EUROPEAN CENTRAL BANK

BANKING SUPERVISION

Template for comments

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

Institution/Company
ABI
Italian Banking Association

Contact person

Mr/Ms

First name

Surname

Email address

Telephone number

☑ Please tick here if you do not wish your personal data to be published.

General comments
We have seen that compared to the current Guide (May 2018) the approach adopted in the document has become very specific, with fine detail on the various - substantive and procedural -aspects that are significant in relation to suitability.This choice does indeed raise serious doubts, as it results in the introduction of new provisions, which directly affect substantive aspects that are remitted to the national law systems and, consequently, not only give rise to inconsistencies with respect to these systems but, in some cases, could be contrary to the principles of constitutional level established in the single legal systems. The ECB's intervention should, on the contrary, necessarily take account of specific national aspects, and not create additional rules, which overlap with those in force at national level. In fact, under the Single Supervisory Mechanism, the ECB applies the relevant EU law and the relevant national transposition legislation in the exercise of its supervisory tasks. Corporate governance legislation is still today largely fragmented and lacking homogeneity within Europe, and until a genuinely common primary regulatory framework is created, must be paramount the ECB's commitment to move within the limits of what is regulated at European level, avoiding the introduction of elements and provisions that do not find precise correspondence - and coverage - within the primary sources. In other words, it is not possible to use the Guide to try to "harmonise" what is not harmonised at the level of primary legislation, especially – as in the case in question – when the intervention affects aspects that touch the very essence of the organisation of intermediaries, with important consequences also from a management point of view. Consequently, we ask that the Guide will adopt a "higher-level" approach so as to be simpler and more effective in terms of practical application, given the variety of situations and cases that may be subject to the assessment criteria. Greater flexibility and delegation to national legislation by the ECB would generally be more appropriate for an aspect that in the CRD IV is subject to minimum harmonisation with less detailed provisions and would allow consideration to be given to the still very different regulatory frameworks in the various Member States. Moreover, although it is envisaged, in some passages of the document, that the rules should be graded for less complex situations, there is no clear indication of the elements that are eased or simplified as a result of this. We therefore hope that the Guide will more effectively define the areas in which the application of the principle of proportionality is envisaged. This would not affect the fit and proper standards - which would still remain high - but would allow the less complex credit institution to adapt to the new reference framework in a manner that is substantive and consistent with their actual characteristics.

EUROPEAN CENTRAL BANK

BANKING SUPERVISION

#NAME?

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:

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
1	Foreword			3	Amendment	The compliance to the present Guide should be ensured in 12 months to be counted after the availability of the translation of the Guide into national lenguages.	We ask for a transition period of at least 12 months. It is crucial in view of the relevant amount of time needed to allow, inter alia, the internal processes to be modified and completed and to find suitable candidates with the new skills requested.		
2	Guiding principles			4	Amendment	The supervisory practices described in the Guide respect the principle of proportionality, namely that they are commensurate with the size, systemic importance and risk profile of the credit institutions under supervision, the specifics of the appointee concerned and the nature of her or his future activity and the efficient allocation of finite supervisory resources.	We welcome that ECB in its Draft Guide aims to respect the principle of proportionality (size, systemic importance and risk profile of the credit institutions). However, we advocate for extending the general commitment to proportionality also to proportionate application of the Draft Guide to all aspects.		
3	Guiding principles			4	Amendment	To consider the prior assessment on the fitness of the candidate as one possibility and to envisage, as an alternative, the assessment subsequent to the appointment, at least in all cases in which the appointment is subject to approval by the shareholders' meeting or is otherwise an immediate consequence thereof. 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 assessments by the Supervisory Authority, notified months after the appointment are only compatible with ex-post procedures where the Authority's power to remove the appointee remains intact. Therefore we propose to amend the paragraph as follows : "The suitability assessment conducted by the competent authorities is prudential ~~and preventive in nature~~ and higly dependent on the available information"	On page 4 the draft states that *"The suitability assessment conducted by the competent authorities is prudential and preventive in nature"*. The provision that the assessment of the candidate's suitability is "in nature" preventive is not in line with the provisions in the CRD IV Directive and does not take due account of the different national rules on company law, which cannot be derogated - as mentioned in the general remarks - by an ECB Guide. The consultation paper should, therefore, clearly recognise the existence of different approaches under national legislation that are only compatible with a ex post (post-appointment) assessment. This is the case of the procedures for the appointment by Shareholders' meetings using lists of candidates, which – for example in Italian listed banks – have to be submitted prior to the shareholders' meeting by shareholders, 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 board (rather than the body resulting from the election) is a solution that finds no comparison in any primary level regulatory source (directive and national law) and therefore cannot be adopted in a Guide that would certainly be of a order lower than them.		Don't publish
4	3. Assessment criteria	3.1.1 Practical experience and theoretical knowledge		8	Amendment	We propose to amend the paragraph as follows: "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 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. ~~The credit institutions are primarily responsible for selecting and nominating appointees who fulfil these minimum requirements for sufficient knowledge, skills and experience.~~ The assessment is conducted – subject to national law – prior to or after the individual's appointment but also whenever required on an ad hoc basis (e.g. in the event of a significant change of responsibilities). In the event the assessment is conducted prior to the individual's appointment, the relevant Authority's decision is sent to the credit institution within [15-30] days from the receipt of notice by the credit institution itself".	See comment n. 1		Don't publish
5	3. Assessment criteria	3.1.1 Practical experience and theoretical knowledge		8	Amendment	Members of the management body as a whole must have up-to-date and sufficient knowledge, skills and experience to fulfill their functions	"Sufficient knowledge". We don't believe each member of the board have the same understanding of all topics. We propose that the requirements apply to the management body as a whole. It seems too early that SSM assess the members of the board on skills that are not really defined yet and that cover so many aspects. Training plans will be suggested.		
6				68	Deletion	[….] ~~**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.**~~	See comment n. 1		Don't publish
7	3. Assessment criteria			8	Amendment	We propose to amend as follows: *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* 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	Paragraph 3 (p. 8) of the consultation document 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. Only in a footnote (footnote 12 on page 8) does it specify that such 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 fitness of those entities should necessarily be limited to the requirements of integrity and good repute and experience. This is the approach adopted in the Italian legislation. Moreover, we do not believe that the assessment of the additional requirements for board members is feasible for management positions.		Don't publish
8	3. Assessment criteria			8	Deletion	~~**Note 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), across the participating Member States**~~	See comment n. 4		Don't publish
9	3.1 Experience	3.1.3 Assessment approach	3,1,3	9	Clarification	Particular focus is given to the level and profile of education of the candidate during the assessment of the FAP. The education is expected to be related to a number of fields, such as banking or financial services, economics, law etc. It is not specifically mentioned whether it is expected a particular level of education, i.e. bachelor degree or master degree.	In some CEE Countries the current local regulation specifically requires a certail level of education degree. In this respect, it would be useful to have some harmonization among all the jurisdictions in scope.		Publish
10	3.1 Experience	3.1.3.1 Theoretical knowledge		10	Amendment	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.**~~ It is required that all members of the management body possess basic theoretical banking knowledge relating to: 1.banking and financial markets; […..] 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 paragraphs.	The consultation document appears to distinguish between areas of expertise for which possession of relevant knowledge by the Board members is identified as "necessary" and others for which it is qualified as "important", respectively. We agree with the list of areas of expertise for which "basic" knowledge is necessarily required for all board members. However, we believe it is crucial to clarify that the additional areas of expertise identified as "important" (e.g., IT and climate-related and environmental risk experience) 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. It may also be helpful to provide some further clarification on the experience required for "quantitative methods". In line with this approach, the "important" areas of expertise should not be included in the paragraph dedicated to the assessment of the presumptive thresholds of remit (Step 1 - Assessment against thresholds), but possibly only in the subsequent paragraph referred to the complementary assessment (Step 2 - Complementary assessment) and, as already noted, only to ensure that certain profiles with the specific skills indicated are present in the collective composition of the Board.		Don't publish

