



EUROPEAN CENTRAL BANK
BANKING SUPERVISION

Template for comments

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

Institution/Company

European Banking Federation

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General comments

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
1					Clarification	<p>ECB legal framework</p> <p>It would be welcome if the ECB maintained a more harmonized approach to the citing of the legal framework supporting its powers and procedures. Throughout most of the Guide, the ECB includes the corresponding references, yet not always so.</p> <p>Some key sections of the Guide, namely section 7.3.1. where the ECB explains its supervisory practices regarding the use of conditions include no such references, and they contain important provisions and consequences of the different decisions taken. In general, the ECB explains that non-fulfilment of a condition has the effect of either not enabling the director to take a position or, in case of conditions subsequent, the decision ceasing to produce effects. None of those seemingly legally-binding effects are referenced to the corresponding legal provisions.</p> <p>Taking into consideration the impact of the extended FAP Questionnaire on processes in the context of new appointments and re-appointments and already started before publication of the final Guide a phase-in period of at least 6 months should be included.</p>			Publish

2				Amendment	<p><u>Different corporate governance structures</u></p> <p>Although the amended Guide states that it does not advocate any particular governance structure and is intended to embrace all existing structures, in line with the provisions of the CRD, this does not seem to be reflected in practice, when examining the Guide's detailed provisions.</p> <p>One good example of the foregoing can be found in section 3.4.3 of the draft Guide, which states that:</p> <ul style="list-style-type: none"> • <i>Members of the management body in its management function are expected to "effectively direct the business of the credit institution".</i> • <i>Members of the management body in its supervisory function are expected to effectively assess and challenge the decisions of the management body in its management function.</i> <p>Both assertions are incompatible or imprecise when taking into account unitary board systems, where the management body acts as one unique and inseparable body through which both management and supervisory functions are performed. All the members of the Board imperatively perform all the functions assigned to it as they are all, collectively, part of the decision-making process, and they all have the same rights and responsibilities; they are all under the same liability regime, for they act as one single collegial body.</p> <p>The allocation of different roles and responsibilities to different board members is thus inadequate for one-tier systems, given that no efficient or real separation of responsibilities can be implemented where company law conceives the board as one unique and inseparable body through which all functions are performed.</p> <p>The fact that specific functions within the Board are attributed to specific members (e.g., Lead Independent Director; Vice-Chairman; Chair of a given committee), does not mean that only the member performing that function at a given point in time is competent for it, nor that another member may perform it the day after. Unlike employees, who usually have a pre-established job prescription detailing their roles and responsibilities, there is no individual identification or statement of responsibilities drawn up for each individual director.</p> <p>Roles within the Board are primarily attributed for the enhancement of checks and balances, as well as to enable an optimum supervision and control and adequate running of the institution, but have no direct link with the accountability regime envisaged for board members in the law, for the decisions within a collegial body carry no tags as to the types of members who adopted it. Moreover, roles are not assigned prior to a directors' appointment, only after he/she becomes part of the Board, and they part of a constant rotation process, alongside the Board itself.</p>			Publish
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	3 Guiding principles			4	Deletion	<p>The consultation paper ("CP") 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.</p> <p>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.</p> <p>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.</p> <p>The current experiences of decisions that take place months after appointment are only compatible with ex-post procedures and the power of removal, which remains intact.</p> <p>"[...] The suitability assessment conducted by the competent authorities is prudential and preventive in nature and highly dependent on the available information. It is distinct from criminal or administrative infringement procedures..."</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.		Publish
4	Extension of the scope to branch managers and key function holders				Deletion	<p>The explicit reference to the assessment of managers of significant institutions' branches is new compared to the ECB 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 CRR3, CRD6. [This is more relevant for some Member States than for others (e.g in the Netherlands ECB-assessment of Key Function Holders is common practice already).] 			Publish

	<p>5</p> <p>1. Scope of the ECB's fit and proper assessments</p>				<p>Clarification</p>	<p>The extension of the Guide's scope of application is most surprising and remains somewhat unclear. The Guide now states that it will cover the assessment of key function holders and managers of significant institution's branches established in other EU Member States of third countries, yet the legal basis for this extension is not entirely clear.</p> <p>This is particularly relevant in case of branches' managers, for whom there is no legal or regulatory provision that requires a FAP assessment (for example, EBA-ESMA guidelines do not require such assessment for all of such managers, and the CRD does not make any reference to them). In this sense, it should be noted that the CRD V only introduced changes in relation to key function holders performing their duties in branches of institutions with their head office in a third country, but did not modify articles 74, 88 or 91 in this regard, as is implied by footnote 9 (i.e. article 91 continues to regulate management bodies, but not key function holders). Reference to key function holders / branch managers of significant institutions established in the Union would thus appear incorrect; deletion is thus suggested for the sake of legal certainty and alignment with the CRD.</p> <p>In any case, for the sake of clarity, it is imperative that the Guide clearly states its legal basis for the extension of its scope of application.</p> <p>Likewise, should the ECB intend to extend the scope of application of the Guide, it is imperative that:</p> <ul style="list-style-type: none"> ● It clearly indicates the specific persons it will apply to (i.e. whether it will apply to senior managers, as defined in the CRD, who are subject to fit & proper assessments as per national law; whether the ECB will embrace the notion of key function holders envisaged in the EBA/ESMA Guidelines). ● It clearly distinguishes between those sections / provisions applicable to members of the management body / bodies of institutions and those applicable to other senior managers / key function holders. <p>This is crucial for institutions to duly embrace and incorporate, as appropriate, the provisions of the Guide into fit & proper processes. And it is particularly important that it remains clear that <u>sections pertaining to conflicts of interest, independence of mind, time commitment, collective suitability and individual accountability will not apply to persons other than candidates to / sitting members of the management body. Neither would sections 4 and 5, likewise envisaged for board members.</u></p> <p>By way of example, in Spain, where the law implementing the CRD already extends fit & proper assessments to senior managers, only experience and reputation criteria are extended beyond the</p>
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6			"Guiding principles" + Section 3 (footnote 12)	P 4 + p.8	Amendment	<p>There is a clear reference to the key function holders which was not the case previously in the ECB Guide. As a reminder, when discussing insertion of key function holders into the CRD V, Member States rejected it so that CRD V does not provide for the assessment of any of the KFH by the supervisor. As explained during the 2020 consultation on the EBA Guidelines on Fit and Proper, there is no legal ground to include such population as part of the assessment by the supervisor - This would go beyond the scope of CRD V Directive.</p> <p>A provision so important for institutions should not be put in a footnote such as footnote 12. In addition to this, how is it expected for KFH, who are employees of an entity (and who are part of integrated functions as the European regulation allows to), to be assessed on the following criteria by the supervisor:</p> <ul style="list-style-type: none"> -Knowledge / skills: this should remain the power of the employee (and therefore the power of the institution) as it is the primary responsibility of the institution -Conflict of interests: assuming there are employees of the group and they are appointed in function, there is no reason why conflict of interests outside the provisions provided by the policies applicable to employees should apply. We should not mix the concept of conflict of interests as provided for employees of the group with the one for the management body. -Time commitment: there are assessed for the purposes of the function for which they are hired: there is no ground for an assessment of the time commitment -Number of directorships: should they hold a directorship, they will be assessed for the purposes of such directorship. There is no need for a full-time function to look at the number of directorships. <p>In any case these criteria are not part of the criteria to be assessed for heads of internal control functions.</p> <p>Articles 74, 88 and 91 do not refer to KFH (even to heads of internal control functions).</p>	<p>There is no provision regarding the assesment of key function holders in CRD V eventhough in some jurisdictions it is provided by the local regulation. This should remain at local level as it might be incompatible with labor law rules as provided by some other national laws.</p>		Publish
7	1. Scope of the ECB's fit and proper assessments			5	Clarification	<p>As mentioned in the Guide: <i>"the assessment criteria concerning key function holders and branch managers depend on national law"</i></p> <p>But footnote 9 specifies that for "branch managers" it would be national law transposing article 91 CRD; however, article 91 is not applicable to branch managers (it is questionable whether the national legislation applicable to EU branch managers is a transposition of article 91 CRD – however it is clear that it is national law and not European law that has provisions regarding branch managers).</p> <p>ECB admits in the last paragraph of section 2.2 in page 6 that some MS go beyond the requirements in article 91 CRD. Therefore, the assessment of the BM by supervisors should not be part of the ECB Guide as it comes from local regulation with no legal ground under EU law.</p> <p>In any cases and regarding EU branches, it is questionable if national law can have additional requirements regarding managers of EU branches (additional to what is provided in EU law under the freedom of establishment requirements) as it could be considered as a limitation of the freedom of establishment.</p> <p>=> Therefore, parts relating to specific national legislation (that are therefore not applicable to the other MS and which, moreover, could be questionable from the perspective of the freedom of establishment) should not be part of the ECB Guide.</p> <p>On the other hand, branch managers of third country credit institutions, are not in the scope of the ECB assesment but of the national competent authorities (as the authorisation of these branches is made by national authorities pursuant to national law) and therefore should not be subject to the ECB guide.</p>	<p>The ECB guide on Fit and proper should not make reference/cover the assesment of branch managers wich, under European law are not subject such assesment.</p>		Publish

