Template for comments

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

Institution/Company

Contact person

Mr/Ms

First name

Surname

Email address

Telephone number

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General comments

In general terms, it seems that the approach adopted in the consultation paper has become very specific, with fine detail on the various aspects relating to suitability, and in terms of process. It is worth noting that a “higher-level” approach setting out principles would have been simpler and more effective in terms of practical application, given the variety of situations and cases that may be subject to the assessment criteria set out in the guide.

In particular, greater flexibility and delegation to national legislation by the ECB would have been more appropriate for an aspect that is subject to minimum harmonisation at a less detailed level in the directive, in consideration of the still very different regulatory frameworks in the various Member States.

We would like to highlight that the most sensitive issues in our view concern the following:

i) the need to clearly recognize that post-appointment assessment of the suitability requirements by the board of directors and the supervisory authorities is envisaged as a permissible alternative;

ii) the fact that satisfaction of the reputation requirement is based on the enversion of the principle of innocence appears to be contrary to the principles set out in art. 4 of Directive 343/2016; with this respect, we believe it is necessary to establish an obligation of disclosure and assessment, respectively, only from the stage of adoption of the measure that establishes individual liability and imposes an administrative sanction and from the stage of publication of the civil judgment, with the need to delimit the scope of relevance in both cases;

iii) as for the conflicts of interest and the requirement of the independence of mind, 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; iv) the proposed questionnaire requires an excessive level of detail in the answers to be provided by board members. We therefore propose a general “lightening” of the requirements.

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	Guiding principles			4	Deletion	In our view, 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. We fully agree that the fundamental role of assessment by the bank's management body must precede the assessment by the Authority, but its placement prior to the appointment and by the outgoing management body (rather than the body resulting from re-election) is still a non-mandatory solution and, if it was necessary, a provision for it would need to be specifically introduced in a primary level regulatory source (directive and national law) and certainly not merely in an administrative guide. We therefore propose that prior assessment should be considered as a possibility and that post-appointment assessment should be envisaged as a permissible alternative. 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. With regard to the latter, for example, it would not be 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. For the few cases where a prior assessment is envisaged, we believe it is essential that clearly defined time limits for the completion of the procedure are also introduced (a maximum of 15 or 30 days). The current experiences of decisions that take place some months	The requirement of a "natural" prior assessment in relation to the appointment appears to be out of step with both the directive and the actual possibility of pursuing it in the context of certain national company law.		Don't publish
2	3. Assessment criteria	3.1.1 Practical experience and theoretical knowledge	3.1.1	8	Amendment	See the comment in ID 1. The following amendment is therefore proposed: "*Members of the management body must have up-to-date and sufficient knowledge, skills and experience to fulfil their functions. This also includes an appropriate understanding of those areas for which an individual member is not directly responsible, but still is collectively accountable together with the other members of the management body.* ~~*The credit institutions are primarily responsible for selecting and nominating appointees who fulfil these minimum requirements for sufficient knowledge, skills and experience*~~*.* *The assessment is conducted – subject to national law – prior to or after the individual's appointment but also whenever required on an ad hoc basis (e.g. in the event of a significant change of responsibilities). In the event the assessment is conducted prior to the individual's appointment, the relevant Authority's decision is sent to the bank within [15-30] days of receipt of notice from the bank*"	See the comment in ID 1.		Don't publish
3		7.1 Notification of intended appointments	7.1	68	Deletion	See comment in ID1 The following amendment is therefore proposed: [….]"~~*Against this background, the ECB encourages early engagement with the JSTs, inviting credit institutions to provide the ECB with their suitability assessments for executive members of the management body before making appointments, so as to frontload supervisory assessments and enable the ECB to provide supervisory input early on in the process. This should enhance the predictability of the supervisory actions, as the supervisory decisions will, where possible, be provided to the institutions before or soon after the appointees take up their respective positions*~~."			Don't publish