11	3.1 Experience	3.1.1 Practical experience and theoretical knowledge	3	11	Clarification	To ensure diversity and Boards composition optimization, this paragraph should be amended. The presumption of sufficient experience for both executive board members and non executive Board members should be adjusted: - In table 1 expectations of duration of recent practices of 10 years for CEO and 5 years for an executive Director. - In table 2 expectations of duration of recent practices of 10 years for Chair and 3 years for non executive Directors. The 10 years and 5 years durations mentionned in the 2 table are much too demanding. Indeed, it prevents institutions to promote good profiles and to enhance the expected diversity whished by the regulator. It creates a real issue to internal promotion within groups and hiders designations of good profiles which learn much quicker than the presumed expected 10 or 5 years experience announced. The presumtion period should be reduced to respectively 5 and 3 years. Besides, for a non executive Director, there should be aslo some presumption of sufficient experience for high level experts such as consultants, or experts is some area such as finance and accounting, risks, etc. Ans in addition, the practice levels indicated just below or one or 2 level below the management body in its management function should be reviewed or adapted. The guide should allow more margin of manoeuver, notably within important Groups.	\		
12	3.1 Experience	3.1.3.2 Practical experience	Table 2	11	Amendment	Non-executive: Three years of recent relevant practical experience at high-level managerial positions (including level managerial positions, non-executive board member positions, qualified professional consultants and advisors and significant theoretical knowledge in banking).	See comment n. 6		Don't publish
13	3.1 Experience	3.1.3.2 Practical experience	Step 1	11	Amendment	Step 1 – Assessment against thresholds The experience of the appointee is assessed against thresholds for the presumption of sufficient experience (see Tables 1 and 2 above), wherever national law does not provide for different thresholds. 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 ~~**automatically**~~ 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 the indicated thresholds.**~~	See comment n. 6 Although at the end of the paragraph the Guide already claryfies that "the thresholds are without prejudice to national law", it would be better if, when referring the thresholds of Tables 1 and 2, the ECB could specify that it will apply different ones if provided by national law.		Don't publish
14	3.1 Experience	3.1.3 Assessment approach	3,1,3,2	13	Clarification	It is reported that it can be covered by training (also in connection to page 40 where it is reported the concept of "knowledge" and "adequate understanding" and not by mandatory experience). Please can you confirm? Should an interview on profiency on these arguments be set? How to check that the training covered the gap? Can we refer to note on page 65 (Given the increasing importance of climate-related and environmental risks in the supervisory context and the generally acknowledged role of the management body and of the risk management function, the compliance function and the internal audit function with regard to such risks, interviews should give appropriate consideration to the appointee's experience with these risks. Where applicable, interviews should also cover the possible contribution by the appointee to the collective suitability of the management body).	More details are useful to determine the better way to aensure a collective knowlege of climate-related and environmental risks		Publish
15	3.1 Experience		new para 3.1.5.	13	Amendment	Para 3..1.5. - 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			Don't publish
16	3.2 Reputation			13	Amendment	[……] Any relevant criminal or administrative records are taken into account, when it is in the phase and is related to the matters, as specified below, having regard to periods of limitation in force in the national law. [….] The ECB frequently encounters the situation where an appointee or member of the management body is ~~**or has been**~~ the subject of pending criminal proceedings, or has been the subject of administrative sanctions or civil or criminal final judgement ~~**proceedings**~~ or other analogous regulatory investigation. In each case, the ECB will assess the materiality of those circumstances. ~~**Whilst there is a presumption of innocence applicable to criminal proceedings, the o fact that an individual is being prosecuted is relevant to propriety.**~~ In the assessment, all existing information regarding the propriety of the appointee together with the stage of the criminal proceedings and the evidential weight of the alleged wrongdoing should be assessed. ~~**Similarly, the fact that an appointee has been convicted or sanctioned is relevant and the factors as listed above will be considered as part of the overall assessment of the appointee's reputation.**~~ ~~**Note 25 "Proceedings" in this section refers to both pending and concluded proceedings**~~	The satisfaction of the requirement is based on an 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, sanctioned in Art. 48 of the Charter of fundamental rights of the European Union.** Reputation has some particularly sensitive aspects, since it is necessary to take account of the specific features of each national legal system. One one feature of particular importance is the principle of the presumption of innocence until a final judgment of conviction is handed down, as sanctioned in the Constitution of the Republic of Italy. As regards **criminal proceedings**, in the introductory part of the paragraph, completely different stages (such as the investigation, committal for trial and sentencing), are given equal importance in the assessment of reputational requirements. It would also appear necessary in this area to make a better distinction, 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. **In any case, in the absence of an express provision to this effect contained in a primary level regulation, it should not be possible to assign importance to the investigative phases of administrative and civil proceedings, in which the liability of the appointee is still the subject of investigations.**		Don't publish
17	3.2 Reputation	3.2.1 Information		14	Amendment	[…] 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. ~~1.Criminal records of the appointee.~~ 1.~~**2.**~~Self-declaration of the appointee ~~**, if required by the national legal framework,.**~~ ~~**3.Information**~~ concerning the following: •in~~v~~estigations, enforcement or supervisory proceedings, or sanctions by a competent authority in which the appointee has been directly ~~**or indirectly**~~ involved; [….] 4.~~I~~nformation concerning any criminal proceedings or relevant administrative sanctions or civil ~~**proceedings**~~ final judgments (including disciplinary actions) ~~**and investigations, sanctioning proceedings or measures**~~. […..] ~~**•in the case of alleged wrongdoing, proceedings, investigations or sanctions involving entities in which the appointee holds or has held mandates: details on the roles and responsibilities of the appointee in the respective entities, in particular as regards the business affected by the findings (e.g. was the appointee a member of the management body or a key function holder at the time of the alleged wrongdoing and/or responsible for a division or business line to which the proceedings (including sanctions or measures imposed) refer,**~~	In the introductory part, any relevant criminal or administrative records are then considered indiscriminately, without limiting the areas for which such proceedings may be relevant (e.g., in the banking, corporate or financial sphere), as is subsequently specified. In this respect, considering the need to scale the relevance of the situations subject of assessment and to allow the Board to assess facts and situations that are not at a merely embryonic stage, for administrative and civil proceedings we believe it is necessary to establish an obligation of disclosure and assessment, respectively, only from the stage of adoption of the measure that establishes individual liability and imposes an administrative sanction and from the stage of publication of the civil judgment, with the need to delimit the scope of relevance in both cases. In particular, it should be made clear that: □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; □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. Consequently, the reference to the fact that the appointee is "indirectly involved" **should be removed** as it would be a source of further uncertain application (see no. 3 of para. 3.2.1.)		Don't publish
18	3. Assessment criteria	3.2.1 Information	3.2	13	Clarification		Moreover, it could be possible that the informations have to be collected only in the participating Member States or also in non participating ones. This point - which in any case shoudb be clarified - adds further incertanties to the applicable scope of the proposed regulation.		
19	3.2 Reputation	3.1.2 Information	point 4	16	Clarification	The Guidelines request that any professional insight is shown by the appointee: • self-reflection in terms of what did they do to prevent or avoid the alleged wrongdoing given their role in the respective entity, • self-reflection specifying if they could have done more to avoid the wrongdoing, • self-reflection in terms of any lessons learned from the alleged wrongdoing; Is this self-reflection to be provided even in cases the appontee nothing to do with the wrongdoing?	A clarification is needed in case the candidate has nothing to do with the wrongdoing.		