8	1. Scope of the ECB's fit and proper assessments				Amendment	<p><u>Use of the terms senior management / management</u></p> <p>For the sake of clarity, we would suggest that, should the final Guide maintain the term "management" or "key function holder", those terms be defined or, preferably, linked to already-existing definitions in the CRD (art. 3(1)(9)) and EBA/ESMA Guide (para. 15), respectively.</p> <p>To this effect, we understand that the generic term "management" should be avoided and substituted by the term "senior management", as managers are generally numerous in credit institutions and normally not equivalent to senior management (responsible for the day-to-day management of the institution).</p>			Publish
9	2.2. CRD and national law			6	Clarification	<p>Banks 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, banks 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> <p>In addition, in order to ensure harmonisation and to avoid national additional requirements (based on supervisory guidance/soft law) in the context of FAP assessments it should be clearly stated that additional supervisory guidance in addition to the ECB Guide is not allowed. Deviations from the ECB Guide should only be possible to the extent explicitly required by national public law. The background is that we have experienced that the NCA applies their own supervisory guidance in the ex-ante assessments, which do not have a proper base in national legislation to be applied by banks and to be taken into account by the ECB in accordance with their mandate based on the SSM Regulation.</p>			Publish
10	3. Assessment criteria			8-47	Clarification	<p>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). Banks 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. The banks 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>			Publish

11	3. Assessment criteria	3.1.1 Practical experience and theoretical knowledge	3.1.1	8	Amendment	<p>See the comment in ID 1. "Members of the management body as a whole 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 bank within [15-30] days of receipt of notice from the bank"</p>	See the comment in ID 1.		Publish
12	3. Assessment criteria			8	Amendment	<p>The CP 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.</p> <p>In line with the related EBA and ESMA Guidelines (paragraph 37), it should be clarified that the assessment of key function holders 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.</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>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."</p> <p>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), across the participating Member States</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.		Publish

13	3.1 Experience				<p>The revised version of the Guide has considerably expanded its detail regarding the assessment of knowledge and experience, in a way that seems to be a step back regarding diversity.</p> <p>As a starting point in this regard, it is important to remember that article 91 of the CRD, with a slight technical adjustment introduced by CRD V, establishes that "the overall composition of the management body shall reflect an adequately broad range of experience".</p> <p>Furthermore, the issue of diversity, far from remaining static since the adoption of the CRD, has seen an increased attention by regulators and supervisors alike, with updated national regulations, good governance codes and guidance (including revised EBA/ESMA Guidelines on FAP; revised EBA Guidelines on remuneration as regards gender neutral remuneration policies) emphasizing the need for institutions to duly embody diversity in their internal policies and processes.</p> <p>It is thus surprising that the new wording of the ECB Guide requires (section 3.1.3.1) "all members of the management body to possess basic theoretical banking knowledge [...]".</p> <p>It is unclear why all the ECB now links "all" knowledge to banking. Undoubtedly, theoretical banking knowledge (broadly understood as all knowledge related to banking / financial services or other relevant areas) is quintessential in management bodies of credit institutions, but it is unclear why it the ECB links adds "banking" to all the other knowledge categories listed under section 3.1.3.1. (e.g. would general -outside the banking sphere- accounting and auditing knowledge not suffice even if a candidate has held top-ranking positions in said field for an extended period of time -e.g. a relevant partner of a reputable audit firm, a Chief Accounting Officer of a relevant listed institution of another sector-?).</p> <p><u>It is unrealistic to expect that all candidates to a management body will have theoretical knowledge of all the fields listed in said section, more so if the ECB will only acknowledge said theoretical knowledge if tied to banking.</u></p> <p>Likewise, it would appear to contradict the later section of the Guide, on collective suitability, whereby the ECB states that it "supports diversity, including the promotion of diversity within the management bodies of supervised entities and recognises that the promotion of diversity within management bodies is anchored in the CRD and that the CRD requires institutions to use diversity as one of the criteria for the composition of management bodies and expects them to address diversity in their recruitment policy."</p> <p>Moreover, the thresholds scheme, which is mainly linked to banking expertise (even for non-</p>			Publish
14	3.1 Experience	3.1.1 Practical experience and theoretical knowledge	8	Deletion	<p>It should be clarified in the event of a significant change of responsibilities within the Board of Managing Directors no notification is required. It should be only the task of the institution to check whether the member of the Board of Managing Directors has sufficient experience and knowledge for the specific responsibilities (as all members have been subject to an FAP decision of ECB in the past). In addition, it should be presumed that the person has sufficient experience due to the fact that CRD V/IV and the supervisory authorities require a collective experience/knowledge as well. It would be our understanding that in case of a renewal the appointee and the supervised entity only need to provide new facts or information if any. Such a new fact could be provided in an informal letter/e-mail. The submission of the complete questionnaire would be an unnecessary administrative burden. Especially with regard to the fact that the supervised entity and the respective person are obliged to inform the NCA about any new facts having relevance for the suitability throughout the duration of the mandate anyways. Therefore this question should be deleted.</p>			Publish
15	3.1 Experience		pp 9, 11 and 29	Clarification	<p>"Director" should not be used or should be defined. Indeed, in some MS "<i>directors</i>" only refers to board directors and not to any executive function. The tables 1 and 2 (which are not new) could be more easy to understand if we avoid using the term "directors" for functions such as COO (table 1).</p> <p>It would avoid the specification of footnote 39.</p>	The term "director" is not defined and, unless it is clearly defined, another term should be used instead.		Publish

16	3.1 Experience	3.1.2.Information	3.1.2.	9	Amendment	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.			Publish
17	3. Assessment criteria	3.1.2 Information	1	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." Please provide example criteria of what might be considered 'complementary (or compensating) factors'.	More detail required to ensure the candidate selected meets the ECB criteria.		Publish
18	3. Assessment criteria	3.1.2 Information	1	9	Amendment	Propose 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.		Publish
19	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 (e.g. Bulgaria) the current local regulation specifically requires a certain level of education degree (e.g. Master Degree). In this respect, it would be useful to have some harmonization among all the jurisdictions in scope.		Publish
20	3.1 Experience	3.1.3 Assessment approach	3	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.		Publish
21	3.1 Experience	3.1.3.1 Theoretical knowledge	3.1.3.1	10	Amendment	The CP 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. It may also be helpful to provide some further clarification on the experience required for "quantitative methods". "[...] 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	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.		Publish

