EUROPEAN CENTRAL BANK

BANKING SUPERVISION

Guide to fit and proper assessments

Note: this document is outdated. Please refer to the latest version of the ECB guide to fit and proper assessments (revised December 2021)

June 2021

Contents

Foreword

In this document, the terms “credit institution” and “supervised entity” are used interchangeably, as are the terms “member” and “appointee”.[1]

The term “competent authority” includes both NCAs and the ECB.

Different terms are defined in the text and in the footnotes. In addition, please consult the central ECB glossary.

The management body of a credit institution[2] must be suitable in order to carry out its responsibilities and be composed in such a way that contributes to the effective management of the credit institution and balanced decision-making. This will have an impact not only on the safety and soundness of the credit institution itself, but also on the wider banking sector, as it will reinforce the trust of the public at large in those who manage the financial sector of the euro area.

Since 4 November 2014, the ECB has been responsible for taking decisions on the appointment of all members of the management bodies of the significant credit institutions that fall under its direct supervision. The objective of this revised version of the Guide to fit and proper assessments which replaces the previous version, last updated in May 2018, is to explain in greater detail the policy stances, supervisory practices and processes applied by the ECB when assessing the suitability of members of the management bodies of significant credit institutions and to specify the ECB’s main expectations.

The policy stances, supervisory practices and processes described in this Guide may have to be adapted over time. It is meant to be a practical tool that will be updated regularly to reflect new international and European legal and regulatory developments and experience gained over time in fit and proper supervision.

This Guide is not, however, a legally binding document and cannot in any way substitute the relevant legal requirements stemming either from applicable EU law or applicable national law, nor does it introduce new rules or requirements.

To the extent possible, the Guide follows the terminology used in the Capital Requirements Directive (CRD),[3] the joint ESMA and EBA Guidelines on suitability[4] and the EBA Guidelines on internal governance.[5] For example, the term “management body” applies to the bodies in all governance structures that perform management or supervisory functions.

The Guide does not advocate any particular governance structure and is intended to embrace all existing structures.

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1 The person who is proposed for a position in the management body or who has been appointed to such position.

2 As defined in Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013), (Capital Requirements Regulation – CRR).

3 Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

4 Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU (EBA/GL/2017/12).

5 EBA Guidelines on internal governance under Directive 2013/36/EU (EBA/GL/2017/11).

Guiding principles

The credit institutions are primarily responsible for the initial and ongoing assessment of the suitability of the members of the management body and key function holders.

This Guide, which describes the policy stances, supervisory practices and processes applied by the competent authorities within the Single Supervisory Mechanism (SSM), is designed as a practical tool which will be updated and developed over time.

The policy stances contained in the Guide are without prejudice to national law. However, where possible, the ECB and the national competent authorities (NCAs) strive to interpret national rules consistently with these policy stances.

Fit and proper assessments are carried out on a case-by-case basis and this Guide should serve as a practical tool only. Therefore, in each case, the assessment will come down to an analysis of the individual situation and supervisory judgement.

The supervisory practices described in the Guide respect the principle of proportionality, namely that they are commensurate with the size, systemic importance and risk profile of the credit institutions under supervision and the efficient allocation of finite supervisory resources.

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.

The fit and proper assessment feeds into the ongoing supervision of the governance of a credit institution. Fit and proper decisions may contain provisions that require a follow-up as part of ongoing supervision. Moreover, ongoing supervision may in turn lead to the reassessment of members of the management body, highlight gaps with regard to collective suitability or provide insights in the context of reappointments.

1 Scope of the ECB's fit and proper assessments

This Guide covers fit and proper assessments of members of the management body, both in their management function (executive directors) and supervisory function (non-executive directors) of all institutions under the direct supervision of the ECB (significant institutions), whether credit institutions or (mixed) financial holding companies[6] and in the case of licensing or qualifying holdings. On the basis of Article 6(4) of the SSM Regulation,[7] responsibility for regular appointments in less significant institutions (i.e. outside the context of licensing or qualifying holdings) lies with the NCAs.

The Guide also covers 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[8]. The assessment criteria concerning key function holders and branch managers depend on national law.[9] In accordance with Article 9(2) of the SSM Regulation, the ECB exercises the corresponding national powers[10] The guidance provided below can also be used to interpret the criteria applicable according to the relevant national provisions.

6 For (mixed) financial holding companies, see Article 121 CRD.

7 Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

8 As defined in Article 2(1) SSM Regulation.

9 National law transposing Articles 74 and 88 CRD (key function holders) and Article 91 CRD (branch managers).

10 For further information, see the ECB's letter of 31 March 2017 to supervised entities on "Additional clarification regarding the ECB's competence to exercise supervisory powers granted under national law".