20	3.2 Reputation	3.2.2 Assessment approach	a	17	Amendment	[…] (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 criminal proceedings ~~**or investigations**~~ 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. […]	A further and fundamental aspect that deserves careful consideration is the need to limit the relevance of the situations subject to assessment solely to the appointee and not also to the companies in which he/she holds or has held a position of management or control. The burden of disclosure borne by the appointee and the resulting assessment by the Board of such information should not relate to any criminal, administrative or civil proceedings involving the company in which he/she holds or has held a position in the past, but should be limited solely to those cases where the appointee has been directly concerned by specific charges made against him/her. Any presumed liability of the appointee for failure to monitor the actions of others should not, in fact, have repercussions as regards his/her individual suitability, especially when it is considered that the appointee may not have had news of any proceedings concerning the companies in which he/she holds or has held positions. In this context, a safeguard that admits that a civil or administrative measure also has significance even at a stage prior to its irrevocability, would seem to be leaps ahead. Also in this context, it would be appropriate to expressly provide for the non-relevance, in terms of assessing reputation, of criminal proceedings (and even more so for civil and administrative proceedings) that have been concluded with a final and incontrovertible decision of dismissal or full acquittal (did not commit the act, the act does not constitute an offence, the act is not envisaged by law as an offence), because it has been determined that the acts and the individual liabilities do not exist or have not been proved. Accordingly, we propose that footnote 25 be removed.		Don't publish
21	3.2 Reputation	3.2.2 Assessment approach	2	18	Amendment	2.Relevant administrative ~~**proceedings**~~ sanctions 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. [….] However, if the established facts and evidence are particularly significant, then one relevant administrative ~~**proceeding**~~ sanctions or measure (or admission) may in itself be enough to cast a material doubt as to the appointee's good repute […]	see also comment n. 12. - We also note that the situations that may affect the reputation of appointees include some situations that are too general and/or not pertinent. 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 refer, in fact, to situations in which the reputation of the appointee would be harmed only hypothetically and indirectly, if the resulting specific penalty procedures did not actually appear. Nor is there any requirement for the person concerned to be informed of such situations. We request that this provision be removed. With regard to the documentation that the appointee needs to produce, we believe it is 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 should, if anything, be limited only to cases in which it is required by the legal system in which the company is established.		Don't publish
22	3.2 Reputation	3.2.2 Assessment approach	Figure 1	18	Clarification	*"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," "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."* If there is wrongdoing in the institution or a proceeding against it, that is not directly related to the candidate, does this mean he\she will be of bad repute ?	A clarification of guidance should be provided in order to assess whether the wrongdoing or proceeding on the institution is directly related to the candidate or to their bad repute.		
23	3.2 Reputation	3.2.2 Assessment approach	4	19	Amendment	4.Relevant civil proceedings – In general, only relevant civil ~~**proceedings**~~ final judgements are taken into account when assessing the good repute of an appointee, since they may reflect adversely on their competence, diligence, judgement, honesty or integrity. Relevant civil proceedings ~~**include, for example**~~, refer to judicial dismissal of the appointee from management or supervisory bodies, and civil liability proceedings for damages suffered by an entity, its shareholders, creditors or third parties caused by the appointee as a member of a management body [….]	See comment n. 13		Don't publish
24	3.2 Reputation	3.2.2 Assessment approach	5	19	Deletion	5.Other relevant facts for the assessment of the appointee's good repute (other than proceedings) – An appointee should uphold high standards of integrity and honesty. 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. The following, non-exhaustive, factors are considered in the assessment of reputation, honesty and integrity: […] ~~**(b)financial and business performance of entities owned or directed by the appointee or in which the appointee had or has a significant share or influence;**~~ ~~**(c)large investments or exposures and loans, insofar as they have a significant impact on the financial soundness of the appointee;**~~ […] ~~**(g)other relevant facts* such as findings of tribunals, arbitration or mediation; facts in the public domain; supervisory measures (e.g. any AML/CFT related inspections); credible and material reports (e.g. internal reports of the supervised entity, auditors, reports requested by the supervised entity or other third-party reports).**~~ [...] Where there are material doubts, further assessment is required as set out below.	See comment n. 13		Don't publish
25	3.2 Reputation	3.2.2 Assessment approach		20	Amendment	•Personal involvement: T~~**he level of direct or personal involvement or responsibility in proceedings, particularly with regard to non-personal or corporate proceedings, may vary. The higher the level of the personal involvement, the higher the weight in the assessment. Proceedings (e.g. criminal, administrative, bankruptcy, insolvency or civil) and other relevant facts can refer to either a legal or a natural person.**~~ Proceedings ~~**and other relevant facts**~~ referring to legal persons wil~~**l, in principle, cast a material doubt on the good repute**~~ be taken into consideration only in the case ~~**of the appointee if the**~~ appointee was directly or personally involved in the matter. Such direct or personal involvement can also arise where the appointee had responsibility over a division or business line and where the proceedings (including sanctions or measures imposed) or facts demonstrate omission or inaction on the part of the appointee, or where the appointee failed as a key function holder, senior manager or member of the management body to act with due diligence, honesty and integrity. The level of responsibility of an appointee must be carefully assessed. Where there is clearly no direct or personal involvement, then no further assessment will be necessary. A clear example of no direct or personal involvement is when the appointee was not associated with the institution at the time of the wrongdoing	See comment n. 13		Don't publish
26	3.3 Conflicts of interest and independence of mind			21	Amendment	~~**Formal**~~ qualified independence	In general terms, the consultation document focuses on the possession of independence of mind by all Board members and 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 line with the EBA/ESMA Guidelines on the subject, we suggest the adoption of the term of "qualified independence", rather than "formal independence", which could be understood as going against "substantive independence". We also suggest that more room should be given to the importance of the "qualified independence" of certain board members, expressly envisaging that, where present, such a condition reinforces good corporate governance practices. It would also be desirable to recognise that, in Boards whose composition must, by law or under the Articles of Association, provide for the necessary presence of members with qualified independence, the procedures for controlling conflicts of interest could be simplified and based on the guarantee role assigned to directors who meet the requirements of qualified independence.		Don't publish