22	3.1 Experience	3.1.3.2 Practical experience	3.1.3.2	11	Amendment	<p>In the table 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.</p> <p style="text-align: center;">"Table 2 [....]"</p> <p>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)."</p>			Publish
23	3.1 Experience	3.1.3.2 Practical experience		11	Amendment	<p>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:</p> <ul style="list-style-type: none"> - 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. <p>The 10 years and 5 years durations mentioned in the 2 table are much too demanding. Indeed, it prevents institutions to promote good profiles and to enhance the expected diversity wished by the regulator. It creates a real issue to internal promotion within groups and hides designations of good profiles which learn much quicker than the presumed expected 10 or 5 years experience announced. The presumption period should be reduced to respectively 5 and 3 years.</p> <p>Besides, for a non executive Director, there should be also some presumption of sufficient experience for high level experts such as consultants, or experts in some area such as finance and accounting, risks, etc.</p> <p>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 manoeuvre, notably within important Groups.</p>	Facilitate selection and promotion of good profiles and ensure rotation and diversity of Board composition		Publish
24	3.1 Experience	3.1.3.2 Practical experience	step 1	11	Deletion	<p>Step 1 – Assessment against thresholds</p> <p>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. "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 automatically mean that the appointee is not "fit and proper".</p> <p>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."</p>	see the comment in ID 5		Publish

25	3.1 Experience	3.1.3.2 Practical experience	2 - Table 2	11	Amendment	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.	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.		Publish
26	3.1 Experience	3.1.3.2 Practical experience	3 - 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 required to ensure the candidate selected meets the ECB criteria.		Publish
27	3.1 Experience	3.1.3.2 Practical experience	3	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.		Publish
28	3.1 Experience	3.1.1 Practical experience and theoretical knowledge	3.1.5	13	Amendment	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. "Paragraph 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."	We believe that it is important to specify the assessment criteria of the experience of the key function holders. See comments in ID4		Publish
29	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 proficiency 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 ensure a collective knowledge of climate-related and environmental risks.		Publish
30	3.1 Experience	3.1.4 Special cases		13	Clarification	This section says that the criterion for experience can be considered met by having a training plan for the appointee in case of small savings banks and cooperatives. We do not understand why this is limited only to these types of banks. As there are criteria for small and non-complex banks, this possibility shall be granted to such types, regardless of their legal form	For the sake of equal treatment it shall referred to such banks fulfilling the conditions of art. 4 para 1 no 145 CRR instead of selecting certain legal forms.		Publish

31	3.2 Reputation				<p>Amendment</p> <p>Although in this section the ECB acknowledges that an analysis of a director's reputation must consider fundamental rights (second paragraph of section 3.2), this section lacks a clear statement on the presumption of innocence of the candidate/director which must inspire the reputation assessment, and be strictly applied in light of Article 48 of the Charter of Fundamental Rights of the European Union, which terms are worth reminding:</p> <p><i>Article 48. Presumption of innocence and right of defence</i> 1. Everyone who has been charged shall be presumed innocent until proved guilty according to law. 2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed. The extensive section 3.2, while acknowledging that the conduct must give rise to material doubts about sound and prudent management of the institution, and that facts shall be objective and proveable, also indicates in section 3.2.2 that "where there are no proceedings or other measures [...] 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"</p> <p>The basic principle of presumption of innocence (the relevance of which we understand should be strengthened in this text), implies that (i) the candidate/director is F&P from a reputation perspective unless there is clear and undisputed evidence of facts that raise material doubts about his/her sound and prudent management of the institution; (ii) such facts must be duly proven in the relevant court or administrative proceedings, which follow the corresponding legal guarantees (including rights of defence); (ii) the FAP proceeding shall in all cases be subsidiary to the court and administrative proceedings where the truthfulness of the relevant facts is being assessed, and shall only consider facts that are dismissed in such proceedings under exceptional circumstances (statute of limitations, government pardon or lack of statements on the facts). This means that if a court or administrative body considers that certain facts have not been proven, the ECB's FAP proceeding shall abstain from assessing these facts.</p> <p>Consequently, we understand that the Guide should (i) reflect that presumption of innocence be described as the primary right that the both institutions and the ECB will attend to and respect in its assessment of reputation, and that any proceeding will be subsidiary to that followed before the court or the corresponding administrative body, which embodies a series of strict legal guarantees that have to be respected at all times; (ii) either eliminate all references to "non-exhaustive" factors affecting reputation or "other relevant facts", "any other evidence that suggests" (pages 19 y 20.) in order to avoid any improper legal uncertainties in such a relevant matter as the reputation of a candidate/director and his/her potential prohibition to assume an employment/services position within a company, or clearly state that the fact that certain facts are included in the ECB</p>	<p>ECB should respect the legitimacy of final decisions by dedicated authorities. It should not give any judgment on investigations that are not within their prerogatives and that are still under study.</p>	Publish
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32		Section 3.2 "Reputation" + Section 3.6.2 "Findings"		pp. 13 and seq. + pp.45 and seq.	Amendment	<p>When assessing the reputation of a board member, it is important to make the difference if the person is individually or if the person holds a directorship in an entity that is prosecuted. Indeed:</p> <ul style="list-style-type: none"> -There is legal principle pursuant to which the legal entity is accountable and only in some specific cases, the management body will be responsible; -The largest institutions, on occasion, face complaints, disputes, investigations or regulatory proceedings in various jurisdictions arising in the ordinary course of its business activities. It is not relevant to provide all these disputes. It is neither relevant to provide them for the purposes of the fit and proper of an individual if: <ul style="list-style-type: none"> oThe person was not a member of the management body during the facts oThere is no individual involvement (we do not understand what is covered by "in which the appointee has been directly or indirectly involved" – p14) – more specifically p16, second bullet point : this should not cover "alleged wrongdoing [...] involving entities in which the appointee holds or has held mandates". This is too broad and not accurate. In any case, there should not be any information where the person was a KFH and not personally involved in the proceedings. <p>More specifically, we do not agree with the following assumption (p13): "Whilst there is a presumption of innocence applicable to criminal proceedings, the very fact that an individual is being prosecuted is relevant to propriety". It goes against the principle of presumption of innocence.</p> <p>One of the key points with regards the assessment of the reputation corresponds to the fact the ECB assesses on-going proceedings considering the above. It would lead in situations where an institution might be prosecuted for allegedly faulty conduct / product / with no reasonable grounds. In such circumstances it would not be possible to expect a member to explain how this person made everything possible to remedy this allegedly faulty conduct / product ...</p> <p>Moreover, regarding AML/CFT for which there is already competent authorities in place, it should not be possible for the ECB to re evaluate these facts that have already been assessed by the competent AML/CFT and criminal authorities; even if this assessment is from a prudential perspective, it would be against the principle of <i>non bis in idem</i> (see p14).</p> <p>As regards dismissal from employment: there should not be any presumption of having an impact on the propriety if a person is abusively fired. There should be information on dismissal only when relevant.</p> <p>We do not understand how the self-reflections provided in p16 will be materialized: would that be part of the interviews?</p> <p>The way institutions and members should provide information goes against the principle of the</p>	These provisions, by their ambiguous formulation, reference to on-going prosecutions and to allegedly wrongdoings which are potentially considered as such which no ground, and by referring to the right of ECB to reassess facts already assessed by another competent authority, are against the presumption of innocence and the principle of <i>non bis in idem</i> .		Publish
33	3.2 Reputation		last paragraph of p13	13	Amendment	Despite the reservation related to the presumption of innocence made, the fact that the ECB intends to assess the materiality of circumstances doesn't appear legitimate for proceedings or investigations for which conclusions have not been met by the legitimate instances in charge of these procedures (Legitimacy of res judicata)	ECB should respect the legitimacy of final decisions by dedicated authorities. It should not give any judgment on investigations that are not within their prerogatives and that are still under study.		Publish
34	3. Assessment criteria	3.2.1 Information	3.2	13	Clarification	When it comes to an appointee or member of the management body 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?	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.		Publish
35	3.2 Reputation		last paragraph p14	14	Amendment	Despite the reservation related to the attributions on AML/FT, the fact that the ECB intends to conduct its own assessment doesn't appear legitimate.	ECB should respect the legitimacy of final decisions only. It should not give any judgment on its own on the subject		Publish
36	3.2 Reputation	3.2.1 Information	3	14	Clarification	Specifically it is not clear what is intended by being "indirectly involved" if the candidate/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.	Request for clarification that would provide more accurate guidance to the supervised entity.		Publish

