



Template for comments

ECB Guide to fit and proper assessments and fit and proper Questionnaire

Institution/Company

Association for Financial Markets in Europe (AFME)

Contact person

Mr/Ms

Ms

First name

Tola

Surname

Gbadebo

Email address

tola.gbadebo@afme.eu

Telephone number

+44 (0)20 3828 2734

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General comments

AFME welcomes the opportunity to comment on the ECB's consultation on its Fit and Proper Guide. By way of high-level comments, we would like to highlight the below:

- National law:** We would welcome clarification that the ECB is not intending to introduce conflict with existing national regimes and legal structures. In this respect, we particularly highlight the requirements on individual accountability, ex-ante/ex-post assessments and criminal records checks as requiring further clarification from the ECB;
- Refinement of requirements:** There are several places in the Guide and Questionnaire where clarification or amendment is necessary in order to prevent firms or individuals from being required to provide information that is overly burdensome, already available via local supervisors and/or not strictly relevant for the F&P process;
- Diversity:** We would welcome further consideration from the ECB as to how certain requirements can be adapted to support increased diversity of candidates. In particular, prescriptive requirements related to mandatory experience, or requirements which favour those who have 'done the job before' may place unnecessary barriers on firm's consideration of candidates with less traditional profiles;
- Process and timing:** Our detailed comments outline areas in which further clarity on the intended timeline and the rationale for the ECB's decisions, including where necessary a right of reply, would be welcome. In particular, we expected the Guide to provide more clarification in respect of the timeframes for each step within the process. Currently the timeframes from initial application to interview and interview to final decision vary widely and can take 3 months or more (per section 7.2 it should not exceed 4 months). This makes it difficult to have a position filled within 6 months as the candidate in many cases will not resign from their current position until a positive decision is received. They may then have a significant notice period or cooling off period to complete prior to starting in the position.

Template for comments

ECB Guide to fit and proper assessments

Please enter all your feedback in this list.

When entering feedback, please make sure that:

- each comment deals with a single issue only;
- you indicate the relevant chapter/subsection/paragraph/page, where appropriate;
- you indicate under "Type of comment" whether your comment is a proposed amendment, clarification or deletion.

Deadline: Midnight of 2 August 2021

ID	Chapter	Section	Paragraph	Page	Type of comment	Detailed comment	Concise statement as to why your comment should be taken on board	Name of commenter	Personal data
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1	Guiding principles		4	Deletion	<p>The consultation paper should clearly recognise and acknowledge the existence of different approaches under national legislation that are only compatible with a post-appointment assessment, such as in the case of procedures of appointment by means of lists of candidates, which – for example in Italian listed banks – have to be submitted prior to the shareholders' meeting by shareholders of listed companies, in compliance with procedures for minority representation and the rules for ensuring effective function of markets. We fully agree that the fundamental role of assessment by the bank's management body must precede the assessment by the Authority, but its placement prior to the appointment and by the outgoing management body (rather than the body resulting from re-election) is still a non-mandatory solution and, if it was necessary, a provision for it would need to be specifically introduced in a primary level regulatory source (directive and national law) and certainly not merely in an administrative guide. We therefore propose that prior assessment should be considered as a possibility and that post-appointment assessment should be envisaged as a permissible alternative.</p> <p>This amendment is essential at least for all cases in which the appointment is subject to approval by the shareholders' meeting or is otherwise an immediate consequence thereof.</p> <p>With regard to the latter, for example, it is not practicable for the appointment of a director as a member or chairman of a committee – a decision which must be made by the board of directors – to be subject to prior assessment by the Authority, when it must be carried out following the appointment of the director by the shareholders' meeting.</p> <p>For the few cases where a prior assessment is envisaged, it is essential that clearly defined time limits for the completion of the procedure, of a maximum of 15 or 30 days, are also introduced. The current experiences of decisions that take place months after appointment are <u>only compatible with ex-post procedures and the power of</u></p>	<p>The requirement of a “natural” prior assessment in relation to the appointment is completely out of step with both the directive and the actual possibility of pursuing it in the context of certain national company law rules that could not be overridden by the ECB Guide.</p>	Gbadebo, Tola	Publish
2	1. Scope of the ECB's fit and proper assessments		5	Clarification	<p>We note the introduction in the Guide of the assessment of key function holders and managers of significant institution's branches (within the scope of the applicable national law) which states that the assessment criteria depend on national law, but that the guide can be used to interpret the criteria applicable under relevant national provisions. We assume that it is not the intention of the ECB to put in place any requirements which might place <u>constraints on national law changes.</u></p>	<p>Additional change requirements would generate organisational impacts and workload for both institutions and regulators that would be disproportionate with the risk effectively incurred, knowing notably that these persons are generally not sole or final decision-makers and that final responsibility is borne by CEOs.</p>	Gbadebo, Tola	Publish

	<p>3</p> <p>1. Scope of the ECB's fit and proper assessments</p>		5	Clarification	<p>Further to our comment above, we do not see why the ECB Guide should cover the assessment of managers of significant institutions' branches at all.</p> <p>The explicit reference to the assessment of managers of significant institutions' branches is new compared to the ECG Guide of 2018 and we believe it is incorrect and should be deleted because:</p> <ul style="list-style-type: none"> •No union law - The CRD-requirements on which the EBA Guidelines are based apply to management bodies of institutions and their subsidiaries. Both are defined terms (in CRD IV in connection with CRR) and refer to legal entities. A branch on the other hand is defined (in CRR) as a place of business which forms a legally dependent part of an institution and which carries out directly all or some of the transactions inherent to the business of institutions. The ECB has no power to assess these managers nor can a legal basis for such assessment be found in the CRD-provisions referred to by the ECB. Article 91 CRD relates only to (members of the) management body of an institution (credit institution or investment firm) as defined in Article 3(7) CRD. •Not covered by EBA - the EBA Guidelines on Suitability assessments (EBA/GL/2021/06) do mention the possibility that the head of a branch in the EEA could qualify as a key function holder (see the definition of key function holder in those guidelines: 'Other key function holders might include heads of (...), European Economic Area (...) branches, (...)'), but do not address the assessment of EEA branch managers as such; only in case of a branch of an institution that is authorized in a third country (see p.7, par. 10 of these guidelines). •And as for the Key Function Holders, the reference to articles 74 and 88 CRD in the Guide seems out of place here as these articles regard governance and do not provide a basis for suitability assessments of Key Function Holders, especially in view of the fact that the inclusion of a legal basis for assessment of Key Function Holders is still under debate in the context of the – delayed – implementation of Basel 4 into CRR2, CRD3 	<p>We do not believe that the changes to the Guide are sufficiently backed up by EU law.</p>	Gbadebo, Tola	Publish
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4	2. Legal framework	2.2 CRD and national law		6	<p>We note that NCAs regularly publish supervisory expectations, policy rules, recommendations, opinions, or other variants of non-binding soft law. The Joint EBA/ESMA Guidelines on the assessment of the suitability of members of the management body are also an example of non-binding soft law.</p> <p>Mandatory questions on compliance with this EU/national soft law measures are many times included in the fit and proper questionnaires, thereby effectively resulting in new compulsory requirements that the institutions and/or candidates are to comply with. Filings are considered incomplete and discarded if no answers are provided to questions that are mandatory although they are based on non-binding law. To prevent the framework as regards fit and proper assessments becoming based increasingly on variants of non-binding law, including effectively imposing requirements that are in contradiction of rules relating to the processing of personal data, and to ensure the highest level of effective and consistent harmonization of the applicable framework, we suggest (1) to refrain from posing questions based on soft law, (2) to clarify in the questionnaires on which specific binding Union law or binding national law the relevant questions are based and to (3) only make questions based on binding law mandatory. In addition (4) if national guidance exists, the national guidance should be disapplied and only the ECB Guidance should be followed.</p>	This would reduce unnecessary duplication	Gbadebo, Tola	Publish
5	3. Assessment criteria				<p>As a general comment, there is a concern that the scope of the assessment criteria is too broad. EU case law prescribes that for prior administrative authorisation procedures to be justified, they must be based on objective, non discriminatory criteria known in advance, in such a way as to adequately circumscribe the exercise of the authorities' discretion. Conditions of a vague nature and the absence of any specification of the situations in which the conditions would be deemed to have been met in individual cases, do not comply with the requirement that conditions are to be clear, unambiguous and objective, so that when interpreting the criteria there is no doubt as to the scope of the conditions and obligations imposed and authorities cannot apply the conditions arbitrarily (see e.g.. cases C-724/18 en C-727/18, Cali Apartments, ECLI:EU:C:2020:743; cases C-197/11 en C-203/11, Libert, ECLI:EU:C:2013:288). We note that the ECB and national supervisors increasingly add new criteria to the fit and proper assessments, without clarifying how they relate or can be met in individual cases. We acknowledge that assessing a candidate's integrity and suitability is not a tick the box exercise, but at the same time note that the scope of the criteria the ECB applies is almost infinite resulting in the risk of becoming arbitrary.</p>	More specific requirements would reduce duplication and provide more clarity to the supervised entity.	Gbadebo, Tola	Publish

	6 3. Assessment criteria				<p>A general comment on information requests: The ECB and national supervisors request extensive personal data from candidates. We have taken note of the Opinion of 3 November (2014-0888) from the European Data Protection Supervisor (EDPS) regarding the processing of personal data as part of the SSM by the ECB. As the ECB and national supervisors process more data than originally devised in 2014 and the ECB has made it known it aims to create a tool that partly automates the translation and assessment of fit and proper questionnaires, we would appreciate the ECB providing a detailed explanation on how it mitigates the risks associated with processing large amounts of personal data. We note new developments in the area of automated processing of personal data require careful analysis of the risks involved. We are concerned there appears to be limited attention for this issue as the rather generic privacy statement of the ECB does not provide the required insight. We consider it could be helpful to reach out to the EDPS again now that it is becoming more clear what data the ECB intends to process and on what specific legal basis and/or soft law. In particular, and in line with the opinion of the EDPS, we suggest the ECB works towards limiting the amount of personal data to the amount necessary a.o. by limiting the questions to a certain period and limiting the amount of detail</p>	<p>More specific requirements would reduce duplication and provide more clarity to the supervised entity.</p>	<p>Gbadebo, Tola</p>	<p>Publish</p>
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7	3. Assessment criteria		First para	8	Amendment	<p>The Guide refers directly to the suitability requirements for “members of the management body” in terms of experience, reputation, conflicts of interest and independence of mind, time commitment and collective suitability.</p> <p>Only in the footnote 12 it is stated that the assessment criteria also apply “mutatis mutandis” to key function holders and branch managers of significant banks established in other EU countries or third countries. In line with the related EBA and ESMA Guidelines (paragraph 37), it should be clarified that the assessment of those persons should necessarily be limited to the requirements of integrity and good repute and experience. This is also the approach adopted in the Italian legislation. We do not believe that the assessment of the additional requirements for board members is feasible for management positions. We therefore suggest the following amendment:</p> <p>"The fitness and propriety of members of the management body is assessed against five criteria set out in Article 91 of the CRD: (i) experience; (ii) reputation; (iii) conflicts of interest and independence of mind; (iv) time commitment; and (v) collective suitability. These criteria are described in the following paragraphs.</p> <p><u>The credit institutions should ensure that key function holders are of sufficient good repute, have honesty and integrity, and possess sufficient knowledge, skills and experience for their positions."</u></p> <p><u>Footnote 12: The assessment criteria apply mutatis mutandis to the assessment of key function holders and of managers of significant institutions' branches established in other EU Member States or in third countries (within the scope of the applicable national law).</u></p>	<p>We believe that the assessment criteria of the suitability recruitments should be specified, in terms of experience and reputation, also in relation to the positions of key function holders.</p>	Gbadebo, Tola	Publish
8	3. Assessment criteria	3.1.1 Practical experience and theoretical knowledge		8	Amendment	<p>See the comment in ID 1 regarding the applicability of this Guide to jurisdictions with a post-appointment assessment. We therefore suggest the following amendment: "Members of the management body must have up-to-date and sufficient knowledge, skills and experience to fulfil their functions. This also includes an appropriate understanding of those areas for which an individual member is not directly responsible, but still is collectively accountable together with the other members of the management body. <u>The credit institutions are primarily responsible for selecting and nominating appointees who fulfil those minimum requirements for sufficient knowledge, skills and experience.</u> The assessment is conducted – subject to national law – prior to <u>or after</u> the individual's appointment but also whenever required on an ad hoc basis (e.g. in the event of a significant change of responsibilities). <u>In the event the assessment is conducted prior to the individual's appointment, the relevant Authority's decision is sent to the bank within [15-30] days of receipt of notice from the</u></p>	<p>The requirement of a “natural” prior assessment in relation to the appointment is completely out of step with both the directive and the actual possibility of pursuing it in the context of certain national company law rules that could not be overridden by the ECB Guide.</p>	Gbadebo, Tola	Publish