2 Legal framework

2.1 SSM Regulation and SSM Framework Regulation

Fit and proper supervision is one of the tasks conferred on the ECB for which it has exclusive competence. Article 4(1)(e) of the SSM Regulation provides that fit and proper assessments are part of the ECB's supervision of the overall governance arrangements of credit institutions.

The SSM Framework Regulation (SSMFR)[11] elaborates on compliance with fit and proper requirements in Articles 93 and 94. The SSMFR also imposes obligations on supervised entities in terms of notifying the relevant NCA of certain information with regard to the suitability of members of its management body. Article 93 refers to changes to the members of management bodies, while Article 94 covers new facts or any other issues which could have an impact on the ongoing obligation to have suitable members in the management bodies of credit institutions.

The ECB takes decisions on the suitability of members of the management bodies of significant credit institutions following fit and proper (FAP) assessments. The ECB can use the powers available under the SSM Regulation to perform its role. Examples of the powers are to collect information, including through interviews, and to set conditions, obligations, recommendations, expectations or warnings in fit and proper decisions.

2.2 CRD and national law

The first sub-paragraph of Article 4(3) of the SSM Regulation provides that for the purposes of carrying out its supervisory tasks, the ECB must apply all relevant Union law and, where this Union law is composed of Directives, the national law transposing those Directives. Suitability requirements are succinctly covered by Article 91 of the CRD. The Directive sets down fit and proper standards for the management body, but does not elaborate in detail on the different criteria or the supervisory procedure to be followed (e.g. the choice between ex ante supervisory approval of an appointment of a member of a management body or ex post notification of an appointment to the competent authority).

Consequently, when taking fit and proper decisions, the ECB will apply the substantive fit and proper requirements laid down in the binding national law which implements Article 91 of the CRD. Given that Article 91 is a minimum harmonisation provision, the resulting national laws differ to some extent. Indeed some Member States have laid down requirements going beyond those in Article 91.

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11 Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (ECB/2014/17) (OJ L 141, 14.5.2014, p. 1).

2.3 ESMA/EBA Guidelines

Besides the national law transposing the CRD, the ECB also complies with the joint ESMA and EBA Guidelines on suitability and the EBA Guidelines on internal governance. This Guide does not replace the guidance provided by the joint ESMA and EBA Guidelines on suitability or by the EBA Guidelines on internal governance. It explains the ECB's processes and specifies the ECB's main expectations when conducting suitability assessments.

2.4 SSM policy stances, supervisory practices and processes

The regulatory requirements need to be applied in practice by the competent authorities when assessing the suitability of members of the management body of a credit institution. To ensure consistency in application of the legal requirements, some clarification on how to interpret those requirements is needed alongside the development of common supervisory practices and processes.

To that end the ECB, together with the NCAs, has developed policy stances on fit and proper criteria and supervisory practices, which explain in further detail how the competent authorities within the SSM apply, on a case-by-case basis, the CRD as transposed by national law and the joint ESMA and EBA Guidelines on suitability and the EBA Guidelines on internal governance. The policy stances are without prejudice to national law and are in line with both Guidelines. In the absence of conflicting binding national law, the ECB and the NCAs adhere to the policy standards described in the Guide. The policy standards will be reviewed in the light of experience gained over time in fit and proper supervision and international and European legal and regulatory developments, and interpretation of the CRD by the Court of Justice of the European Union.

3 Assessment criteria

The fitness and propriety of members of the management body[12] 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.[13]

3.1 Experience

3.1.1 Practical experience and theoretical knowledge

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 the individual's appointment but also whenever required on an ad hoc basis (e.g. in the event of a significant change of responsibilities).

The aim of this section of the Guide is to foster a common understanding of the term "experience" as used in the CRD in the context of assessing the suitability of a member of the management body. The Guide determines the range of experience which an appointee must have in order to assume that they have sufficient experience to perform their proposed function in the institution. A two-step approach is presented on how to assess the experience of an appointee.

In line with the joint ESMA and EBA Guidelines on suitability, the term "experience" covers practical and theoretical aspects and includes skills and knowledge. Both theoretical knowledge attained through education and training[14] and practical experience gained in previous occupations is considered.

All members of the management body must have basic theoretical banking knowledge which may be gained through practical experience or through training.[15]

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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.

13 The guidance provided on the criteria set down in Article 91 CRD can also be used to interpret the criteria applicable according to the relevant national provisions concerning key function holders and branch managers.

14 Following the definition in the Guidelines, theoretical experience is essentially theoretical knowledge.

15 Theoretical knowledge can be acquired also through training after taking up the position.

For a director who is also the chief risk officer (CRO), chief financial officer (CFO), chief compliance officer (CCO), head of the internal audit function, Chair of the audit committee or Chair of the risk committee, specialised experience in the relevant area should be identified.