27	3.3 Conflicts of interest and independence of mind		3.3.	23	Clarification	To avoid a subjective view on the matter, how can be this evaluated? Can periodical behavioural evaluation need to be taken in consideration or is it necessary to set up an alternative measurement? Please, note that this info 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		
28	3.3 Conflicts of interest and independence of mind	3.3.1 Information	point 5	23	Clarification	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; What is meant by "financial interests"? Does that include shares in the supervised institution?	A clarification is neeeded on what to consider "financial interests".		
29	3.3 Conflicts of interest and independence of mind	3.3.1 Information		23	Amendment	In line with the joint ESMA and EBA Guidelines on suitability the following minimum set of information from the appointee and the supervised entity is considered relevant to conduct the assessment: 1. description of any personal relationship with other members of the management body and/or key function holders of the supervised entity, the parent undertaking or their subsidiaries; with any qualifying shareholders of the supervised entity, the parent undertaking or their subsidiaries; or with clients, suppliers or competitors of the supervised entity, the parent undertaking or their subsidiaries; […] 5. 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; […] The information listed above should be collected and assessed by the Supervised Entity in accordance with national law (or "within the times and through the means prescribed under national law").	The timing and means to collect some relevant information might be disciplined under national law. This is the case, for instance, for the disclosure of related parties of members of management body of Italian banks. Under Italian national law, such information is collected after the appointment of the board member and therefore could not be available in case of ex-ante assessement until after the appointee has taken up her/his role.		
30	3.3 Conflicts of interest and independence of mind	3.3.1 Information		23	Clarification	In line with the joint ESMA and EBA Guidelines on suitability the following minimum set of information from the appointee and the supervised entity is considered relevant to conduct the assessment: […] 4. description of any financial obligations towards the supervised entity, the parent undertaking or their subsidiaries that are cumulatively above EUR 200,000 (excluding private mortgages 31), or any loans of any value that are not negotiated at arm's length or that are not performing (including mortgages); [31 Private mortgages of any value do not need to be disclosed (if they are performing, negotiated at arm's length and not contrary to any internal credit approval rules) if they are not of a commercial nature. Moreover, all personal loans (e.g. credit cards, overdraft facilities and car loans) to the appointee from one and the same entity (if performing, negotiated at arm's length and not contrary to any internal credit rules) do not need to be disclosed as long as they are cumulatively under the threshold of EUR 200,000. Note that such mortgages or loans should be disclosed if they are likely to become non-performing for any reason.]	The main text seems to exclude from the calculation of the 200K only private mortgages. However, the footnote refers also to both private mortgages and (up to 200K) personal loans as exposures that do not need to be reported. It is therefore not clear what is the exact meaning of (and the interaction between) the two provisions – the one in the main text and the one in the footnote. For example, if the appointee has a mortgage of 500K, other personal loans for 150K and other non-personal loans for 150K (all performing, negotiated at arm's length etc.), is it correct to assume that no information has to be reported?		
31	3.3 Conflicts of interest and independence of mind	3.3.1 Information		23	Amendment	With regard to the requirement of independence of mind, the consultation document assigns to the appointees the burden of declaring in advance a very extensive series of relationships with very broad categories of persons and counterparties, without taking into consideration their effective, material importance. In the absence of any reference to materiality criteria, this obligation is excessively burdensome and could also be unjustified with respect to the actual need that one of those relationships may be the subject of examination, decision or control by the body in which the appointee concerned performs their role. 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. Such a general ex ante burden of disclosure could also entail the risk for the appointee of unknowingly omitting information that should have been provided. Therefore, we believe it would be more 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, for executive directors, for transactions and assessments under their specific responsibility and which fall within the powers actually exercised. There is no reason for having to create huge, pre-emptive and constantly changing information archives of all potential situations of interest if the case of a potential (not only actual) conflict does not become real for the assessment of a specific situation. Only certain more important information could be collected in advance, such as: -positions in other commercial or non-commercial entities; -holdings in companies exceeding 1% of the capital. Such cases would in any case be taken into account – for non-executive members – only if they fall within the decision-making remit of the Board of Directors. Of course, this would not prejudice the procedures adopted by banks to regulate transactions with related parties (which include board members and their relatives), which involve investigation, approval and disclosure requirements.	The presence of the conflicts of interest and the possession of independence of mind is a very sensitive issue. 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.		Don't publish
32	3.3 Conflicts of interest and independence of mind	3.3.1 Information	6	23	Amendment		The fact that an appointee was appointed on the proposal of a "significant" shareholder of the bank, should not in itself be relevant, for the purposes of assessing his/her independence of mind. The rules of company law allow the majority shareholder – or, in some legal systems and articles of association, even some minority shareholders – to appoint a representative on the Board in accordance with the "weight" of their holding and investment. The decision, then, to consider this situation as potentially prejudicial to the independence of mind of the appointed director does not appear justified, all the more so if one considers that the interest of the significant shareholder may correspond with the company's interest and, in the case of banks belonging to banking groups, undoubtedly with the interest of the Group. The fact that the appointee was appointed on the proposal of a "significant" shareholder should not, therefore, affect the independence of mind of the director, unless there is a situation of effective conflict of interest with respect to a specific transaction that involves the bank as a counterparty of the shareholder and there is therefore a risk of potential damage for the bank. We also note that even in cases where the regulations establish the obligation to appoint a quota of directors who meet the requirements of qualified independence, the majority shareholder can appoint them in compliance with the conditions of independence set out in the regulations.		Don't publish
33							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. We believe that this extension is excessive with respect to the aim of ensuring the director's independence of mind and should in any event be limited to companies in which he/she has held the position of executive director or, even more so, as chairman of the board. Similarly with a view to limiting the cases that potentially impact on the independence of mind solely to those cases where there is a real risk that this independence will be lost, it is hoped that the offices or holdings that are no longer current will not be considered relevant, since they cannot basically affect the independence of mind of a director who no longer has any role (including non-executive roles) in the company concerned. In addition, it is unclear to what extent these past situations should be considered relevant. On a practical level, taking into account the number of Directors and the positions held in the past, the provision under examination makes the monitoring of relevant cases excessively burdensome on an operational level, both for appointees and banks.			Don't publish