9	3. Assessment criteria	3.1.2 Information		9	Clarification	Where it states " If the appointee does not meet the presumption of sufficient experience (see the thresholds indicated below), the institution is requested to provide additional, complementary (or compensating) factors." It would be helpful if the ECB could provide example criteria of what might be considered "complementary (or compensating) factors".	More detail required to ensure the candidate selected meets the ECB criteria.	Gbadebo, Tola	Publish
10	3. Assessment criteria	3.1.2 Information		9	Amendment	We request that the JST is required to share a rationale in writing with the supervised entity and the candidate in the case that an appointee does not meet the presumption of sufficient experience.	More detail required to ensure the candidate selected meets the ECB criteria.	Gbadebo, Tola	Publish
11	3. Assessment criteria	3.1.3 Assessment approach		9	Clarification	In addition to 3.1 being unnecessarily repetitious generally, the nature of the two-stage process is unclear and confusing in parts. It seems that if the stage 1 threshold is met, stage 2 is not required, but this should be expressly stated. It is also stated that if the stage 1 threshold is met, the appointee is usually presumed to have sufficient experience "unless there is an indication to the contrary", but does not explain what such indications may consist of and how they could override a conclusion that the person satisfied the requirements of	To ensure that the process is logical and transparent.	Gbadebo, Tola	Publish
12	3. Assessment criteria	3.1.3 Assessment approach		9	Clarification	Where it is stated "First, the experience is assessed against the thresholds for the presumption of sufficient experience (first stage). If the thresholds are met, the appointee is ordinarily presumed to have sufficient experience, unless there is an indication to the contrary." It would be helpful if the ECB could elaborate what is meant by an indication to the contrary and provide examples.	More detail required to ensure the candidate selected meets the ECB criteria.	Gbadebo, Tola	Publish
13	3. Assessment criteria	3.1.3 Assessment approach		9	Clarification	Regarding the two stage assessment process please clarify whether the significant institution will be informed in cases where the appointee does not meet the thresholds for the presumption of sufficient expertise and a second stage assessment is necessary. We would propose that the institution and candidate would be informed if a second stage assessment is necessary as it would allow the institution to plan for a negative decision or candidate withdrawal	Amendment required to enable the institution to plan for alternative solutions.	Gbadebo, Tola	Publish

14	3.1 Experience	3.1.3.1 Theoretical knowledge	3.1.3.1	10	Amendment	<p>The Guide appears to distinguish between areas of expertise for which possession of relevant knowledge by the Board members is identified as "important" and "necessary" respectively. We agree with the list of areas of expertise for which "basic" knowledge is necessarily required for all board members. We believe it is necessary to clarify that the additional areas of expertise identified as "important" (e.g. IT and climate-related and environmental) may be assessed for some board members and considered relevant by individual banks solely for the purposes of assessing the collective composition of the board and not in terms of individual requirements.</p> <p>It may also be helpful to provide some further clarification on the experience required for "quantitative methods". We therefore suggest the following amendment:</p> <p>"[...] The required basic banking knowledge may vary depending on the particular business model of the institution. The level and profile of the education relating to banking or financial services or other relevant areas, such as economics, law, accounting, auditing, administration, financial regulation, strategy, risk management, internal control, financial analysis, IT and quantitative methods is important.</p> <p>It is required that all members of the management body possess basic theoretical banking knowledge relating to:</p> <p>1. banking and financial markets;</p> <p>[.....]</p> <p><u>The level and profile of the knowledge relating to further areas, such as IT and climate-related and environmental, will contribute to the overall diversity and suitability of the management body, as reported in subsequent</u></p>	<p>We believe that it is important to distinguish between "basic" knowledge required for all members and "specific" knowledge required to some board members, being the latter relevant for the collective composition of the Board.</p>	Gbadebo, Tola	Publish
15	3.1 Experience	3.1.3.2 Practical experience	Table 1	11	Amendment	<p>Within the thresholds for the presumption of sufficient experience for the management body in its executive function, it is required that "a significant portion" of such experience is related to senior managerial positions. In footnote 20, it is specified that senior managerial position is to be intended as one level below the management body in its management function. We therefore suggest introducing a sort of proportionality principle, in order to consider also positions two levels below the management body in its management function when it comes to large entities, such as the Holding of a Banking Group.</p>	<p>The application of the requirement to larger firms would limit the presumption of senior managerial experience, excluding the vast majority of SVPs and senior managerial profiles at Holding level.</p>	Gbadebo, Tola	Publish
16	3.1 Experience	3.1.3.2 Practical experience	Tables 1 & 2	11	Clarification	<p>In both tables 1 and 2 concerning the threshold for presumption of sufficient experience it is not clear what is intended as "significant proportion" and if possibly this should be understood as at least 4 or 5 years out the total 10 years to be taken in consideration</p>	<p>This would provide more accurate guidance to the supervised entity.</p>	Gbadebo, Tola	Publish

17	3.1 Experience	3.1.3.2 Practical experience	Tables 1 & 2	11	Amendment	<p>We are concerned that the thresholds for presumption of sufficient experience are inflexible and create challenges for renewing the management body, particularly in light of supervisors' and the industry's commitment to increase diversity. The thresholds are likely to make it significantly more difficult to attract candidates who are diverse in terms of experience, gender etc. Indeed:</p> <ul style="list-style-type: none"> - The minimum durations of 10 years or 5 years mentioned both in table 1 & Table 2 seem much too long. We suggest respectively 5 and 3 years, on the basis that good candidates should not take that long to acquire a good experience and knowledge and to become efficient within a Board - For a non-executive Director, there should also be some presumption of sufficient experience for high level experts such as consultants, or experts in areas such as finance and accounting, risks, etc. - The practice levels indicated just below or one or 2 level below the management body in its management function should be reviewed or adapted. In frame of the presumption of sufficient experience, the guide should allow more margin of manoeuvre, notably within important Groups 	This would enable firms to consider a more diverse pool of candidates, including those whose experience has been built outside the traditional banking sector.	Gbadebo, Tola	Publish
18	3.1 Experience	3.1.3.2 Practical experience	Table 2	11	Amendment	<p>In Table 2 of thresholds for presumption of sufficient experience, we consider it essential to also expressly add the indicated roles, performed for three years to the indicators of presumption of experience for non-executive members. We also consider it necessary for the presumption to include previous management positions as well as corporate positions held in other companies or significant professional activities. We therefore suggest the following amendment to Table 2</p> <p>"Non-executive: Three years of recent relevant practical experience at high-level managerial positions (including <u>managerial level positions, non-executive board member positions, qualified professional consultants and advisors and significant theoretical knowledge in banking</u>)"</p>	It would be useful to clarify that the presumption of sufficient experience for the role of non-executive director is met when the Board member previously held such a role in a bank. Moreover, the presumption should be also considered as met when the non-executive Board carried out significant professional activities in the field of banking (as advisor or consultant).	Gbadebo, Tola	Publish
19	3.1 Experience	3.1.3.2 Practical experience	Table 2	11	Amendment	<p>The requirement for a CEO's practical experience at one level below management body in [the] areas only related to banking or financial management to not be older than 2 years is extremely (and possibly overly) prescriptive. There are many personal and professional reasons why a suitable candidate might not meet this requirement.</p>	The highly prescriptive requirement could have unintended consequences. For example, owing to the lack of gender diversity at one level below management body across the industry currently, the requirement could hinder progress in advancing suitable female candidates and meeting diversity targets. While the guide allows for this through the complementary step 2 assessment, it is possible that the prerequisite would deter suitable candidates from applying for the role in the first instance or institutions from putting forward such applicants	Gbadebo, Tola	Publish

20	3.1 Experience	3.1.3.2 Practical experience	Table 2	11	Clarification	Please clarify whether the institutions own 'management levels' should be referred to where it states, "This should include a significant proportion at senior level managerial positions (One level below the management body in its management function.)" or if it refers to the ECB's management levels e.g. key function holders that are one level below management body. Restriction of banking experience to last ten years may exclude relevant experience, particularly for INEDs.	More detail is required to ensure the candidate selected meets the ECB criteria.	Gbadebo, Tola	Publish
21	3.1 Experience	3.1.3.2 Practical experience	Table 2	11	Amendment	The guide does not appear to include thresholds for presumption of sufficient experience for key function holders. If key function holders are subject to such thresholds please include that information	Details of thresholds for key function holders required to ensure the candidate selected meets the ECB criteria.	Gbadebo, Tola	Publish
22	3.1 Experience	3.1.3.2 Practical experience	Step 1	11	Deletion	Step 1 – Assessment against thresholds The "important" areas of expertise should not be included in Step 1 - Assessment against thresholds, but, if necessary, only in Step 2 - Complementary assessment, and only to ensure that certain profiles with the specific skills indicated are present in the collective composition of the Board. We therefore suggest the following amendment: "The experience of the appointee is assessed against thresholds for the presumption of sufficient experience (see Tables 1 and 2 above). If these thresholds are met, then ordinarily the necessary experience is deemed to exist. As indicated above, different requirements apply to members of the management body in its management (executive) function and members of the management body in its supervisory (non-executive) function, as their roles and responsibilities are different by nature. The thresholds are without prejudice to national law and if they are not met, this does not however <u>automatically</u> mean that the appointee is not "fit and proper". Furthermore, specific circumstances with regard to the institution (such as the nature, size and complexity of its business or its market situation) or the function (such as specific responsibility for complex topics, e.g. risk, IT, or climate-related and environmental risks) might require specialised expertise, which is not taken into account by	We believe that it is important to distinguish between "basic" knowledge required for all members and "specific" knowledge required to some board members, being the latter relevant for the collective composition of the Board.	Gbadebo, Tola	Publish
23	3.1 Experience	3.1.3.2 Practical experience	Step 2	12	Clarification	Climate related and environmental risks: We would appreciate more detail on how a collective knowledge of these risks can be ensured in practice. For instance, is training sufficient where existing experience is not present? How can it be established that the training was sufficient to fill the gap? We note also Footnote 84 on Page 64 covering interview requirements.	More details are useful to determine the best way to ensure a collective knowledge of climate-related and environmental risks.	Gbadebo, Tola	Publish