37	3.2 Reputation	3.2.1 Information	3.2.1	14	Amendment	<p>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 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 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>[...]</p> <p>4. Information concerning any criminal proceedings or relevant administrative sanctions or civil proceedings final judgments (including disciplinary actions) and investigations, sanctioning proceedings or measures:–</p> <p>[...]</p> <ul style="list-style-type: none"> 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," 	We believe it is important to simplify the documentation to be provided by the board member to prove his reputation.		Publish
38	3.2 Reputation	3.2.1 Information		14	Amendment	<p>In France the Criminal records were up to now not systematically required. It was required only for officers that were not living in France since more than 3 years.</p> <p>Indeed, in France ACPR had direct access to this information for persons living on the French territory.</p> <p>Will this be really systematically requested in the future as this will create unnecessary additional administrative workload? Couldn't previous system be maintained?</p>	As ACPR has normally access directly to Criminal report information (and even more than standard criminal report), requesting systematically to collect this data at institutions level would create an unnecessary workload.		Publish
39	3.2 Reputation	3.2.1 Information		14	Amendment	<p>Considering the self-declaration of the appointee requested in case this is required in frame of the national legal framework, this shall be directly included in frame of the FAP questionnaire or in the appointee declaration. Indeed, It shall not have to be established in frame of an additional document to be provided that would create additional workload and complexity</p>	Simplify the FAP and designation process		Publish
40	3.2 Reputation	3.2.1 Information		14	Clarification	<p>States that when it comes to AML/CFT, "the ECB has neither fact-finding competences nor investigatory powers" (...) "and relies in this respect on information provided by the competent AML/CFT and criminal authorities respectively. However the ECB evaluates these facts and conducts its own assessment from a prudential perspective". Does this mean that the ECB might draw conclusions concerning AML/CFT in relation to fit and proper assessments, irrespective of whether those conclusions are supported by the competent AML/CFT authorities?</p>			Publish
41	3.2 Reputation	3.2.1 Information	4	15	Amendment	<p>The candidate/appointee may not have knowledge of investigations currently being conducted. Therefore we suggest to amend the paragraph by specifying that information concerning investigations should be intended as to the best knowledge either of the company or of the candidate /appointee.</p>	The amendment is requested to better align the document with the actual legal practices in different countries.		Publish

42	3.2 Reputation	3.2.1 Information	point 3	15	Clarification	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. Information are related to the following areas: <i>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;</i>	To be clarified what trade or business should be considered and whether it should be assessed for a single deal or in general.		Publish
43	3.2 Reputation	2.1 SSM Regulation and SSM Framework Regulation	no 4	15/16		In our view this approach is too far reaching as administrative / civil proceedings and investigations are a broad field and do not necessarily allow the conclusion that the person can be made responsible. In addition it would be a high administrative and unproportional burden for the institution to provide these information to the authorities (in particular as these information should already be available to them due to their supervisory review and evaluation process). Furthermore, in cases where the candidate comes from a competitor, the candidate would not be allowed to disclose internal information such as administrative and civil law proceedings / investigations towards the potential new institution.			Publish
44	3.2 Reputation	3.2.1 Information	point 4	16	Clarification	The Guidelines request that any professional insight is shown by the appointee: <ul style="list-style-type: none"> • 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.		Publish
45	3.2 Reputation	3.2.2 Assessment approach	3.2.2	17-20	Amendment	Please, see our comments in ID 9-10. Paragraph 3.2.2 "[...] (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. [...] 2. <input type="checkbox"/> 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 [...] 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 [...] 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: [...]	We request to remove those provisions referring to situations in which the board member is not directly involved.		Publish

46	3.2 Reputation	3.2.2 Assessment approach			Clarification	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.			Publish
47	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.		Publish
48	3.2 Reputation	3.2.2 Assessment approach	3.2.2	19	Amendment	It is suggested to define 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 candidate and all the Procedures regarding AML topics initiated against both the candidate and the company; B) With timeframe limited to 5 years prior to the application: Procedures initiated against the company (apart from AML topics as detailed above)	To be considered as potential obstacles: i) the candidate might not have access to detailed data from the past. In such case the scope of information that is available to the candidate and institution would be limited to what is publicly available on regulator's web site/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; 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		Publish
49	3.2 Reputation	3.2.2 Assessment approach	3.2.2.5	20	Clarification	States as a relevant criterion for fit and proper testing "any other evidence that suggests that the appointee acts or has acted in a manner that is not in line with high standards of conduct;" This criterion appears to be so open-ended, that there remain little to no constraints on what the ECB may consider in its assessment. One can essentially interpret any behaviour as suggesting that it is not in line with the highest standards of conduct. What is meant with "the highest standards of conduct"? Is it the conduct of the average, law-abiding citizen sufficient, or is a higher level of conduct required? Regarding the subject of reputation, social media have become particularly relevant concern in recent years. Examples abound of people suffering damage to their reputation due to criticism on social media, for voicing certain political beliefs, or comments or behaviour (however long ago) that offends the sensibilities of a segment of the public, etc. In certain cases this has lead to people losing their job or having to resign. Often no judicial review is involved, or even relevant, as the conduct that has lead the public outcry is not even illegal, or even widely held to be immoral. Allegations are not always backed by reliable evidence, and our current technology allows for the creation of fake news, photos, videos etc. Does the ECB include information from social media in its assessment of a candidate's reputation, and how does it mitigate against the above concerns?			Publish

50	3.3 Conflicts of interest and independence of mind			22-23	Amendment	<p>In general terms, the consultation document 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 consultation document (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</p>	The presence of the conflicts of interest and the possession of independence of mind is a very sensitive issue.		Publish
51	3.3 Conflicts of interest and independence of mind				Amendment	<p>Section 3.3.1, and later sections 3.3.2.1 to 3.3.2.4, includes a set of information and circumstances where the ECB assumes that there is a conflict of interest. We consider that, in certain cases, such circumstances may constitute a conflict of interest, but, in general, they do not qualify as such (for example, having positions of political influence, appointment proposed by a shareholder, all kinds of financial interests, all kinds of businesses with Group entities, etc.).</p> <p><u>In the field of conflicts of interest, it is essential that the Guide be clear that they are not, in abstract, a “state” in which a director “sees him/herself”, but rather a specific situation to be managed by the entity and the director (only where they cannot be managed can they potentially imply the director’s separation).</u></p> <p>That is to say, <u>conflicts of interest cannot be presumed to exist in the manner that the Guide portrays them.</u> The Guide can very well list examples of circumstances or relationships where conflicts can or tend to arise, but it is incorrect to assume that the existence of such circumstance or relationship de facto generates a conflict (see, in this sense, the assumption made in section 3.3.2.1). We thus consider essential that this section of the Guide be corrected, because not only is it true that “having a conflict of interest in itself does not mean that an appointee cannot be considered suitable”, as the Guide already rightly claims, but also, importantly, that <u>the conflicts of interest regime cannot pivot upon or be founded by “potential or perceived” conflicts of interest, as it currently stands in the draft</u> (first para. of section 3.3.1).</p> <p>In addition, corporate law, which has extensive regulation, doctrine and court precedents dealing with conflicts of interest of members of the management body, does not consider all of the situations described by the ECB as constituting conflicts of interest. <u>Credit institutions should not be subject to an additional burden concerning conflicts of interests affecting candidates/directors to that applicable to entities from other sectors.</u> It is worth noting, in this sense, that directors are, generally, always under the obligation to report any conflict of interest, thus it is questionable whether the actual regime is in need for any further ad hoc specifications by the supervisor.</p> <p>For example, the following cases described in the Guide would by all means appear excessive: - in the second subparagraph of paragraph 3.3.2, which describes the related parties of the</p>			Publish
52	3.3 Conflicts of interest and independence of mind			22	Clarification	<p>How does the ECB reliably assess behavioural skills, such as whether a candidate is able to resist group think? Is there a scientific/psychological basis for this assessment, for instance conducting an Asch Conformity test? More in general, we are interested in learning more details about how the ECB is able to objectively assess matters concerning a person’s psyche or personality – such as their ability to resist groupthink or independence of mind. Can these assessments be</p>			Publish