4	3. Assessment criteria			8	Amendment	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. Only in the footnote 12 it is stated that the assessment criteria also apply “mutatis mutandis” to key function holders and branch managers of significant banks established in other EU countries or third countries. In line with the related EBA and ESMA Guidelines (paragraph 37), we believe it should be clarified that the assessment of those persons should necessarily be limited to the requirements of integrity and good repute and experience. This is also the approach adopted in the Italian legislation. We do not believe that the assessment of the additional requirements for board members is feasible for management positions. The following amendment is therefore proposed: *"The fitness and propriety of members of the management body is assessed against five criteria set out in Article 91 of the CRD: (i) experience; (ii) reputation; (iii) conflicts of interest and independence of mind; (iv) time commitment; and (v) collective suitability. These criteria are described in the following paragraphs. The credit institutions should ensure that key function holders are of sufficient good repute, have honesty and integrity, and possess sufficient knowledge, skills and experience for their positions. "* ~~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~~	In our view the assessment criteria of the suitability requirements should be specified, in terms of experience and reputation, also in relation to the positions of key function holders.		Don't publish
5	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 following amendment is therefore proposed: "[….] *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*	We believe that it is important to distinguish between "basic" knowledge required for all members and the "specific" knowledge required to some board members, being the latter relevant for the collective composition of the Board.		Don't publish
6	3.1 Experience	3.1.3.2 Practical experience	3.1.3.2	11	Amendment	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. The following amendment is therefore proposed: "Table 2 [….] 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			Don't publish

7	3.1 Experience	3.1.3.2 Practical experience	step 1	11	Amendment	Step 1 – Assessment against thresholds In our view, 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 following amendment is therefore proposed: *"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”. ~~Furthermore, specific circumstances with regard to the institution (such as the nature, size and complexity of its business or its market situation) or the function (such as specific responsibility for complex topics, e.g. risk, IT, or climate-related and environmental risks) might require specialised expertise, which is not taken into account by the indicated thresholds."~~*	see the comment in ID 5		Don't publish
8	3.1 Experience	3.1.1 Practical experience and theoretical knowledge	3.1.5	13	Amendment	In our view 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. The following new paragraph is therefore proposed: "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	We believe that it is important to specify the assessment criteria of the experience of the key function holders. See comments in ID4		Don't publish
9	3.2 Reputation			13	Amendment	We would like to highlight that the reputation requirement has some particularly sensitive aspects, considering that the principle of the presumption of innocence until a final judgment is passed and the specific features of each national legal system must be taken into account. We note that satisfaction of the requirement is based on the inversion of the principle of innocence (“An appointee is not considered of good repute if their personal or business conduct gives rise to any material doubt about their ability to ensure the sound and prudent management of the institution”). This appears to be contrary to the principles set out in Article 4 of Directive 343/2016 on the strengthening of certain aspects of the presumption of innocence. It is worth noting that in the introductory part of the document, completely different stages of criminal proceedings, such as the investigation, committal for trial and sentencing stages, are given equal importance in the assessment of reputational requirements. We therefore consider that a precise distinction needs to be made taking into account the different characteristics of the national legal systems. The preliminary investigation phase, also for criminal proceedings, may be considered irrelevant in systems where prosecution by the public prosecutor is mandatory. In such cases, the obligation of disclosure and assessment may start with the indictment. In any event, in the absence of a specific legislative provision to the contrary, we do not believe it is appropriate to assign relevance, for an obligation of disclosure and assessment, to the investigative phases of administrative and civil proceedings, in which the liability of the appointee is still subject to verification and only alleged by a party, either public or private, that must prove and suitably justify it in cross-examination proceedings. It is worth noting that in the introductory part, any relevant criminal or administrative records are considered	In ~~n~~ our view the reputation requirement has some particularly sensitive aspects, considering that the principle of the presumption of innocence until a final judgment is passed and the specific features of each national legal system must be taken into account. In particular, it could be made clear that: □ civil proceedings can only be relevant if final judgments are published that award damages for acts carried out in the performance of duties in entities operating in the banking, financial and insurance sectors or, where applicable, damages for administrative and accounting responsibility; □ the administrative sanctions must have been adopted as a result of proceedings that have established the individual responsibility of the appointee for breaches of banking, financial, company and insurance legislation.		Don't publish