24	3.1 Experience	3.1.1 Practical experience and theoretical knowledge	3.1.5	13	Amendment	<p>The experience requirements of key function holders should be assessed based on their role and the size and operational characteristics of the bank, taking into account the knowledge they have acquired and the practical experience they have gained in previous or existing work activities. In line with the Italian legislation, we propose that the presumption of experience should apply where the person concerned has had at least three years' experience in the same position within the previous six years. We therefore propose the following additional paragraph:</p> <p><u>"Paragraph 3.1.5</u> <u>Key function holders must meet the experience requirement in accordance with their role and the size and operational characteristics of the bank, taking into account the knowledge they have acquired and the practical experience they have gained in previous or existing work activities. The assessment of the criterion may be omitted for key function holders who have at least three years' experience in the same position within the previous six years."</u></p>	We believe that it is important to specify the assessment criteria of the experience of the key function holders.	Gbadebo, Tola	Publish
25	3.2 Reputation			13	Amendment	<p>We are concerned by the assertion that "a person has either a good or a bad reputation". While this may be very clear for some appointees, there will instances in which detailed assessment is required to determine whether an appointee has a suitable reputation to be appointed, which is the purpose of this Guide.</p>	The statement does not take into account instances in which detailed assessment is required, which is the purpose of this Guide.	Gbadebo, Tola	Publish

26	3.2 Reputation			13	Amendment	<p>The reputation requirement has some particularly sensitive aspects, considering that the principle of the presumption of innocence until a final judgment is passed and the specific features of each national legal system must be taken into account.</p> <p>We note that satisfaction of the requirement is based on the inversion of the principle of innocence (“An appointee is not considered of good repute if their personal or business conduct gives rise to any material doubt about their ability to ensure the sound and prudent management of the institution”). This appears to be contrary to the principles set out in Article 4 of Directive 343/2016 on the strengthening of certain aspects of the presumption of innocence.</p> <p>In the introductory part of the document, completely different stages of criminal proceedings, such as the investigation, committal for trial and sentencing stages, are given equal importance in the assessment of reputational requirements.</p> <p>We therefore consider that a better distinction needs to be made taking into account the different characteristics of the national legal systems. The preliminary investigation phase, also for criminal proceedings, may be considered irrelevant in systems where prosecution by the public prosecutor is mandatory. In such cases, the obligation of disclosure and assessment may start with the indictment.</p> <p>In any event, in the absence of a specific legislative provision to the contrary, we do not believe it is appropriate to assign relevance, for an obligation of disclosure and assessment, to the investigative phases of administrative and civil proceedings, in which the liability of the appointee is still subject to verification and only alleged by a party, either public or private, that must prove and suitably justify it in cross-examination proceedings.</p> <p>First of all, in the introductory part, any relevant criminal or administrative records are considered indiscriminately, without limiting the areas for which such proceedings may</p>	<p>The reputation requirement has some particularly sensitive aspects, considering that the principle of the presumption of innocence until a final judgment is passed and the specific features of each national legal system must be taken into account. In particular, it should be made clear that:</p> <ul style="list-style-type: none"> <input type="checkbox"/> civil proceedings can only be relevant if final judgments are published that award damages for acts carried out in the performance of duties in entities operating in the banking, financial and insurance sectors or, where applicable, damages for administrative and accounting responsibility; <input type="checkbox"/> the administrative sanctions must have been adopted as a result of proceedings that have established the individual responsibility of the appointee for breaches of banking, financial, company and insurance legislation. 	Gbadebo, Tola	Publish
27	3.2 Reputation	3.2.1 Information	Final para	13	Amendment	<p>Aside from the legal difficulties with the statement “... the very fact that an individual is being prosecuted is relevant to propriety”, the relevant paragraph should also recognise that certain prosecutions (including in Member States where prosecutions by private citizens are a feature) may be frivolous, vexatious or completely unfounded, and that the potential for this will also be considered.</p>	<p>The nature of the prosecution must be into account in order to ensure the presumption of innocence is protected, including in situations where prosecutions are not fully centralised through a public authority.</p>	Gbadebo, Tola	Publish
28	3.2 Reputation	3.2.1 Information	Final para	13	Clarification	<p>When it comes to an appointee or member of the management body being the subject of (pending) criminal, administrative or civil proceedings or other analogous regulatory investigation, is the applicable scope limited to participating Member States or are non participating Member States to be included as well?</p>	<p>The clarification would help the supervised entity in determining whether this information has to be collected only in the participating Member States or also in non participating ones.</p>	Gbadebo, Tola	Publish

29	3.2 Reputation	3.2.1 Information	First para	14	Amendment	<p>Despite noting that the ECB has neither fact-finding competences nor investigatory powers on AML/CFT, we are concerned by the fact that the ECB intends to conduct its own assessment.</p>	<p>We believe that ECB should respect the legitimacy of final decisions only, rather than making any own judgement.</p>	Gbadebo, Tola	Publish
30	3.2 Reputation	3.2.1 Information	Bullet 1	14	Amendment	<p>in relation to the requirement to provide any criminal records, we note that this is a new requirement in many jurisdictions. For instance,</p> <p>* in France criminal records were up to now not systematically required, but only for officers who had lived outside France for more than 3 years (a similar requirement to that which exists in the Netherlands). Furthermore, in France the ACPR had direct access to this information for persons living on the French territory. In addition, in French law a candidate cannot be discriminated against on the basis of a criminal record unless the offence specifically impacts the role e.g. theft or fraud.</p> <p>* In Ireland an employee can complete a self-attestation however criminal records/vetting are only available by law to very specific industries not including banking and it is an offence under the Irish Data Protection Act 2018 to ask an employee to make an access request for data to provide it to an employer which would include their criminal records. The Central Bank of Ireland F&P guidance currently allows for an attestation only. Under current Irish law it would be problematic to provide this data other than by self-attestation.</p> <p>We suggest that, where local supervisors already have access to such information, this is provided direct to the ECB where relevant rather than there being a duplication of requirements for the bank. Furthermore, we request clarification that local restrictions such as those listed above take precedence over this requirement</p>	<p>Requesting new collection of this data at institutional level would create an unnecessary workload. We believe it is important to simplify the documentation to be provided by the board member to prove his reputation.</p>	Gbadebo, Tola	Publish

31	3.2 Reputation	3.2.1 Information	Bullet 1	14	Amendment	<p>In addition, we also note that the additional situations that may affect the reputation of appointees include some situations that are too general and not appropriate to the reputational requirement. This relates, in particular, to the performance of companies in which the appointee has a holding or which are managed by the appointee, to any significant investments or exposures of the appointee, or to any additional circumstances, such as general "evidence" from courts, arbitrations, mediations, internal reports of banks or authorities. These are situations in which the harm to reputation and the grounds for it are only hypothetical and indirect, if the resulting specific penalty procedures have not manifested themselves. Nor is there any requirement for the person concerned to be informed of such situations. We request that this provision be removed in full.</p> <p>With regard to the documentation that the appointee is required to produce, we believe it should be sufficient for each board member to issue a statement, under their own responsibility, regarding the absence or occurrence of the situations subject to assessment, without the need to produce documentary evidence (e.g. certificates of pending proceedings, etc.). The acquisition of further documentary evidence would in any case be limited to the jurisdictions where the company is established and is therefore unnecessary and burdensome.</p> <p>"[...] In line with the joint ESMA and EBA Guidelines on suitability, the following minimum set of information from the supervised entity, the appointee, and/or the judicial/administrative authority concerning legal proceedings and criminal investigations is needed to conduct the assessment.</p> <p>1. Criminal records of the appointee.</p> <p>2. Self-declaration of the appointee, if required by the national legal framework.</p> <p>3. Information concerning the following:</p> <ul style="list-style-type: none"> • investigations, enforcement or supervisory proceedings, or sanctions by a competent authority in which the appointee has been directly or indirectly involved; [...] 	<p>Requesting new collection of this data at institutional level would create an unnecessary workload. We believe it is important to simplify the documentation to be provided by the board member to prove his reputation.</p>	Gbadebo, Tola	Publish
32	3.2 Reputation	3.2.1 Information	Bullet 2	14	Amendment	<p>We suggest that, where a self declaration is already required by national law, this can be included in the F&P Questionnaire self-declaration of the appointee, rather than the information being duplicated.</p>	<p>This would avoid duplication of workload for banks.</p>	Gbadebo, Tola	Publish
33	3.2 Reputation	3.2.1 Information	Bullet 3	14	Clarification	<p>It is not clear what is intended by being "indirectly involved" means. If the appointee has been indirectly involved in any of the proceeding mentioned (investigations, enforcement or supervisory proceedings, or sanctions) in an indirect manner there could be confusion of the extent of events that are called to be taken in consideration. In addition, the appointee may not be aware of their indirect involvement</p>	<p>Request for clarification that would provide more accurate guidance to the supervised entity.</p>	Gbadebo, Tola	Publish

34	3.2 Reputation	3.2.1 Information	Bullet 3	14	Clarification	<p>Greater clarity is needed on the link between an investigation, proceedings, sanction etc. to the appointee. There is a potential for the information referred to here to be very wide and completely unrelated to the appointee (given their position, seniority, business area at the relevant time).</p> <p>It will be important that firms will only be required to submit information relating to the appointee, either on matters directly addressed to them or where they held senior positions relevant to the issue at hand. The text will need to clearly indicate that firms are not required to submit all information concerning the firm no matter how remote from the appointee or unrelated to the fit and proper assessment.</p>	To ensure clarity on the scope of the relevant information being considered as part of the assessment of reputation	Gbadebo, Tola	Publish
35	3.2 Reputation	3.2.1 Information	Bullet 3	14	Clarification	<p>While public credit records such as court judgements are available in many countries credit bureau records in many countries are only accessible strictly for the purposes of lending. They are not accessible for employment purposes and again in Ireland it would be an offence to ask an employee to provide a copy of their credit record other than public records such as registered judgements. Again in France it is not permissible to request this data from employees.</p>	Clarification to align with the actual legal practices in different countries.	Gbadebo, Tola	Publish
36	3.2 Reputation	3.2.1 Information	Bullet 3	15	Clarification	<p>In relation to "refusal of registration, authorisation, membership or licence to carry out a trade, business or profession; or the withdrawal, revocation or termination of registration, authorisation, membership or licence", we request clarification as to the scope in terms of trade or business. In addition should this be for a single deal or general?</p>	Request for clarification that would provide more accurate guidance to the supervised entity.	Gbadebo, Tola	Publish
37	3.2 Reputation	3.2.1 Information	Bullet 4	15	Amendment	<p>The appointee may not have knowledge of investigations currently being conducted. Therefore we suggest that the paragraph is amended by specifying that information concerning investigations should be intended as to the best knowledge either of the company or of the appointee.</p>	The amendment is requested to better align the document with the actual legal practices in different countries.	Gbadebo, Tola	Publish
38	3.2 Reputation	3.2.1 Information	Bullet 4	16	Clarification	<p>In relation to the requirements for self-reflection on the part of the appointee, is this still required in cases where the appointee was not involved in the alleged wrongdoing?</p>	Request for clarification that would provide more accurate guidance to the supervised entity.	Gbadebo, Tola	Publish