3.1.2 Information

When submitting a fit and proper application[16], credit institutions should provide information on the appointee's experience. The minimum information should be taken from the underlying documentation (e.g. the FAP questionnaire, curriculum vitae), which provides complete information on the individual's qualifications and banking, financial or other relevant experience and training. The information to be provided should include a confirmation from the institution that the appointee is suitable to perform their function. 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.

3.1.3 Assessment approach

The assessment of an appointee's theoretical knowledge and practical experience will necessarily take into account the main characteristics of their specific function and of the institution. The more complex these characteristics are, the more experience will be required. When assessing an appointee's theoretical knowledge and practical experience, particular regard is paid to a number of factors:

- The level and profile of 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, information technology (IT) and quantitative methods is considered;
- Training plans completed, ongoing or to be followed by the appointee are also taken into account.

Practical experience is assessed from information on previous positions, such as the length of service, size of the entity[17], responsibilities held, number of subordinates, nature of activities, actual relevance of the recent experience gained and other relevant factors.

The assessment of the appointee's experience consists of a two-stage process. First, the experience is assessed against the thresholds for the presumption of sufficient experience (first stage). If the thresholds are met, the appointee is ordinarily presumed to have sufficient experience, unless there is an indication to the contrary. Second, if the appointee does not meet the thresholds for the presumption of sufficient expertise,

[16] Fit and proper application or notification submitted in accordance to national law.

[17] Any organisation other than the supervised entity.

or where institution or function-specific circumstances require specific theoretical and/or practical experience, a more detailed assessment is necessary (second stage). This two-stage assessment process does not apply in the case of a renewal of an appointment in respect of which the ECB has previously taken a FAP decision. In this case sufficient experience will be presumed, if there is no indication to the contrary.

3.1.3.1 Theoretical knowledge

All members of the management body must possess basic theoretical banking knowledge relating to the matters listed below. This knowledge is presumed if the member has practical banking experience. A lack of theoretical banking knowledge may be mitigated by providing for adequate training.

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;
2. regulatory framework and legal requirements;
3. strategic planning, the understanding of an institution's business strategy or business plan and accomplishment thereof;
4. risk management (identifying, assessing, monitoring, controlling and mitigating the main types of risk of a credit institution);
5. accounting and auditing;
6. the assessment of the effectiveness of a credit institution's arrangements, ensuring effective governance, oversight and controls; and
7. the interpretation of an institution's financial information, the identification of key issues based on this information, and appropriate controls and measures.[18]

3.1.3.2 Practical experience

Practical experience is assessed with reference to the relevance of experience, the number of years of experience and the level of managerial experience. The assessment uses information on previous positions, taking into account the length of

[18] Joint ESMA and EBA Guidelines on suitability.

service, size of the entity, responsibilities held, number of subordinates, nature of activities, actual relevance of the experience gained, and when it was gained, etc.

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.

Table 1

Thresholds for presumption of sufficient experience for the management body in its executive function

Chief Executive Officer (CEO)	Director
Executive: Ten years of recent[19] practical experience in areas related to banking or financial services. This should include a significant proportion at senior level managerial positions.[20]	Executive: Five years of recent practical experience in areas related to banking or financial services at senior level managerial positions.

Note: Theoretical knowledge is required in all cases.

Table 2

Thresholds for presumption of sufficient experience for the management body in its supervisory function

Chair	Director
Non-executive Chair: Ten years of recent relevant[21] practical experience. This should include a significant proportion at senior level managerial positions and significant theoretical knowledge in banking or a similar relevant field.	Non-executive: Three years of recent relevant practical experience at high-level managerial positions[22] (including theoretical knowledge in banking). Practical experience gained in administrative or academic positions could also be relevant depending on the position held.

Note: Theoretical knowledge is required in all cases.

Practical experience is assessed in a two-step process:

Step 1 – Assessment against thresholds

The experience of the appointee is assessed against thresholds for the presumption of sufficient experience (see Tables 1 and 2 above). 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

19 Not older than two years.

20 One level below the management body in its management function.

21 The scope of experience can be broader for the non-executive Chair or a non-executive director compared with an executive director.

22 One or two levels below the management body in its management function.

risks[23]) might require specialised expertise, which is not taken into account by the indicated thresholds.

Step 2 – Complementary assessment

If the thresholds at which sufficient experience is presumed are not met, the appointee can still be considered suitable if the institution can adequately justify this. Moreover, as indicated above, institution-specific or role-specific circumstances might require specialised expertise which cannot be presumed from the assessment against thresholds (Step 1). A complementary assessment of the appointee's experience is conducted, taking into account the need to have sufficient diversity and a broad range of experiences in the management body and, where relevant, national requirements to have staff representatives in the management body.