10	3.2 Reputation	3.2.1 Information	3.2.1	14	Amendment	It is also worth noting that the additional situations that may affect the reputation of appointees include some situations that seem to be 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. We believe that 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. 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. The following amendment is therefore proposed: "[….] I*n line with the joint ESMA and EBA Guidelines on suitability, the following minimum set of information from the supervised entity, the appointee, and/or the judicial/administrative authority concerning legal proceedings and criminal investigations is needed to conduct the assessment.* ~~*1.Criminal records of the appointee.*~~ ~~*2.*~~ *Self-declaration of the appointee, if required by the national legal framework,*~~.~~	We believe it is important to semplify the documentation to be provided by the board member to prove his reputation.		Don't publish
11	3.2 Reputation	3.2.2 Assessment approach	3.2.2	17-20	Amendment	Please, see our comments in ID 9-10. The following amendment is therefore proposed: 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.* ***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.* *[….]*	In our view those provisions referring to situations in which the board member is not directly involved should be removed.		Don't publish

12	3.3 Conflicts of interest and independence of mind			22-23	Amendment	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 appropriate 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. 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. The following amendment of paragraph 3.3. is therefore proposed: *[….] "The notion of independence of mind, applicable to all members of a supervised entity’s management body, should be distinguished from the qualified independence t ~~he principle of being independent (formal independence)~~ . The qualified independence ~~Formal independence~~ is only required if envisaged by national law, for certain members of a supervised entity’s management body in its supervisory function".*	In our view the presence of the conflicts of interest and the possession of independence of mind is a very sensitive issue.		Don't publish
13	3.3 Conflicts of interest and independence of mind	3.3.1 Information	3.3.1	23-24	Amendment	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. This appears to be an 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. A non-executive director who for example has outside professional activities with a client of a bank branch may not be aware that their client has a relationship with the bank. This circumstance may never become relevant for the responsibilities attributable to the director in the bank. Statements are requested without any possible verification by the person concerned, such as relationships with clients, suppliers, and competitors of the bank and the group it belongs to. This obligation of ex-ante disclosure without an express qualification of materiality is excessively burdensome 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. It could also entail a breach of the confidentiality of the person concerned with regard to their personal activities. 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	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.		

14	3.3 Conflicts of interest and independence of mind	3.3.2 Assessment approach	3.3.2	24	Amendment	With regard to the step of assessment of potentially relevant situations for the purposes of independence of mind, the document seems to excessively extend the list of persons considered to be related to the director, including, in addition to the close family members of the board members, companies in which the board members have or have in the past held an office or a qualifying holding. We believe that this extension is not reasonable with respect to the aim of preserving the director's independence of mind and should in any event be limited to companies in which they have held the position of executive director or, at most, chairman of the board. Even more unjustified appears to be 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. Moreover, it is not clear 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 not manageable at operational level, both for the appointees and for banks. The following amendment of paragraph 3.3.2. is therefore proposed: *"The competent authority will assess the materiality of the conflict of interest.* *~~Without prejudice to national law, the list below includes situations and thresholds where there is a presumption that a conflict of interest exists.~~ Th e ~~ese~~ 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)~~*			
15	3.3 Conflicts of interest and independence of mind	3.3.2.1 Personal conflict of interest	3321	24	Deletion	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.			
16	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	With regard to financial relationships, we believe 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. Where the relevant scope also includes holdings and directorships, we believe it would be appropriate for the consultation paper to make reference to a materiality threshold set in the internal procedures of the individual banks. The significance of the relationships may differ according to the size of the bank and the company considered. Moreover, we believe it would be reasonable for loans secured by any form of collateral (e.g. a pledge of shares) to be excluded from the scope of the assessment, along with mortgage loans. Another particularly sensitive aspect concerns the assessment of the impact of the loan on the financial situation of the appointees, their family members and the companies considered relevant, which entails the need to acquire and circulate sensitive and not entirely relevant information, such as information on the "total assets" of the persons indicated. As an alternative solution, we believe that it would be more consistent with creditworthiness procedures to refer to the bank's rating of the borrower, which summarises the borrower's viability, in accordance with internal procedures and without the need to obtain specific information. With regard to directors and their family members, account should be taken of the fact that banks are always required to apply strict procedures to assess the creditworthiness of customers, which take into account the customer's income and financial capacity to repay the debt. In addition, once a customer has become a board member, any further loans would be subject to approval by the Board of Directors, as required under Italian			
17	3.3 Conflicts of interest and independence of mind	3.3.2.3 Financial conflict of interest	3.3.2.3	25	Deletion	Please, see our comments in previous ID 13 and 16. We ask accordingly for the deletion of paragraph 3.3.2.3			