39	3.2 Reputation	3.2.2 Assessment approach		17-20	Amendment	<p>Please, see our comments above in relation to ongoing criminal proceedings. We therefore suggest the following amendments: Paragraph 3.2.2 "[...]"</p> <p>(a) Assessing the impact of the stage of proceedings on an appointee's reputation – as proceedings progress, the information becomes increasingly reliable. Therefore, the stage of the proceedings is taken into account in the assessment; its impact increases as the proceedings progress. There may be instances of ongoing <u>criminal proceedings or investigations</u> where an authority (criminal, administrative or civil) has sufficiently established relevant facts linked to the involvement of the appointee, thereby potentially having an impact on their suitability, even if no decision has yet been issued or an appeal is pending. Subject to those facts being material and available to the competent authority, they can be taken into consideration in the assessment of the suitability of the appointee.</p> <p>[...]</p> <p>2. Relevant administrative <u>proceedings sanctions</u> or other regulatory investigations or measures – The appointee's involvement in any relevant administrative sanctions proceedings in the field of financial services (e.g. banking, insurance activities, investment services, securities markets, payment instruments, AML, pensions, asset management or under any financial services legislation) and/or the existence of relevant regulatory investigations or measures including enforcement or supervisory actions by any supervisory or public authorities or professional body involving the appointee and/or the entity are always relevant and are further assessed to consider inter alia the stage or outcome of the proceedings, investigations or measures, the existence of an admission or acceptance of facts, and the level of direct or personal involvement of the appointee.</p> <p>[...]</p> <p>However, if the established facts and evidence are particularly significant, then one relevant administrative</p>	<p>We request the removal of references to those provisions referring to situations in which the board member is not directly involved.</p>	Gbadebo, Tola	Publish
40	3.2 Reputation	3.2.2 Assessment approach	Point 2	18	Clarification	<p>"In general, a single finding or an admission or acceptance of facts that constitutes (or may constitute) only one relevant administrative proceeding or measure, as referred to in the paragraph above, of a minor nature (e.g. low amount of the sanction) does not in principle suffice to give rise to a material doubt as to the reputation of the appointee,"</p> <p>"Where there are no proceedings or other measures (as described in points 1-4 above), other relevant facts may nevertheless affect an appointee's reputation."</p> <p>If there is wrongdoing in the institution, or a proceeding against it, that is not directly related to the appointee, does this mean that the appointee will be considered to be of bad repute?</p>	<p>A clarification of guidance should be provided in order to assess whether the wrongdoing or proceeding on the institution is directly related to the appointee or to their bad reputation.</p>	Gbadebo, Tola	Publish

41	3.2 Reputation	3.2.2 Assessment approach	Point 2	19	Amendment	<p>We suggest defining a specific timeframe to assess the relevance of any supervisory measure; more concretely: A) With unlimited timeframe: Only for all the Procedures initiated against the appointee and all the Procedures regarding AML topics initiated against both the appointee and the company; or B) With timeframe limited to 5 years prior to the application: Procedures initiated against the company (apart from AML topics as detailed above).</p> <p>However, we also note as potential obstacles: i) the appointee might not have access to detailed data from the past. In such case the scope of information that is available to the appointee and institution would be limited to what is publicly available on regulator's website/register of fines; ii) the companies are not keen in revealing this data to a candidate, particularly if he/she was not involved in the matter personally and after he/she left the company; and iii) companies are not at liberty to share this data due to banking and GDPR secrecy, especially if they do not belong to the same Group.</p>	Request for clarification that would provide more accurate guidance to the supervised entity.	Gbadebo, Tola	Publish
42	3.2 Reputation	3.1.3 Assessment approach	Personal Involvement	20	Deletion	<p>Considering personal involvement in case of doubt regarding a appointee's reputation, notably in case of non personal or corporate proceedings, this should not be introduced in the guide. In some jurisdictions, such as in France, individual responsibility of board members does not exist as the board of Directors is a collective body with a global responsibility. Responsibility cannot be individualised unless in cases of criminal responsibility.</p>	The assessment of individual involvement or responsibility with regard to non personal or corporate proceedings would be unlawful	Gbadebo, Tola	Publish
43	3.2 Reputation	3.2.2 Assessment approach		21	Clarification	<p>Is the ECB able to specify a time threshold for the assessment to take place?</p>	A threshold specification can be useful from an operational point of view.	Gbadebo, Tola	Publish

44	3.3 Conflicts of interest and independence of mind			21	Amendment	<p>In general terms, the Guide focuses on the possession of independence of mind by all Board members, whereas it refers to national legislation for the set of relationships and situations that may be relevant for the purposes of the "formal" independence requirement, which must be met by a sufficient number of Directors. On this point, in accordance with the EBA/ESMA Guidelines, we believe it would be more correct to refer to a concept of "qualified" rather than "formal" independence, used in the Guide (which appears to go against substantive independence). We feel that the document should give more room to the possible importance of the qualified independence of certain board members, acknowledging that, where present, such a condition reinforces good corporate governance practices.</p> <p>We believe that it should be duly recognised that in legal systems (such as the Italian legal system) or in banks where qualified independence is a constraint on the composition of the board, the procedures for controlling conflicts of interest can be simplified and based on the guarantee role assigned to directors who meet the requirements of qualified independence.</p> <p>We propose accordingly to amend paragraph 3.3 as follows: [...] The notion of independence of mind, applicable to all members of a supervised entity's management body, should be distinguished from the qualified independence the principle of being independent (formal independence). The qualified independence Formal independence is only required if envisaged by national law, for certain members of a supervised entity's management body in its supervisory function.</p>	The presence of the conflicts of interest and the possession of independence of mind is a very sensitive issue.	Gbadebo, Tola	Publish
45	3.3 Conflicts of interest and independence of mind		Point (a)	22	Clarification	To avoid a subjective view on the matter, how should behavioural skills be evaluated? In addition we note that this information is not mirrored in the questionnaire	To avoid a subjective view on the matter it is important to have a clarification to assess behavioural skills like "courage", "resist 'group-think'" etc.	Gbadebo, Tola	Publish
46	3.3 Conflicts of interest and independence of mind	3.3.1 Information		23	Amendment	The presentation of the potential material conflicts of interests in Table 1 of the 2018 Guide was much more comprehensive and operationally useful. The new presentation proposed under text is less practicable. Could the previous format be reinstated?	The information layout in the 2018 Guide was operationally easier for firms to implement.	Gbadebo, Tola	Publish

47	3.3 Conflicts of interest and independence of mind	3.3.1 Information		23	Amendment	<p>With regard to the requirement of independence of mind, we consider it essential to note that the consultation document requires appointees to declare in advance a very extensive series of relationships, irrespective of their actual relevance, regarding relations with very broad categories of persons and counterparties, without any materiality criteria.</p> <p>This is an unjustified and excessive burden with respect to the actual need and to the possibility that one of those relationships may be the subject of examination, decision or control by the body in which the person concerned performs their role.</p> <p>A non-executive director who for example has outside professional activities with a client of a bank branch may not be aware that their client has a relationship with the bank. This circumstance may never become relevant for the responsibilities attributable to the director in the bank. Statements are requested without any possible verification by the person concerned, such as relationships with clients, suppliers, and competitors of the bank and the group it belongs to.</p> <p>This obligation of ex-ante disclosure without an express qualification of materiality is excessively burdensome and wholly unjustified and gives rise, moreover, to a risk of omission of information, in view of the large number of parties mentioned, as well as a risk of inefficiency in the process of continuous updating and assessment by the Board and the Authority, and an absolute breach of the confidentiality of the person concerned with regard to their personal activities.</p> <p>We believe it would be more reasonable and consistent with the purposes of the legislation to limit the disclosure obligation of Board members to situations or relationships related to matters that are subject to examination and approval by the Board, establishing an ex-post obligation – i.e. during the person's term of office at the bank – of disclosure and of abstention by the member concerned only if a situation of conflict of interest arises during the examination of the specific relationship by the company body of which the appointee is a member and,</p>	<p>We note that the consultation document requires appointees to declare in advance a very extensive series of relationships, irrespective of their actual relevance, regarding relations with very broad categories of persons and counterparties, without any materiality criteria. We believe it would be more reasonable and consistent with the purposes of the legislation to limit the disclosure obligation of Board members to situations or relationships related to matters that are subject to examination and approval by the Board, establishing an ex-post obligation of disclosure and of abstention by the member concerned only if a situation of conflict of interest arises during the examination of the specific relationship by the company body of which the appointee is a member.</p>	Gbadebo, Tola	Publish
48	3.3 Conflicts of interest and independence of mind	3.3.1 Information	Point 1	23	Clarification	<p>The question regarding conflicts with "clients, suppliers and competitors" should be explained more fully in the text. Is the bank expected to provide a list of names in this category to the candidate?</p>	<p>Request for clarification that would provide more accurate guidance to the supervised entity.</p>	Gbadebo, Tola	Publish
49	3.3 Conflicts of interest and independence of mind	3.3.1 Information	Point 2	23	Amendment	<p>Description of involvement, either directly or indirectly, in any legal proceedings or out-of-court disputes against the supervised entity, the parent undertaking or their subsidiaries: we suggest that this should be limited in terms of timeframe and should correspond to current proceedings only</p>	<p>This would be more precise and pertain only to relevant proceedings.</p>	Gbadebo, Tola	Publish

50	3.3 Conflicts of interest and independence of mind	3.3.1 Information	Point 5	23	Clarification	<p>Description of any financial interests in the supervised entity, the parent undertaking or their subsidiaries; or in clients, suppliers or competitors of the supervised entity, the parent undertaking or their subsidiaries: we request clarification as to what is meant by "financial interests"? Does it include shares in the supervised institution?</p>	Request for clarification that would provide more accurate guidance to the supervised entity.	Gbadebo, Tola	Publish
51	3.3 Conflicts of interest and independence of mind	3.3.2 Assessment approach		24	Amendment	<p>With regard to the step of assessment of potentially relevant situations for the purposes of independence of mind, the document excessively extends the list of persons considered to be related to the director, including, in addition to the close family members of the board members, companies in which the board members have or have in the past held an office or a qualifying holding.</p> <p>We believe that this extension is unreasonable with respect to the aim of preserving the director's independence of mind and should in any event be limited to companies in which they have held the position of executive director or, at most, chairman of the board. Even more unjustified is the relevance assigned to offices or holdings that are no longer current, since we cannot see how they can affect the independence of mind of a director who no longer holds any role (even a non-executive role) in the company concerned. In addition, it is unclear to what extent these past situations should be considered relevant. From a practical perspective, considering the number of Board members and the positions held in the past, it is clear that the recommendation in the consultation document is completely unmanageable at operational level, both for the appointees and for banks.</p> <p>We propose to amend paragraph 3.3.2. as follows: "The competent authority will assess the materiality of the conflict of interest.</p> <p>Without prejudice to national law, the list below includes situations and thresholds where there is a presumption that a conflict of interest exists. These situations will be assessed in detail on a case-by-case basis and the information provided by the supervised entity regarding the material or non-material nature of the conflict will be considered. The list below is, however, non-exhaustive and the competent authority may find that a (material) conflict of interest exists in other cases that are not covered by these situations and thresholds. In this Section 3.3.2, appointee must be understood as the appointee personally, but also their close relatives.</p>	This would be more precise and pertain only to relevant information.	Gbadebo, Tola	Publish