53	3.3 Conflicts of interest and independence of mind	3.3.1 Information	3.3.1	23-24	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.</p> <p>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, 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 the most important information on relationships with the Bank or the Bank's Group could be collected in advance, such as:</p> <ul style="list-style-type: none"> -positions in other commercial or non-commercial entities; -holdings in companies exceeding 1% of the capital. <p>Such situations 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</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>		Publish
54	3.3 Conflicts of interest and independence of mind	3.3.1 Information		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>			
55	3.3 Conflicts of interest and independence of mind	3.3.1 Information		23	Amendment	<p>The presentation of the potential material conflicts of interests that was presented under a table in frame of previous ECB Guide was much more comprehensive and operational. The new presentation proposed under text is less practicable .</p>	<p>To make things operational & clear , previous presentation within a table of potential material conflicts of interest was much better for comprehension of principles followed</p>		Publish
56	3.3 Conflicts of interest and independence of mind	3.3.1 Information	point 2.	23	Amendment	<p>Concerning the second point 2. 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.</p> <p>This should be limited in terms of timeframe and should correspond to current proceedings only</p>	<p>Be more precise and circunvene needs to relevant periods</p>		Publish
57	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;</p> <p>What is meant by "financial interests"? Does that include shares in the supervised institution?</p>	<p>A clarification is needed on what to consider "financial interests".</p>		Publish
58	3.3 Conflicts of interest and independence of mind	3.3 Conflicts of interest and independence of mind	3.3	23	Clarification	<p>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</p>	<p>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.</p>		Publish

59	3.3 Conflicts of interest and independence of mind	3.3.2 Assessment approach	3.3.2	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.</p> <p>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.</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, 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> <p>In addition to all the above observations, below are some observations regarding some of the types of situations subject to assessment.</p>			Publish
60	3.3 Conflicts of interest and independence of mind	3.3.2 Assessment approach		24	Amendment	<p>Last paragraph should be replaced by</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, dependent 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>	clarify the perimeter of close relatives		Publish
61	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"</p> <p>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.</p>	In order to avoid uncertainty in the definition of relevant time a timing limit should be foreseen.		Publish
62	3.3 Conflicts of interest and independence of mind	3.3.2.1 Personal conflict of interest	3.3.2.1.	24	Deletion	<p>It is not clear what is meant by "personal relationships" also with entities other than natural persons. This point may need clarification. In any case we propose to delete the paragraph 3.3.2.1, as explained above.</p>			Publish

63	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.</p> <p>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.</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. In any case we ask for the deletion of paragraph 3.3.2.2</p>			Publish
64	3.3 Conflicts of interest and independence of mind	3.3.2.3 Financial conflict of interest	3.3.2.3	25	Deletion	We ask for the deletion of paragraph 3.3.2.3			Publish
65	3.3 Conflicts of interest and independence of mind	3.3.2.4 Political conflict of interest	2	25	Deletion	When mentioning examples for high political influence, the guide refers to the term of "public employee" which is too general and shall therefore be deleted from the list of examples.	Term is too broad and comprises also levels where such an influence cannot be assumed		Publish
66	3.3 Conflicts of interest and independence of mind	3.3.3 Conflicts of interest statement		27	Deletion	<p>We would like to ask for the following amendment: "An ancillary provision may be targeted to the supervised entity's conflicts of interest policy, namely to pursue the supervised entity's interests or to better monitor internally potential conflicts of interest; or to create specific committees within the management body to assist the supervisory function of the management body in situations where there is a potential conflict of interest."</p>	This ancillary provision may highly complicate the current governance systems, having in mind that level 1 regulation already provides for specific committees, but not for such a committee. This provision has thus no legal ground. Moreover, some national law have already set up specific procedures to be applied in case of conflicts of interests. On a subsidiary basis, if such an ancillary provision should be maintained, such assistance should be granted by an existing committee, e.g. the nomination committee, so as to mitigate the impacts in terms of governance.		Publish
67	3.4 Time commitment	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.			Publish
68	3.4 Time commitment	3.4.2 Information	2	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 than number of meetings.	The amendment is proposed with the aim to collect more accurate information.		Publish

69	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.</p> <p>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 style="text-align: right;">"Application of privileged counting</p> <p>Without prejudice to national law, 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)."</p>			Publish
70	3.4 Time commitment	3.4.3 Assessment approach			Clarification	Regarding time commitment, is it possible to make clear that a number of days per year is sufficient and therefore remove reference to number of hours per week? In some jurisdictions it is required to specify both the number of days per year and the number of hours per week. This would avoid unnecessary administrative burden.			Publish
71	3.5 Collective suitability of the management body	Climate-related and environmental risks and collective suitability of the		39	Deletion	<p>“Climate-related and environmental risks are widely acknowledged as a source of significant financial risks.” While a coherent argument can be made that climate and environmental risks are a source of financial risk, the same can be said about however many other catastrophic one-off events or structural challenges to today’s society. The COVID-19 pandemic is a prime example. The scientific consensus is that a pandemics of this kind are likely to occur again, there is nothing in the facts to suggest that pandemics of this magnitude are a one-off event. Nor are climate change and environmental degradation the only catastrophic risks. Why is it that out of the catastrophic risks capable of causing severe financial risks, climate change and environmental degradation are (almost solely) singled out for particular attention from the prudential authorities?</p>			Publish
72	3.5 Collective suitability of the management body		Footnote n°56	p.40	Clarification	In p40, there is a reference to SREP and to the fact that assessment of the gender balance is part of the ongoing supervision. Would that mean that an entity might be twice sanctioned for the same fact, once pursuant to the SREP and once pursuant the the Fit and Proper guidelines?			Publish
73	3.5 Collective suitability of the management body	management body		41	Amendment	<p>We propose to adjust as follows</p> <p>«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 copy extracts of conclusion documents could be quite inefficient workload		Publish

74	3.6 Assessment of individual accountability of board members		41-47	Deletion	<p><u>This new section of the Guide regulates an individual accountability regime that is not reflected in the Fit & Proper legal requirements set out in CRD IV, and which is unrelated to any of the Fit & Proper criteria described in such regulation and in this ECB Guide. This Guide is not a Directive, a Regulation, or any other regulatory text (and is not even binding), and therefore, does not have the legal nature to be able to create a new Fit & Proper requirement, which would develop an accountability regime for directors who would be liable for deficiencies occurred in the credit institution or in institutions where they previously held positions.</u></p> <p>It should be noted that not all the legal framework affecting rights and duties of members of the management body can be redirected to the Fit & Proper analysis. The latter comprises an analysis to be made by institutions and supervisors on specific individual and collective requirements detailed in the applicable regulation (section 3 of the ECB Guide), which are construed and described in greater detail in non-binding texts such as the EBA-ESMA suitability guidelines or this ECB Guide itself.</p> <p><u>The remaining circumstances which may impact a director's capacity to hold his/her position or concerning liability shall be dealt with from a general corporate law perspective, which regulates directors' incompatibilities, dismissal causes as well as the legal proceedings concerning directors' liability and potential sanctions, among others.</u> This regime has been applicable for a very long period of time (provided in the old EEC Directives concerning corporate law), and has been consolidated both from legal and judicial perspectives, and provides guarantees to directors on the circumstances that may generate such liability, and the legal and judicial proceedings.</p> <p>Moreover, this regime seems to contradict the widely assumed corporate law principle known as "business judgement rule", which sets a standard for directors' fiduciary duties. Under this principle, in general, directors would be excluded from legal liability for decisions in which they acted in good faith, without personal interest, with sufficient information and in accordance with a standard decision-making proceeding. Section 3.6 introduces a new purely objective liability standard which is external to, and contradicts basic corporate law principles widely assumed in the legal jurisdictions of EU Member States.</p> <p>Consequently, section 3.6 of the ECB Guide deals with matters affecting directors' liability that are not related to a fit & proper proceeding and not stipulated in the fit & proper regulation, and unduly conflicts with a field that is consolidated in the EU corporate regulation.</p> <p>We therefore strongly encourage the ECB to eliminate section 3.6, the maintenance of which would gravely impact institutions and is extremely hard to reconcile with already existing liability.</p>	The assessment of individual involvement or responsibility with regard to non personal or corporate proceedings would be unlawful		Publish
75	3.6 Assessment of individual accountability of board members		41 (footnote 54)	Deletion	<p>Does the scientific literature convincingly support the hypothesis that increased gender diversity of a group is a prime factor in lowering conformity/"groupthink"? Or do the characteristics of the individuals play a larger role? Is this emphasis on gender diversity to combat groupthink justified based on the available scientific evidence? With regards to the above two points: while promoting gender diversity and combating climate change are obviously important things, it really is an altogether different matter whether these belong within the remit of the prudential supervisor. The increasing diversification of topics the ECB pays attention to, may in time distract from its core mandate, for which it was granted a high level of (political) independence. The more (potentially political) topics the ECB includes in its mandate, the more stress this might place on its ability to credibly maintain (political) independence.</p>			Publish
76	3.6 Assessment of individual accountability of board members	3.6.1 Scope	42	Amendment	<p>Individual accountability principle jeopardizes the principle of collegiality of the board. Indeed, the Board speaks one voice and in the decision making process, the board is collectively responsible and accountable.</p> <p>P42 : As such and as mention in the part relating to findings: it is not possible to find a member responsible if there is no connection between their individual roles and the given findings. Again, the legal entity might be in some cases accountable and not the member.</p> <p>It is the same comment when looking at previous directorships in section 3.6.1 – 1.</p> <p>P42 : We cannot expect each board member to have the same understanding of the topics and this is the very reason why they collectively cover the business and risks of an entity.</p>	It is not possible to jeopardize the principle of collegiality of the board and the fact that the entity has its own distinct legal personality.		Publish