18	3.4 Time commitment	3.4.3.1 Quantitative assessment: multiple directorships	3.4.3.1	30	Amendment	We agree with the solution set out in the CP concerning the notion of a “group” relevant for the purposes of counting several directorships as a single directorship. In this respect, the document takes into account all entities consolidated in accordance with the financial reporting standards. This solution is consistent with the rationale underlying the provisions on limits to the number of directorships, which are based on the need to ensure the time necessary to perform the directorship in the bank. However, for this reason we do not agree with the more restrictive interpretation (cited in footnote 41), which limits the privileged counting of directorships solely to companies within the scope of prudential consolidated supervision. 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. The following amendment is therefore proposed: "Application of privileged counting ~~Without prejudice to national law, w~~When assessing the group context, the ECB takes into account the consolidated situation (based on the accounting scope of consolidation) in its approach to counting. The privileged counting also applies in case a board member holds a position in a “third” company (that is not controlling the bank or controlled by the bank) and at the same time in other companies within the same scope of consolidation			Don't publish
19	3.6 Assessment of individual accountability of board members			41-47	Deletion	In a completely new departure, the consultation document devotes considerable attention to the individual accountability of board members, requiring a specific assessment for this aspect. We ask the Authority to reconsider this point, given that these situations are already subject to assessment in terms of meeting the requirements of reputation, expertise and independence of mind. An additional assessment by the Board on the aspect of individual accountability risks creating confusion between the different areas of assessment, which are already very comprehensive and detailed. We request that the entire paragraph 3.6 be deleted	We ask the Authority to consider to delete the paragraph concerning the individual accountability of the board members since in our view it risks creating confusion between the different areas of assessment, which are already very comprehensive and detailed.		Don't publish
20		5.3 Assessment approach	Table 4	62	Amendment	In general terms, we agree with the principle that banks are required to inform the Supervisory Authority when situations arise that may have an impact on the initial assessment (paragraph 5.3.1) and that it is therefore not necessary to communicate every new fact, including those that are irrelevant for the purposes indicated. However, some of the situations listed in Table 4 as being subject to mandatory reporting appear to be overly burdensome or irrelevant not relevant to the fit and proper assessment process. The following amendment is therefore proposed: "[...] Conclusion or commencement of any criminal proceedings or relevant civil final judgements or administrative sanctions ~~proceedings~~ (including convictions under appeal and bankruptcy, insolvency or similar proceedings) Conclusion ~~or commencement~~ of disciplinary actions (including disqualification as a company director, discharge from a position of trust) Refusal of registration, authorisation, membership or licence to carry out a trade, business or profession, or such termination, withdrawal or revocation Conclusion ~~or commencement~~ of sanctioning proceedings by public authorities or professional bodies or pending investigations or past investigations or enforcement proceedings Deliberations by the management body of the supervised entity regarding a member of the management body’s (or key function holder’s) reputation where there were any material conclusions ~~Performance-related issues that prompted a resignation from duties in entities other than the supervised entity~~ Findings that the individual concerned deliberately provided wrong information to the competent authority and/or acted with a lack of transparency Findings that the individual concerned infringed the supervised entity’s internal governance rules, such as its			Don't publish
21		7.1 Notification of intended appointments	7.1 Supervisory practices	68-69	Amendment	Please, see our comments in ID 1, 2 and 3. The following amendment is therefore proposed *"... ~~The ECB invites~~ A ~~a~~ ll credit institutions in participating Member States that are not required under national law to notify the competent authorities before the intended appointment of a member ~~to:~~ can: - submit ~~a fit and proper questionnaire and~~ the CV for the newly proposed member of the management body as soon as there is a clear intention to appoint them; "*			Don't publish

12	3.3 Conflicts of interest and independence of mind			21-26	Amendment	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. 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. 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. 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. 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	The presence of the conflicts of interest and the possession of independence of mind is a very sensitive issue. We note that the consultation document requires appointees to declare in advance a very extensive series of relationships, irrespective of their actual relevance, regarding relations with very broad categories of persons and counterparties, without any materiality criteria. We believe it would be more reasonable and consistent with the purposes of the legislation to limit the disclosure obligation of Board members to situations or relationships related to matters that are subject to examination and approval by the Board, establishing an ex-post obligation of disclosure and of abstention by the member concerned only if a situation of conflict of interest arises during the examination of the specific relationship by the company body of which the appointee is a member.		Don't publish
13	3.3 Conflicts of interest and independence of mind	3.3.1 Information	3.3.1	23-24	Amendment	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. 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. A non-executive director who for example has outside professional activities with a client of a bank branch may not be aware that their client has a relationship with the bank. This circumstance may never become relevant for the responsibilities attributable to the director in the bank. Statements are requested without any possible verification by the person concerned, such as relationships with clients, suppliers, and competitors of the bank and the group it belongs to. 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. 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	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.		