52	3.3 Conflicts of interest and independence of mind	3.3.2 Assessment approach		24	Amendment	<p>If this is to be retained, noting our suggestion above to delete, we suggest an amendment to the paragraph as follows:</p> <p>"In this Section 3.3.2, appointee must be understood as the appointee personally, but also their close relatives (spouse, registered partner, cohabitee, <u>dependent</u> child, parent or other relation with whom they share living accommodation) and any legal person in which the appointee is or was a board member or a manager, or a qualifying shareholder, at the relevant time."</p>	This would clarify the perimeter of close relatives.	Gbadebo, Tola	Publish
53	3.3 Conflicts of interest and independence of mind	3.3.2 Assessment approach		24	Amendment	<p>"and any legal person in which the appointee is or was a board member or a manager, or a qualifying shareholder, at the relevant time": If this is to be retained, noting our suggestion above to delete, we suggest that the reference to "relevant time" leaves too much discretion. The timing should be limited to the period of relationship with the supervised institution. For example, a appointee could be a Manager in a company which was a supplier 10 years ago, but the company could have changed its subject of activity in the meantime and be no longer supplier of the institution.</p>	In order to avoid uncertainty in the definition of relevant time, a timing limit should be provided.	Gbadebo, Tola	Publish

54	3.3 Conflicts of interest and independence of mind	3.3.2.2 Business, professional or commercial conflict of interest	3.3.2.2	24-25	Deletion	<p>With regard to financial relationships, we note, first of all, that the establishment of a single threshold of EUR 200,000 for the purposes of assessing the materiality of the relationship, both for natural persons and legal persons, is not appropriate in our opinion. Where the relevant scope also includes holdings and directorships, we believe it would be appropriate for the consultation paper to make reference to a materiality threshold set in the internal procedures of the individual banks. The significance of the relationships may differ according to the size of the bank and the company considered. Moreover, we believe it would be reasonable for loans secured by any form of collateral (e.g. a pledge of shares) to be excluded from the scope of the assessment, along with mortgage loans.</p> <p>Another particularly sensitive aspect concerns the assessment of the impact of the loan on the financial situation of the appointees, their family members and the companies considered relevant, which entails the need to acquire and circulate sensitive and not entirely relevant information, such as information on the “total assets” of the persons indicated. As an alternative solution, we believe that it would be more consistent with creditworthiness procedures to refer to the bank’s rating of the borrower, which summarises the borrower’s viability, in accordance with internal procedures and without the need to obtain specific information.</p> <p>With regard to directors and their family members, account should be taken of the fact that banks are always required to apply strict procedures to assess the creditworthiness of customers, which take into account the customer’s income and financial capacity to repay the debt.</p> <p>In addition, once a customer has become a board member, any further loans would be subject to approval by the Board of Directors, as required under Italian legislation and in many other jurisdictions.</p> <p>We therefore request that the provisions concerning the assessment of the impact on the financial situation of the appointee be deleted in full.</p>	The amendment is proposed with the aim of collecting more proportionate information.	Gbadebo, Tola	Publish
55	3.3 Conflicts of interest and independence of mind	3.3.2.3 Financial conflict of interest	3.3.2.3	25	Deletion	Please, see our comments on 3.3.2.2. We ask accordingly for the deletion of paragraph 3.3.2.3	The amendment is proposed with the aim of collecting more proportionate information.	Gbadebo, Tola	Publish
56	3.3 Conflicts of interest and independence of mind	3.4.1 Concept of time commitment		27	Clarification	The time commitment requirement appears to be an open-ended, upon demand, first-priority claim on the person’s time. If so, that should be stated explicitly for INEDs and the candidate should confirm this point separately.	The amendment is proposed with the aim of collecting more accurate information.	Gbadebo, Tola	Publish

57	3.4 Time commitment	3.4.2 Information	Bullet 2	28	Amendment	We suggest eliminating the detailed information on number of meetings for mandates in other companies where the appointee holds a position. This number may not be reliable thus representative of the actual time commitment. We believe It is more appropriate to quantify the time commitment in terms of hours rather than number of meetings.	The amendment is proposed with the aim of collecting more accurate information.	Gbadebo, Tola	Publish
58	3.4 Time commitment	3.4.3.1 Quantitative assessment: multiple directorships	3.4.3.1	30	Amendment	<p>We agree with the solution set out in the CP concerning the notion of a "group" relevant for the purposes of counting several directorships as a single directorship. In this respect, the document takes into account all entities consolidated in accordance with the financial reporting standards. This solution is consistent with the rationale underlying the provisions on limits to the number of directorships, which are based on the need to ensure the time necessary to perform the directorship in the bank. However, for this reason we do not agree with the more restrictive interpretation (cited in footnote 41), which limits the privileged counting of directorships solely to companies within the scope of prudential consolidated supervision.</p> <p>In any event, we believe it would be helpful to clarify that the privileged counting of multiple directorships within the same group also applies in cases where those directorships are held in a company outside the bank and its group.</p> <p>"Application of privileged counting Without prejudice to national law, wWhen assessing the group context, the ECB takes into account the consolidated situation (based on the accounting scope of consolidation) in its approach to counting. <u>The privileged counting also applies in case a board member holds a position in a "third" company (that is not controlling the bank or controlled by the bank) and at the same time in other companies within the same scope of consolidation (such directorships count as a single directorship).</u>"</p>	The amendment is proposed with the aim of collecting more proportionate information.	Gbadebo, Tola	Publish
59	3.5 Collective suitability of the management body	3.5.2.2 Remediation of gaps		41	Amendment	<p>We suggest an amendment to the paragraph as follows: "The JST might request more explanations on a copy of the conclusion of the self-assessment if there are doubts as to the adequacy of the collective knowledge, skills and experience. The JST might also request supporting documentation with regard to the self-assessment"</p>	Assesment is already provided in the questionnaire, asking for a copy of the conclusion documents would be inefficient.	Gbadebo, Tola	Publish
60	3.6 Assessment of individual accountability of board members			41	Clarification	An express statement should be inserted to the effect that this section is without prejudice to national law frameworks underpinned by relevant protections (incl. with respect to constitutional rights) for assigning accountability to individuals, and that such frameworks will always take precedence. It will need to be clear that a supervisory assignment of responsibility to an individual which bypasses these frameworks and protections is not permitted and is not envisaged by the Guide	To ensure that the Guide does not purport to override or interfere with national law frameworks governing the assignment of individual accountability	Gbadebo, Tola	Publish

61	3.6 Assessment of individual accountability of board members			41-47	Amendment	We request that jurisdictional differences are taken into account in relation to the concept of individual accountability. For example, individual accountability is not possible in France as the Board is a collective body, Board members can not be seen from a legal standpoint as individually accountable, except in the case of criminal offences.	In some jurisdictions, the assessment of individual involvement or responsibility with regard to non personal or corporate proceedings would be unlawful.	Gbadebo, Tola	Publish
62	3.6 Assessment of individual accountability of board members			41-47	Amendment	The Guide devotes considerable attention to the individual accountability of board members, requiring a specific assessment for this aspect. Noting our comments on the national applicability of individual accountability above, we ask the Authority to reconsider the contents of this section, given that these situations are already subject to assessment in terms of meeting the requirements of reputation, expertise and independence of mind. An additional assessment by the Board on the aspect of individual accountability risks creating confusion between the different areas of assessment, which are already very comprehensive and detailed.	The amendment is proposed with the aim of reduing duplication.	Gbadebo, Tola	Publish
63	3.6 Assessment of individual accountability of board members	3.6.1 Scope		42	Clarification	We request clarification for the word 'certain' in the following sentence is vague both regarding (i) to 'which supervisory inspection other than AML/CTF' and (ii) the severity: <i>"It follows that a member of the management body who has or had a position in the institution at the time when facts underlying <u>certain</u> findings (e.g. ML, fraud, or other findings arising from on-site inspections or legal proceedings) occurred may be responsible for those findings even if there is no connection between their individual roles and responsibilities in the management body and the given findings."</i>	Request for clarification that would provide more accurate guidance to the supervised entity.	Gbadebo, Tola	Publish
64	3.6 Assessment of individual accountability of board members	3.6.2 Findings		43	Clarification	We request clarification as to the intention of 'recent' in the following sentence: " <u>Findings identified by a supervisor as recent</u> , relevant and severe are taken into account when considering the individual accountability of an appointee"	Request for clarification that would provide more accurate guidance to the supervised entity.	Gbadebo, Tola	Publish
65	3.6 Assessment of individual accountability of board members	3.6.2 Findings		44	Deletion	Where it states, "on-site inspection reports and SREP letters, if these result in supervisory measures being taken" please delete "on-site inspection" reports as reports contain findings rather than decisions and supervisory measures.	Deletion is suggsted to simplify the process. In addition, 'on-site inspection reports' is incongruous with the previous listed items, such as supervisory measures and final court decisions.	Gbadebo, Tola	Publish
66	3.6 Assessment of individual accountability of board members	3.6.4 Process		46	Clarification	Supervisory findings, if any, need to be assessed during the FAP, provided they are severe, relevant and recent. In case the findings refer to an entity different from the one for which the appointee's FAP is being carried out, it is not clear how the exchange of information on supervisory measures between the two different entities is expected to be managed, considering the sensitivity of the data and possible data secrecy limitations.	There is potential for non-compliance with data secrecy requirements.	Gbadebo, Tola	Publish
67	5 Situations that trigger a fit and proper assessment other than new initial appointments	5.2 Reassessments		53	Clarification	Periodic reviews of criminal records are either not permitted in a large number of countries or only permitted in very specific circumstances or when there is a material change in the role.	Clarification to align with the actual legal practices in different countries.	Gbadebo, Tola	Publish

68	5 Situations that trigger a fit and proper assessment other than new initial appointments	5.3 Assessment approach	2	54	Amendment	We request that the ECB provides the supervised entity with a right to respond in instances where the re-assessment concludes that the new facts are material and may severely affect the initial assessment. This should be done prior to issuing new decision.	Amendment requested to ensure the entity has a right to respond.	Gbadebo, Tola	Publish
69	5.3 Assessment Approach	5.3.3 Part 2: General guidance on whether or not a new fact may trigger a reassessment	Figure 6	59	Deletion	In line with our comment on 3.6, the Decision wheel in Figure 6 should not make any reference to individual accountability	In some jurisdictions, the assessment of individual involvement or responsibility with regard to non personal or corporate proceedings would be unlawful.	Gbadebo, Tola	Publish
70	5.3 Assessment Approach	5.3.3 Part 2: General guidance on whether or not a new fact may trigger a reassessment		60	Clarification	The Guide states that "a long duration of poor performance is an important materiality indicator". However, we note that performance can be a subjective measure. Further clarity is requested on this point, for example materiality indicators.	Request for clarification that would provide more accurate guidance to the supervised entity.	Gbadebo, Tola	Publish
71	5.3 Assessment Approach	5.3.3	Table 4	62	Clarification	Change of role or additional responsibilities that do not automatically require a new assessment: Please could the ECB clarify what situation would trigger a new assessment? Since Board members can change position in different committees etc, would this require a new assessment each time? Would become too much of an extensive exercise with no value, please clarify or remove	Request for clarification that would provide more accurate guidance to the supervised entity.	Gbadebo, Tola	Publish
72	5 Situations that trigger a fit and proper assessment other than new initial appointments	5.3.3 Part 2: General guidance on whether or not a new fact may trigger a reassessment	Table 4	62	Amendment	We request that the ECB amends the example of new fact which states "Findings that the individual concerned infringed the supervised entity's internal governance rules, such as its internal policy on conflicts of interest" to state 'materially' infringed. Breaches of internal policy may be considered minor breaches e.g. missed mandatory training	Amendment requested to simplify process.	Gbadebo, Tola	Publish
73	5.3 Assessment Approach	5.3.3	Table 4	62	Clarification	Occurrence of a crisis situation in a supervised entity: Since a CEO is assessed during their initial suitability assessment on their ability to handle a crisis, we would need clarification on what crisis can require a new assessment as a CEO, is expected to handle a crisis situation and is hired on the basis that he/she has the capability to direct the institution through that, therefore it does not seem logical to have this situation trigger a new suitability assessment. Please clarify how to define a crisis in this context	Request for clarification that would provide more accurate guidance to the supervised entity.	Gbadebo, Tola	Publish

