships: many respondents asked for a combined application of paragraphs (a) and (b)(ii) of Article 91(4) of the CRD IV, i.e. that directorships held within the same group, together with undertakings in which the institution has a qualifying holding, count as a single directorship. They stated that the ECB’s restrictive approach is in conflict with some national rules and the CRD IV.	Conflict with national law: please refer to the new paragraph 2.2. of the revised Guide. Conflict with CRD IV: Article 91(4) of the CRD IV provides clear counting rules. The ECB’s interpretation of this article is in line with the EBA’s interpretation and does not conflict with the CRD IV.	No change
55		A few respondents asked for clarification on Figure 2, specifically, how would the ECB count directorships held in entities B, D and E (no directorship in entity A – mother company of B, and the only entity holding a qualify holding in D and E).	By means of clarification, a new paragraph has been included with the requested example.	Added
56		Several respondents requested for clarification on the definition of “group”.	The same concept of “Group” used in the EBA Guidelines applies.	No change

Para	Comment	ECB analysis	Amendment
57	Several respondents suggested that not all mandates need to be disclosed (e.g. entities which do not pursue predominantly commercial objectives, no decision-making committees or honorary positions).	<p>The Guide has been revised to clarify that a dual assessment of time commitment needs to be conducted, namely a quantitative assessment and a qualitative assessment.</p> <p>The need to analyse qualitative time commitment requires the full disclosure of mandates, i.e. directorships should be disclosed in the application with no exceptions.</p>	Clarified
58	Several respondents pointed out that the appointee/supervised entity can only provide the ECB with an estimated time commitment and not a precise calculation of time.	It has been expressly added in the Guide that the ECB should be informed of the <i>expected</i> time commitment.	Added
59	Many respondents asked for additional information on how to calculate the buffer of time or for it to be deleted.	The sentence on the buffer has been removed from the list of additional information. The supervised entity should take into account the need for ongoing learning and development, as well as the need for a buffer for unexpected circumstances, when assessing whether the appointee will be able to commit sufficient time to performing his/her functions.	Changed
60	A few respondents commented that the candidate should only provide detailed information on time commitment if the number of entities exempted from the counting was high.	It has been clarified that the requested information is necessary for the qualitative assessment of time commitment and that it should include an explanation of potential synergies if the number of positions exempted is high.	Clarified

Chapter 5.5 Collective suitability

	Para	Comment	ECB analysis	Amendment
61		A few respondents suggested that it would be less time-consuming and a more fact-based process if standardised questionnaires, tables and CV templates were used.	This was not considered necessary given the description provided of the short reasoned statement that is requested. A standardised template may be too generic.	No change
62		A few respondents queried the difference between collective suitability and the sum of individual knowledge, skills and experience.	Collective suitability is assessed from the perspective of the needs of the management body and does not merely consider the sum of the experience of each of the individual members.	No change

Chapter 6

	Para	Comment	ECB analysis	Amendment
63	6	A few respondents commented that it is necessary to have a member of the management body involved in the interviews for confidentiality reasons.	An interview aims to gather information on the appointee, not on the institution. In addition, the Guide explains in Chapter 3 (Principle 5) that the principles of due process and fairness mean that the appointee and the supervised entity enjoy all procedural guarantees included in the SSM Regulation and the SSM Framework Regulation ³ . A footnote referring to Article 32 of the latter has been added.	Clarified

³ Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation).

	Para	Comment	ECB analysis	Amendment
64	6.2	Several respondents commented that there is no need for mandatory interviews for the positions of CEO and Chairman, because all information could be provided in writing and these persons are usually well known and experienced.	<p>The purpose of interviews is to complement the written information on an appointee. They are an important supervisory tool for the comprehensive assessment of the suitability of an appointee. The ECB takes a risk-based approach, meaning that, in principle, an interview will only always be conducted for the most important positions from a risk perspective (i.e. CEO/Chairman). In duly justified cases, the ECB may decide that an interview is not necessary (e.g. the incoming CEO is already the deputy CEO and is well known to the competent authority).</p> <p>The term “mandatory” has been deleted and the sentence “Interviews will be conducted in the case of new appointments for CEO (or equivalent) and Chairman positions at stand-alone banks and the top banks of groups, as these entail the most risk” has been added to better clarify the above.</p>	Clarified
65		A few respondents commented on the sentence “the aim of the interview is to complement and/or verify (i) the documentation submitted by the appointee and/or the supervised entity”, asking for clarification on the extent to which institutions should “investigate” the veracity of the assessed person’s declarations or disclosures. In any event this obligation should be limited to public information and/or to the jurisdiction(s) in which the institution carries out its activities.	This sentence in Chapter 5.2 explains the aim of an interview. The key principle regarding the primary responsibility of supervised entities includes the obligation on supervised entities to verify the information provided by the appointees to the extent possible, making use of all available sources.	No change
66	6.3	A few respondents suggested that, in order to enable the appointee to prepare for the interview, the notification about the interview should include the length of the interview and the names of the panel members.	Usually an interview will not take more than 90 minutes, but the duration may depend on the type of interview, the issues that come up and the topics discussed. Therefore, it is difficult to predict the duration. The suggestion to include the names of the panel members cannot always be ensured far in advance, but the ECB will do so whenever possible.	No change