14	3.3 Conflicts of interest and independence of mind	3.3.2 Assessment approach	3.3.2	24	Amendment	With regard to the step of assessment of potentially relevant situations for the purposes of independence of mind, the document excessively extends the list of persons considered to be related to the director, including, in addition to the close family members of the board members, companies in which the board members have or have in the past held an office or a qualifying holding. We believe that this extension is unreasonable with respect to the aim of preserving the director's independence of mind and should in any event be limited to companies in which they have held the position of executive director or, at most, chairman of the board. Even more unjustified is the relevance assigned to offices or holdings that are no longer current, since we cannot see how they can affect the independence of mind of a director who no longer holds any role (even a non-executive role) in the company concerned. In addition, it is unclear to what extent these past situations should be considered relevant. From a practical perspective, considering the number of Board members and the positions held in the past, it is clear that the recommendation in the consultation document is completely unmanageable at operational level, both for the appointees and for banks. We propose to amend paragraph 3.3.2. as follows: "The competent authority will assess the materiality of the conflict of interest. ~~Without prejudice to national law, the list below includes situations and thresholds where there is a presumption that a conflict of interest exists.~~ The~~se~~ situations will be assessed in detail on a case-by-case basis and the information provided by the supervised entity regarding the material or non-material nature of the conflict will be considered. ~~The list below is, however, non-exhaustive and the competent authority may find that a (material) conflict of interest exists in other cases that are not covered by these situations and thresholds.~~ ~~In this Section 3.3.2 , appointee must be understood as~~			
15	3.3 Conflicts of interest and independence of mind	3.3.2.1 Personal conflict of interest	3321	24	Deletion	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.			
16	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	With regard to financial relationships, we note that the establishment of a single threshold of EUR 200,000 for the purposes of assessing the materiality of the relationship, both for natural persons and legal persons, is not appropriate in our opinion. Where the relevant scope also includes holdings and directorships, we believe it would be appropriate for the consultation paper to make reference to a materiality threshold set in the internal procedures of the individual banks. The significance of the relationships may differ according to the size of the bank and the company considered. Moreover, we believe it would be reasonable for loans secured by any form of collateral (e.g. a pledge of shares) to be excluded from the scope of the assessment, along with mortgage loans. Another particularly sensitive aspect concerns the assessment of the impact of the loan on the financial situation of the appointees, their family members and the companies considered relevant, which entails the need to acquire and circulate sensitive and not entirely relevant information, such as information on the "total assets" of the persons indicated. As an alternative solution, we believe that it would be more consistent with creditworthiness procedures to refer to the bank's rating of the borrower, which summarises the borrower's viability, in accordance with internal procedures and without the need to obtain specific information. With regard to directors and their family members, account should be taken of the fact that banks are always required to apply strict procedures to assess the creditworthiness of customers, which take into account the customer's income and financial capacity to repay the debt. In addition, once a customer has become a board member, any further loans would be subject to approval by the Board of Directors, as required under Italian legislation and in many other jurisdictions. We therefore request that the provisions concerning the			
17	3.3 Conflicts of interest and independence of mind	3.3.2.3 Financial conflict of interest	3.3.2.3	25	Deletion	Please, see our comments in previous ID 13 and 16. We ask accordingly for the deletion of paragraph 3.3.2.3			