74	5.3 Assessment Approach	5.3.3	Table 4	62	Amendment	<p>In general, we agree with the principle that banks are required to inform the Supervisory Authority when situations arise that may have an impact on the initial assessment (paragraph 5.3.1) and that it is therefore not necessary to communicate every new fact, including those that are irrelevant for the purposes indicated. However, some of the situations listed in Table 4 as being subject to mandatory reporting appear to be overly burdensome or irrelevant not relevant to the fit and proper assessment process. "[...]"</p> <p>Conclusion or commencement of any criminal proceedings or relevant civil <u>final judgements</u> or administrative <u>sanctions proceedings</u> (including convictions under appeal and bankruptcy, insolvency or similar proceedings)</p> <p>Conclusion <u>or commencement</u> of disciplinary actions (including disqualification as a company director, discharge from a position of trust)</p> <p>Refusal of registration, authorisation, membership or licence to carry out a trade, business or profession, or such termination, withdrawal or revocation</p> <p>Conclusion <u>or commencement</u> of sanctioning proceedings by public authorities or professional bodies or pending investigations or past investigations or enforcement proceedings</p> <p>Deliberations by the management body of the supervised entity regarding a member of the management body's (or key function holder's) reputation where there were any material conclusions</p> <p><u>Performance-related issues that prompted a resignation from duties in entities other than the supervised entity.</u></p> <p>Findings that the individual concerned deliberately provided wrong information to the competent authority and/or acted with a lack of transparency</p> <p>Findings that the individual concerned infringed the supervised entity's internal governance rules, such as its internal policy on conflicts of interest</p> <p>Findings that the individual concerned did not intentionally follow up on material supervisory recommendations, namely within SREP, that could impact on the sound and</p>	The situations listed in Table 4, as being subject to a new assessment and mandatory reporting appear to be overly burdensome or not relevant to the fit and proper assessment process, as also explained in the previous comments.	Gbadebo, Tola	Publish
75	6 Interviews	6.2 ECB approach to interviews	8	65	Amendment	<p>In our experience in many applications a second specific interview is held. The premise of these interviews has never been due to the facts listed in this paragraph. We propose that where a second interview is requested the rationale is shared with the candidate and supervised entity.</p>	Amendment requested to improve transparency of the process.	Gbadebo, Tola	Publish
76	6 Interviews	6.4 Procedural aspects	2	66	Clarification	<p>Where it states, "The appointee and the credit institution are given adequate notice in writing of the date, time and place of the interview. " We request that the ECB specifies what is considered adequate notice.</p>	Amendment requested to improve transparency of the process.	Gbadebo, Tola	Publish

77	7 Notifications, decisions and ancillary provisions	7.1 Notification of intended appointments		68	Clarification	We request clarification that the ECB is not intending to bring further requirements in this area beyond the notification requirement set out in the Guide, given the potential operational burden this would add (with particular reference to the 2019 consultation by the European Commission on CRR3 Implementation, which seemed to suggest a desire to move to ex-ante assessments). The Guide itself sets out the differences in national regimes in this regard.	Additional law change requirements on the subject would generate organisational impacts and workload for both institutions and regulators. It could also be an issue as regards the obligation of having 2 Executive Directors set by European law.	Gbadebo, Tola	Publish
78	7 Notifications, decisions and ancillary provisions	7.1 Notification of intended appointments		68	Deletion	See the comment in ID 1 regarding the applicability of this Guide to jurisdictions with a post-appointment assessment. We therefore suggest the following sentences are deleted: [...] " Against this background, the ECB encourages early engagement with the JSTs, inviting credit institutions to provide the ECB with their suitability assessments for executive members of the management body before making appointments, so as to frontload supervisory assessments and enable the ECB to provide supervisory input early on in the process. This should enhance the predictability of the supervisory actions, as the supervisory decisions will, where possible, be provided to the institutions before or soon after the appointees take up their respective positions. "	The requirement of a "natural" prior assessment in relation to the appointment is completely out of step with both the directive and the actual possibility of pursuing it in the context of certain national company law rules that could not be overridden by the ECB Guide.	Gbadebo, Tola	Publish
79	7 Notifications, decisions and ancillary provisions	7.1 Notification of intended appointments		68	Amendment	Please, see our comments above in relation to ex ante vs ex post assessments. We therefore propose the following amendment: "... The ECB invites A all credit institutions in participating Member States that are not required under national law to notify the competent authorities before the intended appointment of a member to: can: - submit a fit and proper questionnaire and the CV for the newly proposed member of the management body as soon as there is a clear intention to appoint them;..."	The requirement of a "natural" prior assessment in relation to the appointment is completely out of step with both the directive and the actual possibility of pursuing it in the context of certain national company law rules that could not be overridden by the ECB Guide.	Gbadebo, Tola	Publish
80	7.1 Notification of intended appointments	7.1 Notification of intended appointments	7.1	69	Clarification	Would it be possible to set out a timeframe for this part of the process, and in particular the interaction between local and supervisory authorities?	Setting a timeframe would allow firms to plan effectively and would also provide clarification on how to deal with any fragmentation of approach between authorities.	Gbadebo, Tola	Publish
81	7.2 Types of decision	7.2 Types of decision		69	Clarification	It is stated that the ECB has the power to include recommendations, conditions and/or obligations in positive decisions to address certain concerns. In par. 7.3.1.1 under (c) a legal basis for the ECB's power to impose conditions is construed. There is no reference to any legal basis for imposing an obligation or giving a recommendation in the context of a fit and proper decision. We would appreciate clarity as to where such legal basis can be found.	Clarity is required as to the legal basis for this provision	Gbadebo, Tola	Publish

Template for comments

Fit and proper Questionnaire

Please enter all your feedback in this list.

When entering feedback, please make sure that:

- each comment deals with a single issue only;
- you indicate the relevant section/question/page, where appropriate;
- you indicate under "Type of comment" whether your comment is a proposed amendment, clarification or deletion.

Deadline: Midnight of 2 August 2021

ID	Section	Question	Page	Type of comment	Detailed comment	Concise statement as to why your comment should be taken on board	Name of commenter	Personal data
1	Fit and proper Questionnaire – ECB template			Clarification	Banks have had intensive discussions with the ECB and/or their local regulator on the information which should be provided as part of the introduction of the IMAS portal. The questionnaire which is currently being consulted by the ECB introduces new questions which are not included in the IMAS portal. Could the ECB explain how the questionnaire relates to the discussions that took place as part of the introduction of the IMAS portal .	Request for clarification that would provide more accurate guidance to the supervised entity.	Gbadebo, Tola	Publish
2	Declaration by the appointee		2	Amendment	In some jurisdictions, a self declaration is already required by the national legal framework (e.g. in France, Art. 500-1 of Monetary Code about non being concerned by a list of interdictions. Where this is the case, could the ECB consider this sufficient, in order to avoid duplication of requirements and documentation? We suggest that the declaration by the supervised entity is amended as follows:	This amendment would avoid duplication of requirements vs national laws.	Gbadebo, Tola	Publish
3	Declaration by the supervised entity		3	Amendment	"...confirms that the supervised entity believes, on the basis of due and diligent enquiry and information provided by the candidate and by reference to the fit and proper criteria as laid down in [national and European law, international standards, including regulations, codes of practice, guidance notes, guidelines and any other rules or directives issued by the [NCA] or by the ECB and the European Banking Authority (EBA) and the European Securities and Markets Authority (ESMA), that the appointee is a fit and proper person to perform the function as described in this questionnaire"	While the bank will carry out a "due and diligent enquiry" based on information it is reasonably able to obtain, it should also be able to rely on the information provided by the appointee, particularly in cases where the appointee is from outside the bank.	Gbadebo, Tola	Publish
4	Declaration by the supervised entity		3	Deletion	In the Declaration by the Supervised Entity we propose that the following be deleted: * Confirmation that they have informed the director or key function holders of the responsibilities associated with their functions	The confirmation requested to the banks on the fact that they have informed the director or key function holders of the responsibilities associated with their function is not necessary and represents a further burden for the banks. We ask for a deletion	Gbadebo, Tola	Publish

5	1. Identity of the supervised entity and appointee	Is the supervised entity a "CRD significant institution" in accordance with "national law"	5	Amendment	<p>The template provides for this to be updated in accordance with specific national laws. However we note that there are different natures of "significant institutions", for instance:</p> <ul style="list-style-type: none"> - (i) Global systemic entities, Other systemic entities - (ii) specific thresholds per Members State as regards rules on limitation of number of corporate offices (i.e. 15 GE in France) - (iii) specific therssholds per Members State as regards rules on creation of specialized committees (i.e. 5 GE in France) <p>We suggest that this question could be further clarified to remove any ambiguity for the user.</p>	The wording of the question should be amended to clarify the question for users	Gbadebo, Tola	Publish
6	1. Identity of the supervised entity and appointee	Governance model of the supervised entity	5	Clarification	We request that the ECB includes definitions of governance models e.g. one tier and two tier models.	Clarification required to ensure the correct model is selected.	Gbadebo, Tola	Publish
7	1. Identity of the supervised entity and appointee	Governance model of the supervised entity	5	Clarification	<p>It is currently unclear whether French banks should indicate "One-tier model" or "Other model"</p> <p>For French banks, the most common model could rather be identified as an "In-between model " or "Hybrid system" where there is a board of directors and CEO/COO. In this system, the board is a collective body in charge of the Supervisory Function and is also in charge of the determination of the institution's strategy, whereas the Executive Function is ensured by one or more physical persons. In such system, the CEO/COO can be allowed to be members of the board ensuring Supervisory Functions but when acting as such members, they do not conduct executive missions (they act as every other board member), and they are of course in minority in terms of number.</p> <p>In other One tier system (e.g. UK or Spain): there is one single collective body which performs both Executive and Supervisory Functions</p> <p>Two tier system (e.g. German or France for system with supervisory board and management board): there is one collective body is in charge of the Executive Function and one other separate collective body is in charge of Supervisory Function.</p> <p>We therefore suggest that the ECB's expectations for banks in this situation should be clarified. In addition, we suggest that it should not be required for banks to justify their selection for each application. Where additional information is required by the ECB, we suggest that this is sought from the local supervisor, who already has full</p>	CRD and EBA guidelines are intended to apply to all existing board structures without interfering with general allocation of competences in accordance with national company law or advocating a particular structure. This would provide clarity for affected entities.	Gbadebo, Tola	Publish
8	1. Identity of the supervised entity and appointee	C: Number of current valid identity document or passport	6	Amendment	When providing the current valid identity document or passport, we suggest that the issuing country and expiry date should also be provided.	This would ensure information on the validity of the documents	Gbadebo, Tola	Publish