34	3.3 Conflicts of interest and independence of mind	3.3.1 Information	1	23	Clarification		It is not clear what is meant by “personal relationships” also with entities other than natural persons. We request clarification of this point		Don't publish
35	3.3 Conflicts of interest and independence of mind	3.3.2.2 Business, professional or commercial conflict of interest		23/25	Deletion	**We request that the provisions concerning the assessment of the impact on the financial situation of the appointee be deleted in full.**	With regard to financial relationships, (see no. 4 page 23) 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, causes some puzzlement. 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. 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. 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. 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.		Don't publish
36	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 in previous ID 18 and 22**			
37	3.3 Conflicts of interest and independence of mind	3.3.2 Assessment approach		24	Amendment	"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" Relevant time leaves too much discretion. The timing should be limited to the period of relationship with the supervised institution. A candidate could be a Manager in a company which was 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	In order to avoid uncertainty in the definition of relevant time a timing limit should be foreseen		
38	3.3 Conflicts of interest and independence of mind	3.3.2 Assessment approach	3	25	Amendment	Where the appointee has: • a material financial obligation towards the supervised entity, its subsidiaries or the parent undertaking ~~**or their subsidiaries**~~ (e.g. loans or credit lines); • a material financial interest (such as ownership or investment) in the supervised entity, its subsidiaries or the parent undertaking ~~**or their subsidiaries**~~; or in clients, suppliers or competitors of the supervised entity, the parent undertaking or their subsidiaries.	The Guide seems to consider the financial relations of the appointee with subsidiaries not only of the S.E., but also of its parent company. This seems to unnecessarily and excessively broaden the scope of the information to be collected and assessed.		
39	3.3 Conflicts of interest and independence of mind	3.3.2 Assessment approach	3	25	Clarification	In principle, the following is considered to be material: financial obligations towards the supervised entity cumulatively exceeding EUR 200,000 (excluding private mortgages 33) or any loans of any value that are not negotiated at arm’s length or that are non-performing (including mortgages); and current shareholdings of more than 1% or other investments of equivalent value. [Footnote 33: In the sense of footnote no. 29]	Could you please provide some details on the interaction between this provision and the provision under point 4. of paragraph 3.3.1 Information? Is it correct to assume that, with the new Guide, situations that are not deemed material will no longer have to be reported? On a separate note, the reference shall probably be to footnote 31 instead of 29.		
40	3.4 Time commitment	3.4.3.1 Quantitative assessment: multiple directorships			Clarification	Application of privileged counting ~~**Without prejudice to national law, w**~~When assessing the group context, the ECB takes into account the consolidated situation (based on the accounting scope of consolidation) in its approach to counting. 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)	We agree with the solution set out in the consultation document 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. 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.		Don't publish
41	3.4 Time commitment	3.4.2 Information		28	Deletion	We suggest eliminating the detailed information on number of meetings for mandates in other companies where the candidate holds a position since such number may not be reliable and thus not representative of the actual time commitment. We believe It is more appropriate to quantify the time commitment in terms of hours rather that number of meetings.	The amendment is propesed with the aimes to collect more accurate informationn		
42	3.4 Time commitment	3.4.3.2 Qualitative assessment: Two step assessment process		33	Deletion	(a) The indicated overall workload per days/year ~~**or per week**~~ is considerad high	As for time commitment, we suggest the removal of the indication of the number of weekly meetings for assignments in other companies where the candidate holds a position, given that this indication could turn out to be burdensome in its practical application, indicating it in days per year		Don't publish
43	3.5 Collective suitability of the management body				Amendment	There should be a sufficient number of members with knowledge ~~**in each area**~~ to enable effective discussions and challenges to be made and robust decisions to be taken	The quoted paragraph together with other parts of the Revised Guide indicate the revised ECB approach to be focused (more than in the past) on each member of the management bodydirector, on an individual basis. We believe it needs to be clarified that not every member of the management body must have an appropriate understanding, but the management body as whole (collectively). It is e.g. sufficient that one member of the management body has understanding in a listed area ensuring collective suitability, however, not every member has to have the same degree of understanding.		
44	3.5 Collective suitability of the management body	3.5.1 Information		40	Clarification		In cases where one or more members are appointed but there is not a renewal of the entire body, does the same set of information need to be provided for the entire body (including the members that had been previously appointed) and does the same assessment approach have to be followed? **The Guide could better specify what set of information has to be notified in case of a partial renewal of the board, with regards to the other members, those that are not subject to a complete FAP assessment at that stage.**		
45	3.6 Assessment of individual accountability of board members			41/47	Deletion	We request that the **entire paragraph 3.6 be deleted.**	In a completely new departure, the consultation document devotes considerable attention to the individual accountability of board members, requiring a specific assessment for this aspect. Given that these situations are already subject to assessment in terms of meeting the requirements of reputation, expertise and independence of mind, a further assessment by the Board of the same situations from the point of view of individual accountability, risks generating confusion between the various areas of assessment, already in themselves highly articulated and detailed.		Don't publish

