



EUROPEAN CENTRAL BANK
BANKING SUPERVISION

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



EUROPEAN CENTRAL BANK

BANKING SUPERVISION

██████████ welcomes the publication of the revised Guidelines on Fit and Proper assessments (GLs), whereby the ECB sets out more clearly its expectations, supervisory practices and processes when assessing the suitability of board members. Overall the compliance with the Guidelines is feasible from an operational point of view. However, we deem that the changes introduced would cause a relevant burden for all the parties involved in the suitability assessment (appointee, financial institution and supervisor), that can lengthen the time to complete the process.

Moreover, it is sometimes difficult reconciling the actions requested in the GLs with the prescriptions set out in National Regulation: i.e. the ex-ante evaluation procedures could lead to problems, especially in countries where the lists of candidates should be presented by the shareholders; for this reason we suggest to maintain the freedom of choice of the National Competent Authorities on this point. Similarly, the GLs specify that the time taken to adopt a decision should not exceed four months from the date on which the application or notification is made by the credit institution, without prejudice to any deadline set out in national law. Given the fact that national laws are still relevant to determine the timing of the process, we deem that an harmonization of the timeframe for all the jurisdictions in scope would be needed in order to ensure certainty of the maximum duration of the process.

Furthermore, due to the fragmentation among supervisory authorities of the relevant competences and the different procedures across the EU, acknowledged by the GLs themselves, for the supervised institution it might become critical to cope with the different procedures and to meet the GLs expectations while granting a timely response and organize effectively the internal activities.

Regarding the newly introduced requirement to consider possible supervisory findings when assessing an appointee's suitability, we deem that more clarifications are needed. In particular, it should be further explained how to link the direct involvement of a member of the management board to a specific finding. This new request can be potentially operationally burdensome, especially if it should be also determined whether the candidate

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ECB Guide to fit and proper assessments

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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	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.		#REF!
2	3.1 Experience	3.1.3 Assessment approach	3.1.3.2	11	Amendment	Within the thresholds for the presumption of sufficient experience for the management body in its executive function, it is required that "a significant portion" of such experience is related to senior managerial positions. In the footnote 20, it is specified that senior managerial position is to be intended as one level below the management body in its management function. In this respect, it is suggested to introduce a sort of proportionality principle, in order to consider also positions two levels below the management body in its management function when it comes to large entities, such as the Holding of a Banking Group.	The application of the requirement to ██████████ would limit the presumption of senior managerial experience only to 1st liners of GEC members, excluding the vast majority of SVPs and senior managerial profiles at Holding level.		#REF!
3	3.1 Experience	3.1.3.2 Practical experience	3	11	Clarification	In both tables 1 and 2 concerning the threshold for presumption of sufficient experience it is not clear what is intended as "significant proportion" and if possibly this should be understood as at least 4 or 5 years out the total 10 years to be taken in consideration	The request for clarification would provide more accurate guidance to the supervised entity.		#REF!
4	3.3 Conflicts of interest and independence of mind	3.3 Conflicts of interest and independence of mind	3.1.3	12	Clarification	The Guidelines state that "In the event of remaining concerns, the ECB may impose ancillary provisions in the fit and proper decision which are specifically tailored to the particular situation." We would suggest to better clarify by which act the ECB will represent such ancillary provisions, whether it will be able to be appeal against it and if it is directly applicable or will become part of the decision of the local regulator.	The request for clarification would provide more accurate guidance to the supervised entity.		
5	3.1 Experience	3.1.3 Assessment approach	3.1.3.2	13	Clarification	It is reported that knowledge of climate related and environmental risks 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 (<i>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</i>)?	More details are useful to determine the better way to ensure a collective knowledge of climate-related and environmental risks.		Publish
6	3. Assessment criteria	3.2.1 Information	3.2	13	Clarification	When it comes to check whether an appointee or member of the management body is subject to (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.		
7	3.2 Reputation	3.2.1 Information	3	14	Clarification	It is not clear what is intended by being "indirectly involved" if the candidate/appointee has been indirectly involved in any of the mentioned proceedings (investigations, enforcement or supervisory proceedings, or sanctions). There could be confusion on the extent of events that are called to be taken in consideration.	The request for clarification would provide more accurate guidance to the supervised entity.		Publish