9	1. Identity of the supervised entity and appointee	Have you ever been subject to any supervisory assessment in the financial sector (including assessments for functions abroad)?	7	Clarification	We request that the ECB clarifies what is regarded as a 'supervisory assessment'. Does this only include approvals which require an application and assessment? For example, certain certified roles under the current UK regulatory regime were previously termed 'approved' roles, although the process for 'approval' did not require an application or detailed assessment resulting in some level of confusion as to whether such roles should properly be considered 'approved' roles.	Clarification required to ensure the correct information is provided.	Gbadebo, Tola	Publish
10	1. Identity of the supervised entity and appointee	D: Have you ever been subject to any supervisory assessment in the financial sector (including assessments for functions abroad)?	7	Amendment	We believe it would be sufficient to indicate the latest assessment carried out by the Authority, without having to provide details of all previous assessments	This would reduce duplication of effort	Gbadebo, Tola	Publish
11	1. Identity of the supervised entity and appointee	D: If any previous assessment has resulted in a negative decision, withdrawal of authorisation, or a positive assessment but with conditions, recommendations or obligations, please explain the reasons for this	7	Deletion	It is unclear why appointees should provide such details, for example: - for Directorships that are already terminated as they have ensured their function and thus should be considered as having been able to hold their positions; - for Directorships within the EU of which the ECB and NCAs are already aware; - for any Directorships where it might be impossible to collect this level of detail, notably in case of positions held in entities out of a Group; or - as information may not be available at an institution or appointee level (assessment notification with conditions may not be directly available at appointee level nor at the entity level (establishing a new FAP file).	This would avoid workload at institutions and appointees' level on information that will not be relevant as obsolete, or that may not be available at the level of the entity or appointee, or that are already available at the level of NCAs or the ECB.	Gbadebo, Tola	Publish
12	1. Identity of the supervised entity and appointee	E: Are you aware or have you been informed by the supervised entity of any reasonable grounds to suspect that money laundering or terrorist financing is being or has been committed or attempted, or whether there is any increased risk thereof in connection with the supervised entity or its group?	7	Deletion	This question seems to be not appropriate, as the questionnaire assesses the fitness and propriety of the appointee and not the supervised entity. In addition, the appointee is often external and may only have a limited insight to the AML framework and reporting of the organisation. We suggest that the question should be deleted from this section, unless a different interpretation is intended, in which case this should be clarified.	The appointee is not yet in function at the supervised entity when filling the questionnaire, so we deem this question is not appropriate in the fit and proper process.	Gbadebo, Tola	Publish
13	2. Function for which the questionnaire is submitted	Information on the function for which the questionnaire is submitted - Select the specific function	8	Clarification	We would like to know if there is a specific reason why the function of Statutory Auditor of the board of Statutory Auditors has been deleted with respect to the current Fit and Proper questionnaire.	Request for clarification that would provide more accurate guidance to the supervised entity.	Gbadebo, Tola	Publish

14	2. Function for which the questionnaire is submitted	Select the specific function	8	Amendment	<p>The questionnaire requires indication of whether the function is Executive or non-Executive, but also whether it is a Key function holder function or a branch manager function. However, FAP submissions are not required in all Member States for Key function holders (KFH) and branch manager functions. E.g. It is not required in France even though regulators have the possibility to give their opinion on the subject, notably in frame of their on-site reviews on entities. Furthermore, the status of KFH and branch managers is quite different from a law perspective than the status of Directors or CEOs, Deputy CEOs, for which FAP files are required in France.</p> <p>KFH and Branch managers are employees of an institution or group; they are selected by senior management under internal HR processes and are subject to national labour laws (not within the perimeter of the European jurisdiction), which is very different from Directors. They cannot be designated or revoked in the same manner. Therefore, approval by European regulators or NCAs should not follow the same process as for members of the management body.</p> <p>Besides, in terms of processes and organisation, follow ups for these individuals are generally different. The accesses in the Imas portal or NCAs should not be granted with the same authorisations. It would be very complicated for Institutions and Groups to adjust or make processes sufficiently segregated to ensure confidentiality and smooth organisational arrangements.</p> <p>We therefore suggest that this section should either not apply to KFH and Branch managers, or should set out the</p>	It would not be appropriate to set the same process for KFHs and branch managers as for Directors.	Gbadebo, Tola	Publish
15	2. Function for which the questionnaire is submitted	Select the specific function	8	Amendment	<p>in line with our previous point, the multiple choices given in the proposed questionnaire may not be not applicable to all Member States, all entities, all legal forms etc. In France for instance CFO, CRO, Manager of a foreign branch, head of compliance, Head of internal audit, Head of risk management function should not be made available as choices for a French entity</p> <p>The form should be adapted to facilitate preparation of FAP files by each entity and should not cause confusion where the user is not fully fluent in English and/or may not be aware of the subtleties of each legal form or country obligations</p>	This would make the form applicable for all entities and reduce the risk of user confusion.	Gbadebo, Tola	Publish
16	2. Function for which the questionnaire is submitted	Select the specific function	8	Amendment	In the list of proposed functions, what should be selected to identify a second effective officer that may not be considered a corporate officer of the Management body ?	This would ensure that all specific cases can be taken into account	Gbadebo, Tola	Publish
17	2. Function for which the questionnaire is submitted	Select the specific function	8	Amendment	There may be confusion caused by some of the functions proposed, notably the difference between the CRO and the head of the risk management function	This would make the form applicable for all entities and reduce the risk of user confusion.	Gbadebo, Tola	Publish
18	2. Function for which the questionnaire is submitted	Select the specific function	8	Amendment	The role of employee representative is not suggested as an option; we suggest this is included	This would make the form applicable for all entities and reduce the risk of user confusion.	Gbadebo, Tola	Publish

19	2. Function for which the questionnaire is submitted	Select the specific function	8	Amendment	In the list of the different possible roles and functions, a box entitled "others" should be added, to be completed with free text, where further roles can be inserted (e.g. head of the anti-money laundering function in the Italian legislation)	This would make the form applicable for all entities.	Gbadebo, Tola	Publish
20	2. Function for which the questionnaire is submitted	Select the specific function	8	Deletion	In the field relating to the specification of roles and functions performed, we propose that the following be deleted: * Detailed description of the duties, responsibilities and reporting lines of the function responsibilities and reporting lines of the function	The detailed description of the duties, responsibilities and reporting lines of the function is not necessary and represents a further burden for the banks, taking also into account that the supervisory authority is already aware of such information. We ask for a deletion	Gbadebo, Tola	Publish
21	2. Function for which the questionnaire is submitted	(Planned) date of the formal decision on the appointment issued by the competent governance body of the supervised entity	8	Clarification	This question is unclear. Upon a recommendation of the Nominations Committee, the Board approves the candidate to hold a pre-approval role subject to regulatory approval. An application for a proposed appointment is not submitted to JST without Board oversight.	Request for clarification that would provide more accurate guidance to the supervised entity.	Gbadebo, Tola	Publish
22	2. Function for which the questionnaire is submitted	(Planned) end date of the term of office	9	Amendment	In alternative to a specific date we suggest that it should be possible to identify an event such as the approval of the financial statements.	The amendment is intended to capture situations in which a firm date is not yet set	Gbadebo, Tola	Publish
23	3. Experience	Educational organisation (e.g. university, centre of studies, etc.)	10	Amendment	We suggest that the choices on levels of educational qualification obtained should be extended to reduce the use of "Other". For example in France, many high level qualifications do not come from Universities, but from what are termed "High Business Schools", "Engineer schools" or schools such as the "National Administration school"(ENA).	This would reduce the use of the "Other" category.	Gbadebo, Tola	Publish
24	3. Experience	Degree of seniority of the position / hierarchical level	10	Clarification	A clarification is requested as to whether the degree of seniority is a self-assessment made by the appointee or if there is a reference benchmark. In addition, we request that the ECB provides definitions or examples related to the categories set out under 'Degree of seniority of the position / hierarchical level'	Request for clarification that would provide more accurate guidance to the supervised entity.	Gbadebo, Tola	Publish
25	3. Experience	B&C: Size (total assets in EUR millions)	10&11	Amendment	We suggest that larger categories may be needed, e.g. within banks the balance sheet size amounts generally in Billion Euros and not in Millions. Thus having the most significant entities with a size > 50 Millions Euros seems small.	The scale of total assets size doesn't seem appropriate for banking entities.	Gbadebo, Tola	Publish
26	3. Experience	B&C: Number of subordinates	10&11	Amendment	We suggest that the scale indicated might cause confusion. Could the actual numbers be listed, e.g. <100; 101-500?	Change of scale of presentation of number of subordinates would be clearer.	Gbadebo, Tola	Publish
27	3. Experience	B&C: Number of subordinates	10	Clarification	A clarification is requested as to whether indirect subordinates are also to be taken in consideration, or only first reporting lines. In addition, whether indirect would refer to the total number of employees of the company where the experience was gained or only to the specific area of responsibility of the person concerned. This would provide helpful guidance on the correct perimeter to be taken in consideration for the calculation	Request for clarification that would provide more accurate guidance to the supervised entity.	Gbadebo, Tola	Publish
28	3. Experience	E: Assessment of the level of banking experience	12	Clarification	The list of areas of expertise should be made consistent with the text subject of consultation, indicating all the subjects for which basic knowledge is required of all Board members and the other subjects considered desirable at the level of the collective composition of the Board	Request for clarification that would provide more accurate guidance to the supervised entity.	Gbadebo, Tola	Publish