46	3.6 Assessment of individual accountability of board members	3.6.1 Scope		42	Clarification	The reference to 'certain' in the following sentence is too much vague both regarding to 'which supervisory inspection other than AML/CTF' as well as regarding the severity: *"It follows that a member of the management body who has or had a position in the institution at the time when facts underlying certain 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."*	More details are needed to avoid too vague and all-encompassing concept about which findings to be mentioned.		
47	3.6 Assessment of individual accountability of board members	3.6.1 Scope		42	Clarification	The above approach is applied in conjunction with the fit and proper assessment criteria provided in Sections 3.1 – 3.3 of this Guide.	While the connection between the assessment of individual accountability and Reputation criteria (3.2) is clear, the link with the Experience (3.1) and the Independence (3.3) criteria seems more blurred. Could the Guide provide some more details on this?		
48	3.6 Assessment of individual accountability of board members	3.6.2 Findings		43	Clarification	The underlined wording of the following sentence "Findings identified by a supervisor as recent, relevant and severe are taken into account when considering the individual accountability of an appointee" is hard to understand, as the reference to 'recent' is unclear.	Reference to "findings identified by a supervisor as recent" brings about net complexity and uncertainty.		
49	3.6 Assessment of individual accountability of board members	3.6.1 Scope	point 2	43	Amendment	Where the appointee is seeking appointment or reappointment for the position of Chair, CEO and/or executive member of the management body in one of the following entities (the "destination entity"): (a) a supervised entity at the highest level of consolidation of a significant supervised group; ~~**(b) a credit institution with the largest total value of assets in a significant supervised group, if this entity is different from that referred to in point (i) above;**~~ (c) a significant supervised entity that is not part of a significant supervised group; or (d) a supervised entity with total assets of EUR 30 billion or more. The requirements for becoming executive member of MB or CEO are too restrictive as point (b) may not be achievable	We suggest to amend this requirement as point (b) may not be achievable.		
50	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	Potential non-compliance with data secrecy requirements.		
51	5.2 Reassessments	5.2 Reassessments		54	Clarification	To have periodical reassessment is frequently a best practice. Can periodical reassessment be performed in addition to reassessment driven by fact?	Clarification is important to determine whether the institution should produce a periodical assessment		
52	5.3.3 Part 2: General guidance on whether or not a new fact may trigger a reassessment	5.3.3 Part 2: General guidance on whether or not a new fact may trigger a reassessment		60	Clarification	A long duration of poor performance is an important materiality indicator.	How poor performance is measured as per some opinion the performance of individual could be above avarage.		
53	5.1 Changes of role, renewals and departures from office	5.3.3 Part 2: General guidance on whether or not a new fact may trigger a reassessment	Table 4	62	Amendment	New facts that may affect the suitability of a member of the management body/key function holder Conclusion or commencement of any criminal proceedings or relevant civil final judgements or administrative sanctions ~~**proceedings**~~ (including convictions under appeal and bankruptcy, insolvency or similar proceedings) Conclusion ~~**or commencement**~~ of disciplinary actions (including disqualification as a company director, discharge from a position of trust) Refusal of registration, authorisation, membership or licence to carry out a trade, business or profession, or such termination, withdrawal or revocation Conclusion ~~**or commencement**~~ of sanctioning proceedings by public authorities or professional bodies or pending investigations or past investigations or enforcement proceedings 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 ~~**Performance-related issues that prompted a resignation from duties in entities other than the supervised entity**~~ Findings that the individual concerned deliberately provided wrong information to the competent authority and/or acted with a lack of transparency Findings that the individual concerned infringed the supervised entity's internal governance rules, such as its internal policy on conflicts of interest Findings that the individual concerned did not intentionally follow up on material supervisory recommendations, namely within SREP, that could impact on the sound and prudent management of a supervised entity ~~**Findings that the member of the management body acted in breach of their fiduciary duties of care and/or loyalty and not in keeping with the types of behaviour expected to ensure sound and prudent management of a supervised entity, in line with high standards of conduct**~~ Material supervisory findings, as defined above and measures (e.g. outcome of inspection by the prudential or competent AML/CFT authority, measures applied by the prudential or competent AML/CFT authority) ~~**External reports (e.g. from law firms or consultants) with relevant findings having an impact on the suitability of the individual concerned**~~ Imposition of administrative measures or sanctions by the competent AML or prudential competent authority related to AML shortcomings Initiation of criminal proceedings or criminal convictions based on AML or prudential authorities' material findings Change of role or additional responsibilities that do not automatically require a new assessment ~~**Findings (or multiple findings) that the individual concerned was unable to prevent severe breaches or failures relating to their areas of responsibility in the supervised entity**~~ Findings (or multiple findings) that the individual concerned did not comply with an earlier condition, imposed in the context of the relevant suitability assessment, that can be linked to performance (e.g. probationary period) ~~**Findings (or multiple findings) that the individual concerned takes decisions that negatively impact on the sound and prudent management of a supervised entity**~~ New mandate or new function (internal or external) that has an impact on the ability of the individual concerned to commit sufficient time to the supervised entity New mandate or new function that has an impact on time commitment, where the supervised entity was already requested to monitor and review time commitment as part of the initial approval Significant internal reshuffling of the division of work between members of the management body ~~**Occurrence of a crisis situation in a supervised entity**~~ Repeated non-attendance at meetings of the management body caused by lack of availability New mandate, function, interest or exposure of any description that may raise a potential material conflict of interest	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 to the fit and proper assessment process. We therefore propose that Table 4 be amended as suggested.		Don't publish
54	6.2 Interviews	6.2 ECB approach to interviews		63	Deletion		The provision according to which it would be mandatory to conduct an interview in the event of the appointment of the chair or CEO could undermine the "principle of joint decision-making" of the board (as it is collectively responsible for its own decisions) and would contribute towards making the process more complex. This provision should, therefore, be removed.		Don't publish
55	6.4 Pricedural aspects			66	Amendment	"Interviews must be conducted in an orderly and structured way and in a timely manner to guarantee the objectivity and quality of the assessment. The ECB agrees with the appointee on the language to be used in the interview, which will be her or his native language in general. ~~**If the credit institution already communicates with the ECB in English, interviews are usually conducted in English. However, flexibility will be used whenever the situation warrants the use of a language other than English.**~~ **In the case of credit institutions that have not opted to communicate with the ECB in English.** ~~However,~~ the appointee may agree to the interview being conducted in English. Otherwise, the ECB will agree with the appointee on the language to be used in the interview."	Regarding the language used in interviews with appointees, the Draft Guide links the language the institutions use in their communication with the ECB to the interview language. We believe that this general rule should be refined, as in our opinion the link cannot be made. The institution (especially the SPOC), in case of cooperative networks a central body, might have no problems with communication in English while it cannot be expected e.g. that members of the management body of regional/local institutions have sufficient English skills to conduct a sophisticated F&P interview. In light of the diversity of European banks and proportionality we believe appointees should, as a general rule, use their native language in interviews if no other language is explicitly concluded.		
56	7.1 Notification of intended appointments	7.1 Notification of intended appointments		69	Clarification	How to deal with fragmentation between local and supervisory authorities mainly to guarantee timely response and organize the activities internally?	To guarantee timely response and organize the activities internally a clarification on how to deal with fragmentation is welcome.		Don't publish

57	7.2 Types of decision	7.2 Types of decision		69-70	Clarification	A formal ECB decision is taken after every FAP by the deadline provided for in national laws, if applicable. Without prejudice to any deadline set out in national law, the joint ESMA and EBA Guidelines on suitability provide that the time taken to adopt a decision should not exceed 4 months from the application date. In this respect, it is suggested a harmonization of the timeframe for all the jurisdictions in scope, in order to ensure certainty of the maximum duration of the FAP process.	To provide a certain maximum timeframe for the adoption of the decision, with full harmonization within the jurisdicitions in scope, by aligning the national laws in this respect, which would support the proper planning of managerial changes.		Don't publish
30									Don't publish
31									Don't publish
32									Don't publish
33									Don't publish
34									Don't publish
35									Don't publish
36									Don't publish
37									Don't publish
38									Don't publish
39									Don't publish
40									Don't publish
41									Don't publish
42									Don't publish
43									Don't publish
44									Don't publish
45									Don't publish
46									Don't publish
47									Don't publish
48									Don't publish
49									Don't publish
50									Don't publish
51									Don't publish
52									Don't publish
53									Don't publish
54									Don't publish
55									Don't publish
56									Don't publish
57									Don't publish
58									Don't publish
59									Don't publish
60									Don't publish
61									Don't publish
62									Don't publish
63									Don't publish
64									Don't publish
65									Don't publish
66									Don't publish
67									Don't publish
68									Don't publish
69									Don't publish
70									Don't publish
71									Don't publish
72									Don't publish
73									Don't publish
74									Don't publish
75									Don't publish
76									Don't publish
77									Don't publish
78									Don't publish
79									Don't publish
80									Don't publish
81									Don't publish
82									Don't publish
83									Don't publish
84									Don't publish
85									Don't publish
86									Don't publish
87									Don't publish
88									Don't publish
89									Don't publish
90									Don't publish
91									Don't publish
92									Don't publish
93									Don't publish
94									Don't publish
95									Don't publish
96									Don't publish
97									Don't publish
98									Don't publish
99									Don't publish
100									Don't publish
101									Don't publish
102									Don't publish
103									Don't publish
104									Don't publish
105									Don't publish
106									Don't publish
107									Don't publish
108									Don't publish
109									Don't publish
110									Don't publish
111									Don't publish
112									Don't publish
113									Don't publish
114									Don't publish
115									Don't publish
116									Don't publish
117									Don't publish