77	3.6 Assessment of individual accountability of board members	3.6.2 Findings	4	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 required to simplify process. In addition, 'on-site inspection reports' is incongruous with the previous listed items, such as supervisory measures and final court decisions.		Publish
78	3.6 Assessment of individual accountability of board members	3.6.2 Findings				The institutions are often not able to provide this information and the potential candidate would not be able to disclose this information to the new employer (see the comment: 3.2 Reputation, 2.1 SSM Regulation and SSM Framework Regulation, no 4, 15/16)			Publish
79	5 Situations that trigger a fit and proper assessment other than new initial appointments	5.2 Reassessments			Amendment	<p>Comments made for section 3.2 (reputation) are also applicable to this section. This includes the need to detail an exhaustive list of new facts that may trigger reassessments, in order to avoid legal uncertainties in a proceeding as relevant as the reassessment of a director/candidate's reputation.</p> <p>Concerning reassessments due to deficiencies in skills, knowledge and experience, it should be noted that skills, knowledge and experience are matters to be analysed upon appointment, but that are not lost while holding the position (a person does not lose his/her past experience, knowledge or gained skills). There may eventually be a need to strengthen the collective knowledge on a certain field (i.e. climate risks, AML, etc.), requiring particular training, but by no means can this imply a potential reassessment and eventually a removal from the management body of a person who was considered F&P in relation to his/her skills, knowledge and experience.</p> <p>The possibility to reassess the skills, knowledge and experience would bring great legal uncertainty, in that any negative circumstance affecting the institution may ultimately be attributed to a particular member of the Board (which in one-tier structures acts as one sole collegiate body, as indicated above) and his/her presumed lack of skills, knowledge or experience, or even his/her independence of mind (which is impossible to assess, as also described above).</p> <p><u>This section must be clarified, to indicate that changes of role would be subject to a FAP assessment "if required and as defined by national law", as it is correctly indicated in the current version of the ECB Guidelines (section 6.4).</u> There is no legal reason why this new version of this non-binding document shall change its scope and provide a mandatory FAP assessment in cases where neither the applicable national regulation nor the EBA-ESMA suitability guidelines require such assessment.</p>			Publish
80	5 Situations that trigger a fit and proper assessment other than new initial appointments	5.2 Reassessments			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.			Publish
81	5 Situations that trigger a fit and proper assessment other than new initial appointments	5.3 Assessment approach	2	54	Amendment	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.		Publish
82	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		59	Deletion	In line with the remark on 3.6 the point in 5.3.3, the Decision wheel should not make any reference to individual accountability	The assessment of individual involvement or responsibility with regard to non personal or corporate proceedings would be unlawfull		Publish

83	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 average.		Publish
84		5.3 Assessment approach	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.</p> <p>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>"[...]</p> <p>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)</p> <p>Conclusion or commencement 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 or commencement 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>Performance-related issues that prompted a resignation from duties in entities other than the supervised entity.</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 prudent management of a supervised entity</p> <p>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</p> <p>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)</p> <p>External reports (e.g. from law firms or consultants) with relevant findings having an impact on the suitability of the individual concerned</p> <p>Imposition of administrative measures or sanctions by the competent AML or prudential competent authority related to AML shortcomings</p> <p>Initiation of criminal proceedings or criminal convictions based on AML or prudential authorities'</p>		Publish	
85	6 Interviews	6.2 ECB approach to interviews		63		<p>Providing for Interviews of chairmen jeopardizes the principle of collegiality of the board. Indeed, the Board speaks one voice and in the decision making process, the board is collectively responsible and accountable.</p> <p>We do not understand why by principle there should be interviews. This will make the process longer than it is already.</p> <p>It might be surprising for a supervisor to be able to put in place interviews on discretionary basis on topics such as reputation.</p>		Publish	
86	6 Interviews	6.2 ECB approach to interviews	8	65	Amendment	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.	Amendment requested to improve transparency of the process.	Publish	
87	6 Interviews	6.4 Procedural aspects	2	66	Clarification	Where it states, "The appointee and the credit institution are given adequate notice in writing of the date, time and place of the interview. " Please specify what is considered adequate notice.	Amendment requested to improve transparency of the process.	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	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			Publish
2	Declaration by the supervised entity		Page 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.		Publish
3	Declaration by the appointee	Could it also be possible to integrate in the declaration the eventual self-declaration required under national legal framework to avoid multiplication of documents to be produced	5	Amendment	To avoid multiplication of documents to be provided and workload, could it be possible to integrate in the declaration the eventual self-declaration required under national legal framework (i.e. in France Art. 500-1 of Monetary Code about non being concerned by a list of interdictions)	Avoid additional workload		Publish
4	1. Identity of the supervised entity and appointee	Governance model of the supervised entity	5	Clarification	Please include definitions of a one tier and two tier governance models.	Clarification required to ensure the correct model is selected.		Publish
5	1. Identity of the supervised entity and appointee	Question "Is the supervised entity a "CRD significant institution" in accordance with "national law"" is unclear and should be amended for clarification	5	Amendment	It is unclear as according to regulation there are different nature of significant institutions. Indeed, there are for instance different thresholds of significant entities: - (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 thresholds per Members State as regards rules on creation of specialized committees (i.e. 5 GE in France)... As of now, NCA questionnaire precises that this concerns specifically the rules linked to limitation of number of corporate offices (i.e. 15 GE in France) as per art.xxx of National law.	It is necessary to make things clear for users and persons filling in the questionnaires. The wording of the question should thus be amended to clarify the question for the users		Publish
6	1. Identity of the supervised entity and appointee	Information linked to "governance model" of the supervised entity	5	Clarification	Knowing that for French banks most common model is specific and 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. In other One tier system (ex. UK or Spain): there is one single collective body which performs both Executive and Supervisory Functions Two tier system (ex. German or France for system with supervisory board and management board): there is one collective body in charge of the Executive Function and one other separate collective body in charge of Supervisory Function.	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. Clarification on the system that should be identified by most French banks should be discussed...		Publish