29	3. Experience	E: Assessment of the level of banking experience	12	Clarification	Is there a qualitative/quantitative benchmark in terms of years of experience to determine whether to select high, medium-high, medium-low, low or is the appointee asked to perform a self-assessment?	Request for clarification that would provide more accurate guidance to the supervised entity.	Gbadebo, Tola	Publish
30	3. Experience	E: Assessment of the level of banking experience	12	Clarification	There is an added box for "justification of your answer". It would be helpful if the ECB could provide some clarity on what constitutes as a sufficient justification, e.g. would reference to the resume be sufficient? The justification of a ranking for any candidates experience is subjective in nature and is open to challenge.	Request for clarification that would provide more accurate guidance to the supervised entity.	Gbadebo, Tola	Publish
31	3. Experience	F: Has the appointee undertaken any relevant training in the last five years?	13	Clarification	What is intended as relevant and could a definition or more guidance be provided? We are concerned that requesting details such as content, length and dates on all training represents a sizeable administrative task, since most appointees will have completed a significant amount of training.	Request for clarification that would provide more accurate guidance to the supervised entity.	Gbadebo, Tola	Publish
32	3. Experience	G: Will the appointee undertake training prior to the commencement of the function or within the first year of the commencement of the function?	14	Amendment	We assume that the form will contain lines/boxes for each subject to improve the layout for the answers, but would appreciate confirmation of this.	This would make the form easier to complete.	Gbadebo, Tola	Publish
33	3. Experience	Will the appointee undertake training prior to the commencement of the function or within the first year of the commencement of the function?	14	Deletion	We propose deletion of the columns: Term (hours), Start date and End date, as the question already addresses that the training will take place within the first year of the commencement of the function. In many cases the training will be provided in house by more senior function holders and therefore training dates will need to be flexible. In many cases the commencement of the training programme will also depend on the completion of the fitness and probity process which generally varies from candidate to candidate.	Inclusion of these columns do not add value to the assessment and creates unnecessary administration for the institution and possible ramification if timeframes are not adhered to.	Gbadebo, Tola	Publish
34	4. Reputation		15	Clarification	The questions should relate to the position of the board member and not be extended to other persons. The term "you" should therefore refer exclusively to the Board member.	Request for clarification that would provide more accurate guidance to the supervised entity.	Gbadebo, Tola	Publish
35	4. Reputation		15	Amendment	Definitions of "senior manager" and "associate", as well as "alleged wrongdoing" would be welcome. It should also be clear that information being submitted by reference to time periods covered by these roles only relate to matters relevant to a business area or matter connected to the appointee, rather than all information related to the firm generally.	Request for clarification that would provide more accurate guidance to the supervised entity and that only information relevant to the appointee's reputation will be submitted.	Gbadebo, Tola	Publish
36	4. Reputation		15	Clarification	We question whether there will be some duplication between this section of the questionnaire and the interview, which could make the questionnaire unnecessarily extensive.	This would reduce duplication between the questionnaire and the interview.	Gbadebo, Tola	Publish
37	4. Reputation	Are you or have you been subject to any criminal or relevant administrative or civil proceedings (including any that are pending, concluded or under appeal)? Investigations, sanctioning proceedings or measures conducted or imposed by public or supervisory authorities or professional bodies (i.e. warnings, reprimands, etc.) in any jurisdiction are included in the scope of this question.	15	Amendment	For corporate offices held in listed companies, schedule A as it is currently proposed will be complex and in some cases impossible to complete. Information collected on the subject will already be available and described in the Universal Registration Document (URD) of the concerned entities. Identifying all details also in the FAP file would be duplicative and cause difficulties in completing the questionnaire without legal assistance. Moreover, the cases are likely to have already been discussed with the regulators.	This would make the form easier to complete.	Gbadebo, Tola	Publish

38	4. Reputation	Are you or have you been subject to any criminal or relevant administrative or civil proceedings (including any that are pending, concluded or under appeal)? Investigations, sanctioning proceedings or measures conducted or imposed by public or supervisory authorities or professional bodies (i.e. warnings, reprimands, etc.) in any jurisdiction are included in the scope of this question	15	Amendment	For Schedule A, would it be possible to define a limited time frame for which relevant administrative or civil proceedings as well as investigations should be reported? A limit to proceedings that have been raised within the last 5 years seems reasonable, as this could otherwise be very difficult to track, notably in case of proceedings linked to non personal proceedings and corporate proceedings in companies in which corporate offices have been held by the appointee. This would also fit with existing time limits in some Member States	This would limit the information required to the most relevant cases.	Gbadebo, Tola	Publish
39	4. Reputation	If "Yes" is selected, please provide the following details	15	Amendment	We suggest the following questions i) Were you a member of the management body at the time of the alleged wrongdoing? ii) Second: Are you or have you been a key function holder or a senior manager that is or was responsible for a division or business line to which the proceedings relate at the time of the alleged wrongdoing? This would help given that KFHs and Senior Managers are not jointly responsible	Request for clarification that would provide more accurate guidance to the supervised entity.	Gbadebo, Tola	Publish
40	4. Reputation	A: "In the case of alleged wrongdoing, proceedings, investigations or sanctions involving entities in which you hold or have held functions: ..."	16	Amendment	There is inconsistency in the language being used when referencing the appointee's role in the firm. It would be preferable to frame this question by reference to entities in which the appointee was a member of the management body, KFH, etc. The reference to a function is too unclear and this may result in information unrelated to the appointee and his/her fitness and probity being provided.	To ensure consistency and clarity in the question being raised, and to avoid irrelevant information being submitted.	Gbadebo, Tola	Publish
41	4. Reputation	B: Are you or have you been personally subject to any disciplinary measures or actions (including disqualification as a member of a management body or discharge from a position of trust)?	17	Clarification	We request that the ECB provides more clarity as to those matters that should be regarded as disciplinary measures or actions. Presumably this is intended to encompass matters that result in a formal disciplinary sanction, and not instances where an individual has been the subject of an investigation that closed without action following a fact-finding exercise, but a definition or instruction would be useful here	Please clarify further to avoid inclusion of information which may bias decisions in the event of a disciplinary case which was closed without action.	Gbadebo, Tola	Publish
42	4. Reputation	D: Has any financial institution in which you hold or have held any managerial function, or whose management you influence or have influenced materially in any other way, or in which you hold or have held material interests, ever received State aid or ever been subject to a restructuring, recovery or resolution procedure?	17	Amendment	We propose to amend to state <u>...in which you hold or have held position as a Board members or another pre-approved control function.</u> Otherwise please clarify what is considered any managerial function, influence of management or material interests to ensure consistency. Depending on the candidate's status and length of tenure within an institution they may not be aware of whether the institution has ever received State aid or ever been subject to a restructuring, recovery or resolution procedure. We also suggest that this is limited to State Aid recieved during or directly after the tenure	Amendment requested to simplify process, reduce confusion for candidates and limit the information required to that which is most relevant.	Gbadebo, Tola	Publish
43	4. Reputation	G: Apart from the cases already mentioned elsewhere in your replies, have you been directly or indirectly involved in a situation that led to concerns or suspicions of money laundering or terrorist financing?	18	Amendment	We suggest that the wording of this question is too vague as to provide useful information. All banks have processes in place to detect and prevent money laundering or terrorist financing - unless there has been a sanction on that individual, it would be difficult to determine what direct or indirect involvement would mean in practice for an individual within a banking entity	This would make the form easier to complete.	Gbadebo, Tola	Publish

44	4. Reputation	H: Have you personally ever not been fully transparent with the supervisor?	18	Deletion	The wording of this question makes it very difficult to answer to an objective standard. We suggest that it is removed. If it is to be retained, we suggest it is amended, for example "Have you ever failed to disclose appropriately any information of which the supervisor would reasonably expect notice."	An objective measure would make this question easier to answer.	Gbadebo, Tola	Publish
45	5. Conflicts of interest		19	Clarification	The questions should relate to the position of the board member and not be extended to other persons. The term "you" should therefore refer exclusively to the Board member and possibly to close family members. In any event, we refer to the observations we have made in our comments on the Guide about removing the need for an ex-ante disclosure by the Director concerning the situations required for the purposes of independence of mind, or limiting it to significant relationships with the bank and the group it belongs to.	The questions should relate to the position of the board member and not be extended to other persons.	Gbadebo, Tola	Publish
46	5. Conflicts of interest	E: you have any financial obligations towards the supervised entity, the parent undertaking or their subsidiaries cumulatively exceeding EUR 200,000 (excluding private mortgages) or any loans of any value that are not negotiated "at arm's length" or that are non-performing (including mortgages)?	21	Amendment	We suggest that this should be phrased as an open question, rather than with the prescriptive format currently proposed.	An openly phrased question would make this easier to answer.	Gbadebo, Tola	Publish
47	5. Conflicts of interest	E: you have any financial obligations towards the supervised entity, the parent undertaking or their subsidiaries cumulatively exceeding EUR 200,000 (excluding private mortgages) or any loans of any value that are not negotiated "at arm's length" or that are non-performing (including mortgages)?	21	Amendment	In addition to the exclusion of private mortgages, we request an exemption for private insured real estate loans (which are an alternative to mortgages in some jurisdictions). The insurance means that the loan is already guaranteed. In addition, as with mortgages, the information should be considered private and therefore not relevant.	This exclusion would remove information that is not strictly relevant to the Fit&Proper assessment process	Gbadebo, Tola	Publish
48	5. Conflicts of interest	E: you have any financial obligations towards the supervised entity, the parent undertaking or their subsidiaries cumulatively exceeding EUR 200,000 (excluding private mortgages) or any loans of any value that are not negotiated "at arm's length" or that are non-performing (including mortgages)?	21	Amendment	In addition to the observations already made, the detail on credit relationships needs to be simplified, by excluding the following requests for clarification: i) Conditions of the obligation(s), ii) Duration of the obligation(s), iii) Value of the obligation expressed as a percentage of the total assets of the debtor, iv) Value of the obligation expressed as a percentage of the total loans to the debtor, v) Value of the obligation expressed as a percentage of the total eligible capital of the supervised entity.	The details required appear to be extremely burdensome and not strictly relevant to the Fit&Proper assessment process	Gbadebo, Tola	Publish
49	6. Time commitment	B: Assessment by the appointee regarding his/her time commitment for the functions	24	Amendment	It would be more appropriate for such assessment to be conducted by the supervised entity instead and not by the Appointee.	The proposed amendment would enable provision of a more accurate calculation, since the supervised entity is in a better position to calculate the necessary the time commitment rather than the appointee.	Gbadebo, Tola	Publish
50	7. Collective Suitability	D: Describe the extent to which the appointee contributes to the collective suitability of the management body	27	Deletion	We question whether it is necessary to add specific reasoning on the knowledge of climate-related risks here as it previously has been accounted for in section 3(E) "Assessment of the level of banking experience" with justification for its answer?	This would reduce duplication.	Gbadebo, Tola	Publish
51	7. Collective Suitability	E: List of members of the management body (as applicable)	28	Clarification	Is it the ECB's intention that banks state each member of the management body in the list, or only the one the application is for? If only the appointee, the information has already been provided in previous sections. However, if for each member of the management body, the layout would require a new page for each member. However as a general point, this question should be removed completely as this information is already available and would not provide anything of value.	Request for clarification that would provide more accurate guidance to the supervised entity and remote potential duplication.	Gbadebo, Tola	Publish

52	8. Additional information and annexes	B: Please upload (if applicable) the following accompanying documents	29	Clarification	In relation to the requirement to provide any criminal records, we note that this is a new requirement in many jurisdictions. For instance, in France criminal records were up to now not systematically required, but only for officers who had lived outside France for more than 3 years (a similar requirement to that which exists in the Netherlands). Furthermore, in France the ACPR had direct access to this information for persons living on the French territory. We suggest that, where local supervisors already have access to such information, this is provided direct to the ECB rather than there being a duplication of requirements for the bank	Requesting new collection of this data at institutional level would create an unnecessary workload.	Gbadebo, Tola	Publish
53	8. Additional information and annexes	B: Please upload (if applicable) the following accompanying documents	29	Clarification	It would be helpful to clarify what is meant by "suitability reports".	Request for clarification that would provide more accurate guidance to the supervised entity.	Gbadebo, Tola	Publish
54	8. Additional information and annexes	B: Please upload (if applicable) the following accompanying documents	29	Deletion	We request deletion of "Draft" Board minutes or minutes of the Nomination Committee. Draft versions are not legally binding	Draft version are not legally binding	Gbadebo, Tola	Publish
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