118									Don't publish
119									Don't publish
120									Don't publish
121									Don't publish
122									Don't publish
123									Don't publish
124									Don't publish
125									Don't publish
126									Don't publish
127									Don't publish
128									Don't publish
129									Don't publish
130									Don't publish
131									Don't publish
132									Don't publish
133									Don't publish
134									Don't publish
135									Don't publish
136									Don't publish
137									Don't publish
138									Don't publish
139									Don't publish
140									Don't publish
141									Don't publish
142									Don't publish
143									Don't publish
144									Don't publish
145									Don't publish
146									Don't publish
147									Don't publish
148									Don't publish
149									Don't publish
150									Don't 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				Clarification	The form in which the questionnaire is to be presented is not clear, given that both the statements made by the appointee and the merit evaluations carried out by the competent company body are envisaged. It is therefore necessary to clearly separate the information requested from the appointee from the information/assessments within the responsibility of the Bank (these are not clearly specified for the following sections: pg. 11, lett. D; pg. 14, lett. G; pg. 16, the second last paragraph "Describe any other mitigating or aggravating factors using the Guide to fit and proper assessments as a basis"; pg. 21 lett. E; pg. 24, lett. B).			
2	Declaration by the supervised entity		3	Deletion	~~**confirms that the supervised entity has made the appointee aware of the legal and regulatory responsibilities associated with the function as described in this questionnaire**~~;	The proposed questionnaire requires an excessive level of detail. We therefore propose this deletions in the view of a general “lightening” of the requirements.	,	Don't publish
3	Declaration by the supervised entity		8	Deletion	~~**Provide a detailed description of the duties, responsibilities and reporting lines of the function. Please specify which other functions, if any, the appointee will exercise within the supervised entity**~~	The proposed questionnaire requires an excessive level of detail. We therefore propose this deletion in the view of a general “lightening” of the requirements.	,	Don't publish
4	Declaration by the supervised entity		3, bullet 5	Deletion	Please delete as follows: "Declaration by the supervised entity …confirms that the supervised entity believes, on the basis ~~**of due and diligent enquiry**~~ 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	Bank must be allowed to rely on the information provided by the candidate - a due and diligent enquiry is not required by the bank itself.	,	Don't publish
5	1. Identity of the supervised entity and appointee	Current residence	6	Deletion	~~**Start date of residence at this address**~~	The proposed questionnaire requires an excessive level of detail.		
6	1. Identity of the supervised entity and appointee	D	7	Deletion		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	,	Don't publish

7	1. Identity of the supervised entity and appointee	E	7	Deletion	This question seems to be not appropriate, as the questionnaire assesses the fit&properness of the candidate and not the supervised entity. We suggest to delete the question on awareness or information (received) by the supervisory entity of grounds to supect money laundering or terrorist financing etc. in connection with the supervised entity or its group.	We propose that the entire question concerning suspected violations of anti-money laundering legislation be removed, as it does not appear relevant to the fit and proper questionnaire	,	Don't publish
8	2. Function for which the questionnaire is submitted	Functions	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);	The amendment is proposed with the aim to collect more accurate information	,	Don't publish
9	2. Function for which the questionnaire is submitted	Function	8	Amendment	we request the restoration of the reference to “Statutory Auditor” and “Board of Statutory Auditors” contained in the current questionnaire,	This would make the filling in of the questionnaire more straightforward. 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	,	Don't publish
10	2. Function for which the questionnaire is submitted	Function	8	Amendment	In the list of the different possible roles and functions, a box entitled **“General Manager”** should be added	The amendment is proposed with the aim to collect more accurate information		
11	2. Function for which the questionnaire is submitted	Function	8	Amendment	Also specify "Substitute member of the Board of Statutory Auditors"	The amendment is proposed with the aim to collect more accurate information		
12	2. Function for which the questionnaire is submitted	Function	8	Clarification	Clarify whether question "Is the application for the renewal of an appointment?" is intended to address the renewal of the appointee or the renewal of the appointment.	This aspect needs to be clarified, especially with regard to the cases of confirmation at the shareholders' meeting of members who have already been co-opted by the management board or who have taken over the role of effective member during their mandate.		
13	2. Function for which the questionnaire is submitted	Function	9	Clarification	Clarify whether question "Is the appointee replacing another person?" should be addressed only in the case of replacement during the term of the mandate.			
14	2. Function for which the questionnaire is submitted	Planned end date of the term of office	9	Amendment	We request that an event (such as the approval of the financial statements) should be inserted in addition to a specific date to take into account the fact that a specific date may not have been scheduled yet		,	Don't publish
15	2. Function for which the questionnaire is submitted	Planned date of the term of office	9	Amendment	We suggest that the answer field be changed to a free/blank field, taking into account the fact that some appointments do not have a deadline that can even be planned (e.g. DGs, key functions holders).			
16	3. Experience	Degree of seniority of the position/hierarchical level	10 (and 11)	Clarification		We request further clarification for greater certainty in filling in the questionnaire	,	Don't publish
17	3. Experience	Number of subordinates	10 (and 11)	Amendment	Clarification is needed on what is meant by “subordinates”, as already noted in the comments above. In particular, we request clarification as to whether this number also includes indirect subordinates or only those in the first lines of reporting. Please clarify what is ment by "in hundreds"	The threshold seems to be excessive for cooperative banks	,	Don't publish
18	3. Experience	List of areas	12	Amendment	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.		,	Don't publish
19	3. Experience	assessment of the level of banking experience	12		we request clarification as to whether the expressions “high, medium-high, medium-low, low” correspond to a certain number of years of experience or whether the candidate needs to perform self-assessment		,	Don't publish
20	3. Experience	relevant training in the last five years	13	Clarification	We request clarification as to the meaning of “relevant”		,	Don't publish