8	3.2 Reputation	3.2.1 Information	4	15	Amendment	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.	The amendment is requested to better align the document with the actual legal practices in different countries.		Publish
9	3.2 Reputation	3.2.1 Information	point 3	15	Clarification	Amongst the minimum set of information from the supervised entity, the appointee, and/or the judicial/administrative authority concerning legal proceedings and criminal investigations which is needed to conduct the FIT assessment, information on the <i>refusal of registration, authorisation, membership or licence to carry out a trade is required</i> . A clarification as to the definition of trade business would be useful to better understand how to apply the guidelines.	A clarification on the definition of trade finance is needed in order to apply the guidelines, better specifying what trade or business should be considered and whether it should be assessed for a single deal or in general.		
10	3.2 Reputation	3.2.1 Information	point 4	16	Clarification	The Guidelines request that the appointee shows any professional insight as follows: <ul style="list-style-type: none"> • self-reflection in terms of what did they do to prevent or avoid the alleged wrongdoing , • 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 appointee has nothing to do with the wrongdoing?	A clarification is needed on how to apply the guidelines in case the candidate has nothing to do with the wrongdoing.		
11	3.2 Reputation	3.2.2 Assessment approach	Figure 1	18	Clarification	<i>"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,"</i> <i>"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."</i> If there is wrongdoing in the institution that is not directly related to the candidate, does this mean he/she will be affected by bad repute ?	A 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.		
12	3.2 Reputation	3.2.2 Assessment approach	3.2.2	19	Amendment	We suggest to define a specific timeframe to assess the relevance of any supervisory measure to be considered. More concretely: A) Unlimited timeframe: only for the Procedures initiated against the candidate and all the Procedures regarding AML topics initiated against both the candidate and the company; B) Timeframe limited to 5 years prior to the application: Procedures initiated against the company (apart from AML topics as detailed above)	It can be useful to better define a time frame for a better implementation of the Guidelines.		
13	3.2 Reputation	3.2.2 Assessment approach	3.2.2	22	Clarification	Please, can you specify the minimum time threshold?	A threshold specification can be useful for a correct implementation of the Guidelines.		Publish
14	3.3 Conflicts of interest and independence of mind	3.3 Conflicts of interest and independence of mind	3.3	23	Clarification	To avoid a subjective view on the matter can periodical behavioural evaluation need to be taken in consideration or is it necessary to set up an alternative measurement? Please, note that this info is not mirrored in the questionnaire	To avoid a subjective view on the matter it is important to have a clarification to assess behavioural skills like "courage", "resist 'group-think'" etc.		Publish
15	3.3 Conflicts of interest and independence of mind	3.3.1 Information	point 5	23	Clarification	With respect to the <i>"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;</i> We suggest to add a clarification on what to include in "financial interests": does it include shares in the supervised institution? <i>"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".</i>	A clarification is needed on what to consider "financial interests".		
16	3.3 Conflicts of interest and independence of mind	3.3.2 Assessment approach		24	Amendment	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 a supplier 10 years ago, but the company could have changed its subject of activity in the meantime and be no longer supplier of the institution.	In order to avoid uncertainty in the definition of relevant time a timing limit should be foreseen.		

Template for comments

Fit and proper Questionnaire

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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		Page 3, Bullet 5	Amendment	Please amend the question as follows: "Declaration by the supervised entity ...confirms that the supervised entity believes, on the basis of due and diligent enquiry the information provided by the candidate and by reference to the fit and proper criteria as laid down in [national and European law, international standards, including regulations, codes of practice, guidance notes, guidelines and any other rules or directives issued by the [NCA] or by the ECB and the European Banking Authority (EBA) and the European Securities and Markets Authority (ESMA), that the appointee is a fit and proper person to perform the function as described in this questionnaire"	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.		
2	1. Identity of the supervised entity and appointee	E.Grounds to suspect money laundering or terrorist financing Are you aware or have you been informed by the supervised entity of any reasonable grounds to suspect that money laundering or terrorist financing is being or has been committed or attempted, or whether there is any increased risk thereof in connection with the supervised entity or its group?	7	Deletion	This question seems to be not appropriate, as the questionnaire assesses the fit & proper suitability of the candidate and not the supervised entity. We suggest to delete the question on awareness or information (received) by the supervisory entity of grounds to suspect money laundering or terrorist financing etc. in connection with the supervised entity or its group.	The appointee is not yet in function at the supervised entity when filling the questionnaire, so we deem this question is not appropriate in the FAP process.		Publish
3	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 FAP questionnaire.	The request for clarification would provide more accurate guidance to the supervised entity.		Publish
4	2. Function for which the questionnaire is submitted	(planned) end date of the term of office	9	Amendment	In alternative to a specific date we suggest 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
5	3. Experience	Degree of seniority of the position / hierarchical level	10	Clarification	A clarification is requested whether the degree of seniority is a self-assessment made by the candidate / appointee or if there is a reference benchmark.	The request for clarification would provide more accurate guidance to the supervised entity.		Publish

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