7	1. Identity of the supervised entity and appointee	Information linked to explanation to be provided on "governance model" of the supervised entity in case response made is "Other model"	5	Deletion	<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. Whatever the form of the corporate legal system in each country is, the aim of CRD rules is to ensure a clear separation between the daily management of the institution (Executive Function) and the supervision of such daily management (Supervisory Function).</p> <p>-in One tier system (ex. UK or Spain): there is one single collective body performs both Executive and Supervisory Functions;</p> <p>-in Two tier system (ex. German or France for system with supervisory board and management board): one collective body is in charge of the Executive Function and one other separate collective body is in charge of Supervisory Function;</p> <p>-in Hybrid system/In-between systems (ex. France for system with board of directors and CEO/COO): one collective body is in charge of the Supervisory Function and also 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>The specific rules linked to specificities linked to each national law and company form should not have to be re-explained by institutions in each Fit&proper files. This point should be deleted from the questionnaire.</p>	<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.</p> <p>Specific case linked to national rules should not have to be re-explained each time a fit & proper file needs to be submitted to Regulators. This point should be deleted from the questionnaire.</p>		Publish
8	1. Identity of the supervised entity and appointee	On schedule C "Information on the appointee", regarding the current valid identity document or passport, shouldn't the information related to the document or passport issuing country as well as the expiry date be also provided?	6	Amendment	On schedule C "Information on the appointee", regarding the current valid identity document or passport, shouldn't the information related to the document or passport issuing country as well as the expiry date be also provided?	To ensure information on the validity of the documents	Blasikiewicz, Blazej	Publish
9	1. Identity of the supervised entity and appointee	On Schedule D "Previous supervisory assessments", regarding the need to provide any supervisory assessment in the financial sector. Why should institutions and Directors under assessment provide details and previous approvals or refusals on FAP files that have already been studied and assessed by European supervisors (ECB and NCAs) and that are thus deemed to be available at their level ?	7	Amendment	Schedule D on previous supervisory assessments should be amended to limit the details to be provided in frame of new FAP file to supervisory assessments of non CRD entities that have not already gone through the approval of ECB and NCA assessments, meaning mainly assessments "abroad". Indeed, ECB and European NCAs should not ask for details on files and assessments that have already been studied at their level and that they are thus available at their level. It should not create unnecessary additional and administrative workload for institutions and appointees. Only details on supervisory assessments they should not be already aware of should have to be provided.	Avoid workload at institutions and appointees' level on information that is normally already available at ECB and NCAs level and that have already been studied and provided by them		Publish
10	1. Identity of the supervised entity and appointee	On Schedule D "Previous supervisory assessments", regarding the detail required in case of previous positive assessments with conditions, recommendations or obligations and the need to provide explanation on this. Why should institutions and Directors under assessment provide such details on Directorships ?	7	Deletion	On Schedule D "Previous supervisory assessments", regarding the detail required in case of previous positive assessments with conditions, recommendations or obligations and the need to provide explanation on this. Why should institutions and Directors under assessment provide such details on Directorships ? notably - 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 UE for which the ECB and NCAs are already aware of - for any Directorships as it might be impossible to collect in some cases this detail of information notably in case of positions held in entities out of a Group - 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)	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 NCA's or ECB		Publish
11	1. Identity of the supervised entity and appointee	E) Grounds to suspect money laundering or terrorist financing	7	Deletion	We propose that the entire question concerning suspected violations of anti-money laundering legislation be removed, because it is not relevant to the fit and proper questionnaire	This question doesn't seem operational with the information both available at entity and candidate level.		Publish
12	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	Please clarify 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.		Publish
13	2. Function for which the questionnaire is submitted		8	Amendment	Questions are not applicable for one-tier boards. For example, for an appointment of a non-executive director in one of such boards, one would not know which boxes to tick. Also, questions regarding an independent director seem to be limited for a "management body in its supervisory function".			Publish

14	2. Function for which the questionnaire is submitted	Why does the questionnaire ask for the precision of the function to which the questionnaire is submitted in case of a key function holders and branch managers?	8	Amendment	<p>Considering the information on the function for which the questionnaire is submitted, it is asked to indicate whether the function is Executive or no executive, but also if it is a Key function holder function or a branch manager function.</p> <p>FAP files submissions are not required in all Members State for Key function holders (KFH) and branch manager functions. It is for instance not required in France eventhough regulators have the possibility to give their opinion on the subject, notably in frame of their on-site reviews on entities.</p> <p>Besides, their status 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 depend from national labor law (not in the perimeter of European jurisdiction) which is very different from Directors. They cannot be designated or revoked in the same manner.</p> <p>An approval process by European regulator or NCA should not be assimilated and follow the same process as Management body members' one. Mixing these elements is quite confusing notably as they rely on the same processes and principles and as these persons doesn' bear the same legal risks and formalism.</p> <p>Besides, in terms of processes and organisation, the persons in charge of Branches follow up or KFH follow up are mostly different. The accesses in the lmas 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 orgnisational arrangements.</p> <p>This point should either delete the reference to KFH and Branch managers, either precise the specific Members States and Cases where this is required</p>	Members State do not all require FAP files for KFH and Branche managers end as their selection and designation process is very differnet and relies on specific national laws principles, it should not be implemeted in the same manner and as a common rule for all Members States		Publish
15	2. Function for which the questionnaire is submitted	Why does the questionnaire proposes functions that are not required by all Members States and not adapted to any national law ?	8	Amendment	<p>In line with previous point, the multiple choices given in the proposed questionnaire is misleading as not applicable to all Member States, all entities , all legal forms, as well as all functions.</p> <p>It should be adapted to facilitate preparation of FAP files by each entity which may not always be fully English fluent and isn't aware of subtlety of each legal form or country obligations.</p> <p>The different choices should either be adapted to permit only access to choices applicable per country, either be much clearer on the cases where this is applicable or integrated in frame of a fully different process within FAP file submission processes.</p> <p>In France for instance CFO, CRO, Manager of a foreign branch, head of compliance, Head of internal audit , Head of risk management fuction should not be made available as choices for a French entity</p>	Make it understandable for all entities		Publish
16	2. Function for which the questionnaire is submitted	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 ?	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 ?	Ensure all specific cases can be taken into account		Publish
17	2. Function for which the questionnaire is submitted	In the list of proposed functions, aren't they redundancies between the divers functions proposed, notably: CRO and Head of the risk function?	8	Amendment	In the list of diverse functions aren't they redundancies between the divers functions proposed, notably: CRO and Head of the risk function?	Make it understandable for all entities		Publish
18	2. Function for which the questionnaire is submitted	Provided a detailed description of the duties....	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			Publish
19	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.		Publish
20	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)			Publish
21	2. Function for which the questionnaire is submitted	(planned) end date of the term of office	9	Amendment	In alternative to a specific date it should be possible to identify an event such as the approval of the financial statements.	The amendment is intended for those companies that do set a specific calendar date but an event that is not yet calendarized.		Publish
22	3. Experience	Degree of seniority of hte position / hierarchical level	10	Clarification	A clarification is requested wether the degree of seniority is a self-assessment made by the candidate / appointee or if there is a reference benchmark.	Request for clarification that would provide more accurate guidance to the supervised entity.		Publish
23	3. Experience	Number of subordinates	10	Clarification	A clarification wether also indirect subordinates are to be taken in consideration or only first reporting lines 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.		Publish