21	3. Experience	Training	14	Deletion	Delete the training details table.	Excessive level of detail, also in view of the fact that this assessment must take into account the training activities for appointees approved each year by the competent company bodies, also in the context of group policies.		
22	4. Reputation		15 (and 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 – only for Section 5 on conflicts of interest – to close family members. In any event, we refer to the observations made 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.	,	Don't publish
23	4. Reputation		15	Clarification	Proposal for two questions instead of one under ii). First: Were you a member of the management body at the time of the alleged wrongdoing? 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? Key function holders and Senior Managers are not jointly responsible. A punctual definition of "senior manager" and "associate", as well as "alleged wrondoing" would be welcome	Request for clarification that would provide more accurate guidance to the supervised entity	,	Don't publish
24	4. Reputation	A	16	Deletion	~~**Could you have done more to avoid the alleged wrongdoing and did you learn anything from it?"**~~ repeated with reference both to matters directly affecting the appointee and to matters affecting related companies.	The elimination is considered necessary especially with regard to ongoing proceedings for which the responsibility of the appointee or his/her related companies has not been proven.		
25	5. Conflicts of interest	E	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.		,	Don't publish
26	5. Conflicts of interest	G	22	Amendment	Specify that the question "Do you in any way represent a shareholder of the supervised entity, the parent undertaking or their subsidiaries?" does not apply to cooperative credit banks, even adding "n.a." as a possible answer.	According to the typical statute of cooperative banks, directors must necessarily be chosen among the shareholders.		
27	6. Time commitment	Assessment by the appointee regarding his/her tiime committment	24	Amendment	It may be preferable for this assessment to be conducted by the supervised entity and not by the appointee/candidate, given that the former is in a better position to calculate it.		,	Don't publish
28	6. Time commitment	C	24	Amendment	Introduce as a possible answer to question "Has an additional non-executive directorship been authorised by a competent authority (Article 91(6) CRD)?" **also the option "n.a."**	This action is necessary to deal with those cases where the limit on the number of offices does not apply, according to the national legislation that transposed the CRD requirement according to the principle of proportionality.		
29	6. Time commitment	D	25	Deletion	Remove the request for information on "Number of meetings per year".	This detail is considered superfluous, as the number of days devoted to the task/activity is already indicated.		
30	6. Time commitment	G	26	Deletion	~~If privileged counting is applied, please provide details of any synergies that exist between the entities concerned, such that there is a legitimate overlap in terms of the time commitment with respect to those entities.~~	It is considered that this detail does not need to be provided as such privileged cumulation is already allowed by the CRD and national law, without the requirement to provide reasons for this.		

31	7. Collective suitability	D	27	Deletion	Tthe reason for referring only to climate risk issues in the overall assessment is unclear. This point should be deleted.		,	Don't publish
32	7. Collective suitability	D	27	Deletion	~~**Describe the extent to which the appointee contributes to the collective suitability of the management body, including its understanding of climate-related and environmental risks. In addition, explain in general terms the weaknesses that have been identified in the management body's collective composition and the extent to which the appointee contributes to solving some or all of these weaknesses.**~~	It is considered that the contribution of the individual is not relevant to the assessment of collective suitability, which by definition requires an overall assessment that is already adequately explored in the successive sections of the questionnaire.		
33	8. Additional information and annexes	Suitability reports	29	Clarification	It is not clear what is meant by "suitability report", among the documents to be attached		,	Don't publish
34	8. Additional information and annexes	8 B	29	Deletion	Please delete "Draft" Board minutes or minutes of the Nomination Committee . Draft versions are not legally binding	Delete "draft" is needed as the draft versions are not legally binding	,	Don't publish
21							,	Don't publish
22							,	Don't publish
23							,	Don't publish
24							,	Don't publish
25							,	Don't publish
26							,	Don't publish
27							,	Don't publish
28							,	Don't publish
29							,	Don't publish
30							,	Don't publish
31							,	Don't publish
32							,	Don't publish
33							,	Don't publish
34							,	Don't publish
35							,	Don't publish
36							,	Don't publish
37							,	Don't publish
38							,	Don't publish
39							,	Don't publish
40							,	Don't publish
41							,	Don't publish
42							,	Don't publish
43							,	Don't publish
44							,	Don't publish
45							,	Don't publish
46							,	Don't publish
47							,	Don't publish
48							,	Don't publish
49							,	Don't publish
50							,	Don't publish
51							,	Don't publish
52							,	Don't publish
53							,	Don't publish
54							,	Don't publish
55							,	Don't publish
56							,	Don't publish
57							,	Don't publish
58							,	Don't publish
59							,	Don't publish
60							,	Don't publish
61							,	Don't publish
62							,	Don't publish
63							,	Don't publish
64							,	Don't publish
65							,	Don't publish
66							,	Don't publish
67							,	Don't publish
68							,	Don't publish
69							,	Don't publish
70							,	Don't publish
71							,	Don't publish
72							,	Don't publish
73							,	Don't publish

74							,	Don't publish
75							,	Don't publish
76							,	Don't publish
77							,	Don't publish
78							,	Don't publish
79							,	Don't publish
80							,	Don't publish
81							,	Don't publish
82							,	Don't publish
83							,	Don't publish
84							,	Don't publish
85							,	Don't publish
86							,	Don't publish
87							,	Don't publish
88							,	Don't publish
89							,	Don't publish
90							,	Don't publish
91							,	Don't publish
92							,	Don't publish
93							,	Don't publish
94							,	Don't publish
95							,	Don't publish
96							,	Don't publish
97							,	Don't publish
98							,	Don't publish
99							,	Don't publish
100							,	Don't publish
101							,	Don't publish
102							,	Don't publish
103							,	Don't publish
104							,	Don't publish
105							,	Don't publish
106							,	Don't publish
107							,	Don't publish
108							,	Don't publish
109							,	Don't publish
110							,	Don't publish
111							,	Don't publish
112							,	Don't publish
113							,	Don't publish
114							,	Don't publish
115							,	Don't publish
116							,	Don't publish
117							,	Don't publish
118							,	Don't publish
119							,	Don't publish
120							,	Don't publish
121							,	Don't publish
122							,	Don't publish
123							,	Don't publish
124							,	Don't publish
125							,	Don't publish
126							,	Don't publish
127							,	Don't publish
128							,	Don't publish
129							,	Don't publish
130							,	Don't publish
131							,	Don't publish
132							,	Don't publish
133							,	Don't publish
134							,	Don't publish
135							,	Don't publish
136							,	Don't publish
137							,	Don't publish
138							,	Don't publish
139							,	Don't publish
140							,	Don't publish
141							,	Don't publish
142							,	Don't publish
143							,	Don't publish
144							,	Don't publish

145							,	Don't publish
146							,	Don't publish
147							,	Don't publish
148							,	Don't publish
149							,	Don't publish
150							,	Don't publish