Chapter 7 Assessment process

	Para	Comment	ECB analysis	Amendment
67	7	Several respondents provided comments on ex ante assessment and ex post assessment approaches, especially the possibilities for an ex ante approach.	The Guide does not take any stance on assessment approaches. As the single rulebook currently does not provide requirements or guidance regarding the assessment approach, the ECB must apply the approach as provided by national law.	No change
68	7	A few respondents suggested that it would be useful if each NCA were to issue forms to be completed for appointments/renewals/changes of role.	This is a matter of national law. The ECB's website provides a link to all national notification forms.	No change
69	7.1	Some respondents asked for clarification that when there is a change of role in the management body, the new assessment should only be limited to the areas in which there are higher suitability requirements compared with the previous role. It was also suggested that only "a lighter reassessment" should be required in such cases.	The Guide clarifies that a reassessment will focus mainly on the criteria affected by the new fact. Regarding a change of role, it has been clarified that additional documents and/or information must be provided depending on the type of change. An example was added for clarification.	Clarified
70	7.1	A few respondents commented that changes of role or renewals should only be notified if it is also required by the NCA. The respondents state that banks would have information on the management body's structure available to the supervisor for review, but that a specific notification requirement is excessive and may overload the regulators.	Article 93(1) of the SSM Framework Regulation requires supervised entities to notify any change to the management body, including renewals.	No change

	Para	Comment	ECB analysis	Amendment
71	7.1	A few respondents commented that changes of role or renewals should only trigger an individual reassessment and not a collective reassessment.	The Guide already made it clear that, in the case of changes of role or renewals, a fit and proper assessment will only be made if required and as defined by national law. In the case of a change of role, the assessment will focus mainly on the individual's experience, but could also cover time commitment, conflicts of interest and collective suitability, as these may also be affected. In the case of renewals, an appointee is deemed suitable if no new facts have arisen during the first period that the appointee has held a position in the management body, unless national law requires a full in-depth reassessment of all five fit and proper criteria.	No change
72	7.1	A few respondents commented that a resignation itself should not trigger interview obligations or any other obligations.	There is no obligation to have an exit interview in all cases, as is clear from the sentence: "An exit interview may be held...."	No change
73	7.2	Several respondents commented that the phrase "New facts or any other issue" is too broad.	The phrase cites Article 94(1) of the SSM Framework Regulation. The sentence in the Guide was reworded to clarify the term "new facts".	Clarified
74	7.1	Some respondents asked for clarification on the process of reassessment.	The Guide was reworded in order to clarify the process of reassessment.	Clarified

Chapter 8 Decision

	Para	Comment	ECB analysis	Amendment
75	8.2	Several respondents asked for clarification on the legal status of conditions.	Chapter 7.2 now includes clarification that unlike non-compliance with an obligation or recommendation, failure to comply with a condition will automatically affect the fitness and propriety of the appointee. The consequences of non-compliance with a condition (whether the ECB decision never becomes valid or is no longer valid) depend on the type of condition. The wording of the condition will be sufficiently clear not to give rise to any doubts.	Clarified
76	8.2	Some respondents asked for clarification on the reference to the probationary period below the level of the management body as a condition in the case of a positive decision.	This would allow the appointee to obtain the necessary experience on the job. If the condition were not to be implemented, the appointee would not be able to take up the position as a member of the management body.	Clarified
77	8.3	Some respondents asked for clarification on the sentence “the implementation of the decision of the Governing Council is regulated by national law”.	The sentence was changed to clarify that a positive decision of the ECB does not relieve the appointee of the obligation to comply with other national law requirements, such as prior registration in the relevant national registry.	Clarified
78	8.3	Several respondents stated that the fact that an appointee or the supervised entity has the option to request a review by the Administrative Board of Review or to challenge the decision directly before the Court of Justice of the European Union are limited remedies that would reduce access to legal process disproportionately.	As the ECB decision is considered to be a decision of an EU institution, the review and appeal procedures are provided for under EU law. National appeal procedures do not apply in the case of a decision by an EU institution. A footnote has been added with a reference to the Guide to banking supervision, which provides a further explanation of the review and appeal procedures.	Clarified

Chapter 9 Removal of members from the management body

	Para	Comment	ECB analysis	Amendment
79	9	According to a few respondents, the ECB does not have the power to remove at any time members from the management body at any time, neither under national law of some Member States nor under the CRD IV. Owing to the lack of legal background, the respondents asked for this chapter to be deleted or at least for clarification that that ECB's power to dismiss the management body members and the dismissal process is subject to national corporate law.	As included in Chapter 9, the powers of the ECB to remove members of the management body at any time are included in Article 16(2)(m) of the SSM Regulation. As a regulation is directly applicable and does not need to be transposed into national law, the ECB can remove members of the management body at any time, irrespective of national law provisions.	No change