24	3. Experience	In frame of A) Education, we wonder if the choices on levels of educational qualification obtained should be extended as otherwise many high profiles with be shown as "Other"	10	Amendment	In frame of experience, we wonder if the choices on levels of educational qualification obtained should be extended as otherwise many high profiles will be shown as 'Other'? Indeed, in France , many very high profiles qualifications do not come from Universities and the titles come from what we call "High Business Schools " , Ingeneer schools" or Schools like "National Administration school"(ENA).	Permit clarification on the experience and profiles		Publish
25	3. Experience	Degree of seniority of the position / hierarchical level	11	Clarification	Please provide definitions or examples related to the categories set out under 'Degree of seniority of the position / hierarchical level'	Clarification required to ensure consistency in applications and that candidates experience is assessed on a level playing field with all other candidates.		Publish
26	3. Experience	In frame of B)&C) Practical experience are you sure the scale of total assets size is adapted?	10&11	Amendment	In frame of B) Practical experience are you sure the scale of total assets size is adapted? Indeed, within banks the balance sheet size amounts generally in Billion Euros and not in Millions...Thus having the mos significant entities with a size > 50 Millions Euros seems small	the scale of total assets size doesn't seem adapted		Publish
27	3. Experience	In frame of B)&C) Practical experience don't you think the notion of Number of subordinates scale indicated would be more clear if it was indicated in current number or in thousands rather than in hundreds as currently shows?	10&11	Amendment	In frame of B) Practical experience don't you think the notion of Number of subordinates scale indicated would be more clear if it was indicated in current number or in thousands rather than in hundreds as currently shows?	Change of scale of presentation of number of subordinates would be clearer		Publish
28	3. Experience	C) Other relevant experience...	11	Clarification	We request clarification concerning whether in the assessment of experience the number of "subordinates" refers 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.			Publish
29	3. Experience	In frame of schedule D) "Does the appointee meet the presumption of adequate experience, How will this question really help to assess sufficient experience whitout hindering diversity and Boards composition optimization ?	11	Amendment	In frame of schedule D) "Does the appointee meet the presumption of adequate experience in Table 1 and 2 of Section 3.1.3.2 of the Guide to FAP assessments: Such question and current presumptions criteria are much too demanding. Indeed, - the 10 years practice for CEO just below the Senior management level for exectutive function and the 5 years for non executives, prevents to promote good profiles and to enhance the expected diversity whished by the regulator. - experience at the level below the management functions or supervisory functions expected in frame of presumed sufficient exeriece are also a hurdle to promote good profiles which learn much quicker than the presumed expected 10 or 5 years experienceannounced.	Make the assessment pertinent an d		Publish
30	3. Experience		12	Deletion	Including a justification for the assessment of each field is clearly excessive for the purposes of the FAP questionnaire. Details of the experience included in the previous pages are already extensive and more than sufficient to have a clear understanding of the candidate's knowledge and experience.			Publish
31	3. Experience	Assessment of the level of banking experience: Justification of your answer	12	Deletion	Propose to delete this requirement. If not deleted please provide expectations regarding the justification of the answer and the level of detail required. The justification of a ranking for any candidates experience is subjective in nature and is open to challenge.	Justification of answer will be subjective.		Publish
32	3. Experience	Assessment of the level of banking experience - justification of your answer	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 candidate /appointee asked to perform a self-assessment?	Request for clarification that would provide more accurate guidance to the supervised entity.		Publish
33	3. Experience	E) Assessment of the level of banking experience	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			Publish
34	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 candidates will have completed a significant amount of training.	Request for clarification that would provide more accurate guidance to the supervised entity.		Publish
35	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	Propose to delete the columns; Term (hours), Start date, 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.		Publish

36	4. Reputation		15	Amendment	<p>When proceedings affect institutions to which the appointee has been associated as board member, KFH, senior manager, etc., only material proceedings should be considered. For example, if a candidate is or has been a board member of a large company, this company almost certainly would have, or would have had, legal proceedings (and it would be impossible for the candidate to have information on all proceedings). Only proceedings that are material to the candidate/institution should be taken into account.</p> <p>It must be clarified (e.g. by way of a footnote) that proceedings closed more than 5 years ago shall not be listed (reference is made to cancellation of criminal records, but not to any closing of administrative or civil proceedings.)</p>			Publish
37	4. Reputation		15	clarification	<p>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 wrongdoing" would be welcome</p>	Request for clarification that would provide more accurate guidance to the supervised entity.		Publish
38	4. Reputation	Schedule A, Could it be possible to distinguish direct personal proceedings and proceedings on corporate entities with which the appointee has been a board member and do not ask for the same level of detail ?	15	Amendment	<p>For corporate offices held in listed companies, the schedule A as it is currently proposed is much too complex and will be impossible to fill in. Information collected on the subject are available and described in URD of the concerned entities. Listed entities have almost all litigations disclosed there in. Identifying in the FAP file all details about each cases would be ineffective and inappropriate, with difficulties to be precised as requested in the questionnaire. Moreover top banks of Groups, already disclose and discuss directly with the regulators giving all details requested during dedicated meetings. The level of detail required is much too complex and could only be filled in by lawyers or legal experts which is mostly not the case of appointees or persons preparing the FAP files.</p>	Make the questionnaire operational to be filled in with no excessive details		Publish
39	4. Reputation	Schedule A, Could it be possible to precise a limited time frame to report the relevant administrative or civil proceedings as well as investigations	15	Amendment	<p>For Schedule A , could it be possible to precise a limited time frame to report the relevant administrative or civil proceedings as well as investigations ? A limit to proceedings that have been raised within the last 5 years seems reasonable (according to nature of the prescription), 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 legal time limits existing in some Member States</p>	Limit the timeframe under which disclosures shall be made to be realistic in terms of possibility of identification of the cases and relevant in terms of FAP assessment		Publish
40	4. Reputation	IMPORTANT	15	Clarification	<p>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</p>	The questions should relate to the position of the board member and not be extended to other persons.		Publish
41	4. Reputation	Schedule A, Summary of the reasoning of the decision, ruling or finding	15-16	Deletion	<p>For Schedule A , "summary of the reasoning of the decision, ruling finding" The appointee or the entity in charge of the file submission is mostly not aware of the detailed information requested here, notably when it is linked to former positions held by an appointee in an establishment not linked to the entity's submitting the file</p>	Make the questionnaire operational to be filled in with no excessive details		Publish
42	4. Reputation	A ii.	16	clarification	<p>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. Please clarify, that - besides members of the Management body - only key function holders or senior managers that are or were responsible for a division or business line to which the proceedings relate are addressed.</p>	Request for clarification that would provide more accurate guidance to the supervised entity.		Publish
43	4. Reputation	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	<p>Please provide 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.</p>	Please clarify further to avoid inclusion of information which may bias decisions in the event of a disciplinary case which was closed without action.		Publish
44	4. Reputation	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	<p>Propose to amend to state "...in which you hold or have held position as a Board members or another pre-approved control function." 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.</p>	Amendment requested to simplify process and reduce confusion for candidates.		Publish
45	4. Reputation	Schedule D	17	Clarification	<p>The nature of the State aids that are expected to be disclosed here should be clarified .</p>	Clarify what needs to be disclosed here		Publish

46	4. Reputation	Schedule 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	Deletion	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 a specific individual, it would be difficult to determine what direct or indirect involvement would mean in practice for an individual within a banking entity.	Make the questionnaire operational to be filled in with no excessive details		Publish
47	4. Reputation	Schedule 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.	Make the questionnaire operational to be filled in with no excessive details		Publish
48	5. Conflicts of interest	IMPORTANT	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 made above 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.		Publish
49	5. Conflicts of interest		19	Clarification	<input type="checkbox"/> The conflicts of interest heading should clarify that the definition of conflicts of interest shall be that determined under national corporate law. <input type="checkbox"/> "Personal relationship" should be material in order to be identified in this box.			Publish
50			20	Amendment	"Business, professional or commercial relationship" should be material in order to be identified in this box. For example, in accordance with the current wording, having a small loan with an institution's competitor would have to be identified, or a small commercial relationship with one of the numerous suppliers of the institution, all of which does not appear proportional.			Publish
51	5. Conflicts of interest	E	21	Clarification	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.			Publish
52	5. Conflicts of interest	Schedule 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.		Publish
53	5. Conflicts of interest	Schedule 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 line with banking secrecy rules and access to personal information, this question should not apply to transactions or loans of persons or entities over which the appointee has no direct personal control.	Make the questionnaire operational to be filled in		Publish
54	6. Time commitment	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 to provide a more accurate calculation the required time since the supervised entity is in a better position to calculate the necessary the time commitment rather than the candidate/appointee.		Publish
55	6. Time commitment		24	Clarification	Time commitment - it should be clarified that this section applies only to members of the management body.			Publish
56	7. Collective suitability	D	27	Deletion	In section D, the following reference should be deleted: "including its understanding of climate-related and environmental risks". It is unclear why the knowledge of these risks shall be particularly described, and not other relevant areas of the bank (credit risk, strategy planning, accounting, etc.). Also, the candidate's knowledge of this field would have already been described in the preceding section concerning Experience.			Publish
57	7. Collective suitability		28	Deletion	Section E should be deleted when the entity has already submitted a previous file containing the information. It could be replaced by a paragraph where the entity states that such data have not changed since the previous procedure or, if any have changed, can indicate it. In Spain all the information is included on the corporate website, so the information could be made by reference to it. Otherwise, it shall be possible to include this information as an annex to the questionnaire in order not to have to complete all the boxes.			Publish