18	3.4 Time commitment	3.4.3.1 Quantitative assessment: multiple directorships	3.4.3.1	30	Amendment	We agree with the solution set out in the CP concerning the notion of a “group” relevant for the purposes of counting several directorships as a single directorship. In this respect, the document takes into account all entities consolidated in accordance with the financial reporting standards. This solution is consistent with the rationale underlying the provisions on limits to the number of directorships, which are based on the need to ensure the time necessary to perform the directorship in the bank. However, for this reason we do not agree with the more restrictive interpretation (cited in footnote 41), which limits the privileged counting of directorships solely to companies within the scope of prudential consolidated supervision. 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. The following amendment is therefore proposed: "Application of privileged counting ~~Without prejudice to national law, w~~When assessing the group context, the ECB takes into account the consolidated situation (based on the accounting scope of consolidation) in its approach to counting. The privileged counting also applies in case a board member holds a position in a “third” company (that is not controlling the bank or controlled by the bank) and at the same time in other companies within the same scope of consolidation			Don't publish
19	3.6 Assessment of individual accountability of board members			41	Deletion	In a completely new departure, the consultation document devotes considerable attention to the individual accountability of board members, requiring a specific assessment for this aspect. We ask the Authority to reconsider this point, given that these situations are already subject to assessment in terms of meeting the requirements of reputation, expertise and independence of mind. An additional assessment by the Board on the aspect of individual accountability risks creating confusion between the different areas of assessment, which are already very comprehensive and detailed. We request that the entire paragraph 3.6 be deleted	We ask the Authority to delete the paragraph concerning the individual accountability of the board members since it risks creating confusion between the different areas of assessment, which are already very comprehensive and detailed.		Don't publish
20		5.3 Assessment approach	Table 4	62	Amendment	In general terms, we agree with the principle that banks are required to inform the Supervisory Authority when situations arise that may have an impact on the initial assessment (paragraph 5.3.1) and that it is therefore not necessary to communicate every new fact, including those that are irrelevant for the purposes indicated. However, some of the situations listed in Table 4 as being subject to mandatory reporting appear to be overly burdensome or not relevant to the fit and proper assessment process. The following amendment is therefore proposed: "[...] *Conclusion or commencement of any criminal proceedings or relevant civil final judgements or administrative sanctions ~~proceedings~~ (including convictions under appeal and bankruptcy, insolvency or similar proceedings)* *Conclusion ~~or commencement~~ of disciplinary actions (including disqualification as a company director, discharge from a position of trust)* *Refusal of registration, authorisation, membership or licence to carry out a trade, business or profession, or such termination, withdrawal or revocation* *Conclusion ~~or commencement~~ of sanctioning proceedings by public authorities or professional bodies or pending investigations or past investigations or enforcement proceedings* *Deliberations by the management body of the supervised entity regarding a member of the management body’s (or key function holder’s) reputation where there were any material conclusions* *~~Performance-related issues that prompted a resignation from duties in entities other than the supervised entity~~* *Findings that the individual concerned deliberately provided wrong information to the competent authority and/or acted with a lack of transparency* *Findings that the individual concerned infringed the supervised entity’s internal governance rules, such as*			Don't publish
21		7.1 Notification of intended appointments	7.1 Supervisory practices	68-69	Amendment	Please, see our comments in ID 1, 2 and 3. The folowing amendment is therefore proposed: "... ~~The ECB invites~~ All credit institutions in participating Member States that are not required under national law to notify the competent authorities before the intended appointment of a member ~~to:~~ can: - submit ~~a fit and proper questionnaire and~~ the CV for the newly proposed member of the management body as soon as there is a clear intention to appoint them;..."			Don't publish
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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	The confirmation requested to the banks on the fact that they have informed the directors or key function holders of the responsibilities associated with their function seems to be not necessary and represents a further burden for the banks.		Don't publish
2	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	The detailed description of the duties, responsibilities and reporting lines of the function responsibilities and reporting lines of the function seems to be not necessary and represents a further burden for the banks, taking also into account that the Supervisory Authority is already aware of such information.		Don't publish
3	1. Identity of the supervised entity and appointee	D) previous supervisory assessments	7	Amendment	We believe it would be sufficient to indicate the latest assessment carried out by the Authority, without having to provide details of all previous assessments			Don't publish
4	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			Don't publish
5	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)			Don't publish
6	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			Don't publish
7	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			Don't publish
8	4. Reputation	IMPORTANT	15	Clarification	The questions should relate to the position of the board member and not be extended to other persons. The term “you” should therefore refer exclusively to the Board member	The questions should relate to the position of the board member and not be extended to other persons.		Don't publish
9	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.		Don't publish
10	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			Don't publish
11	7. Collective suitability	D	27	Amendment	The reason for referring only to climate risk issues in the overall assessment is unclear. This point should be deleted			Don't publish
12	8. Additional information and annexes	B	29	Clarification	It is not clear what is meant by “suitability report” among the documents to be attached			Don't publish