Examples of justification may include a training plan in the case of a partial lack of experience in a specific field, the overall collective suitability of the current members of the management body, appointment for a specific role limited in time (e.g. an institution in wind-down), or where the appointee has specific theoretical or practical experience which the institution needs.

A member of the management body in its supervisory function who does not meet the threshold for the position may still be considered suitable if (i) the member has experience or expertise which addresses the institution's specific needs (e.g. IT experience or climate-related or environmental risk experience); (ii) the member and the institution commit to the necessary training being undertaken to overcome the lack of basic banking knowledge; and (iii) the member fulfils all other fit and proper requirements. Given the increasing relevance of climate-related and environmental risks as a source of financial risks for credit institutions and, consequently, as an area of supervisory attention, knowledge and/or experience in this specific area will be deemed relevant and will contribute to the overall diversity and suitability of the management body (see Section 3.5).

In certain cases, remaining concerns may be appropriately remedied by an ancillary provision,[24] such as training, to fill a practical experience gap or a theoretical banking knowledge gap (see Section 7).

3.1.4 Special cases

For staff representatives, specific national law considerations may apply.

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[23] Institutions are expected to assign responsibility for the management of climate-related and environmental risks within the organisational structure in accordance with the three lines of defence model. Expectations 5.4, 5.5 and 5.6 concern, respectively, risk management, compliance and internal audit functions. Guide on climate-related and environmental risks: – Supervisory expectations relating to risk management and disclosure, European Central Bank, November 2020.

[24] Namely a condition, obligation or recommendation.

For small savings banks and/or cooperatives, the criterion for experience can be considered met if the supervised entity and/or the cooperative group provide an adequate and timely training plan for the appointee.

In the case of a supervised entity operating in a specialised business area, experience in the specialised field will be treated as relevant experience.

3.2 Reputation

Members of the management body must at all times be of sufficiently good repute. An appointee is considered to be of good repute if there are no objective and demonstrable grounds to suggest otherwise, in particular taking into account the relevant available information on the factors and situations listed in this section.

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. Without prejudice to any fundamental rights, relevant criminal or administrative records are taken into account for the assessment of good repute, honesty and integrity, considering the type of conviction or indictment, the role of the individual involved, the penalty received, the phase of the process reached, the evidential weight of the findings and any rehabilitation measures that have taken effect. The surrounding circumstances, including mitigating factors, the seriousness of any relevant offence or administrative or supervisory action, the time elapsed since the offence, the appointee's conduct since the offence or action, and the relevance of the offence or action to the appointee's role are considered. Any relevant criminal or administrative records are taken into account, having regard to periods of limitation in force in the national law.

Since a person has either a good or a bad reputation, the principle of proportionality cannot apply to the reputation requirement or to its assessment, which should be conducted for all institutions in an equal manner.

The ECB frequently encounters the situation where an appointee or member of the management body is or has been the subject of pending criminal, administrative or civil proceedings[25] or other analogous regulatory investigation. In each case, the ECB will assess the materiality of those circumstances. Whilst there is a presumption of innocence applicable to criminal proceedings, the very fact that an individual is being prosecuted is relevant to propriety. In the assessment, all existing information regarding the propriety of the appointee together with the stage of the proceedings and the evidential weight of the alleged wrongdoing should be assessed. Similarly, the fact that an appointee has been convicted or sanctioned is relevant and the factors as listed above will be considered as part of the overall assessment of the appointee's reputation.

[25] "Proceedings" in this section refers to both pending and concluded proceedings.

Each assessment is conducted on a case-by-case basis. The supervisory approach to the assessment of reputation is not a box-ticking exercise.

The ECB has neither fact-finding competences nor investigatory powers with regard to anti-money laundering and combating the financing of terrorism (AML/CFT) breaches or money laundering/terrorist financing (ML/TF) offences 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.

3.2.1 Information

When submitting a fit and proper application, a minimum set of information concerning criminal or relevant administrative or civil proceedings is required from the supervised entity, the appointee and/or the judicial or administrative authority.[26] It may also be appropriate to gather information through an interview with the appointee. An interview is part of the fact-finding role of the competent authority.

In line with the joint ESMA and EBA Guidelines on suitability,[27] 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.
3. Information concerning the following:
    - investigations, enforcement or supervisory proceedings, or sanctions by a competent authority in which the appointee has been directly or indirectly involved;
    - 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; or expulsion by a regulatory or government body or by a professional body or association, and the grounds for the refusal, withdrawal or expulsion;
    - statement of whether or not the appointee or any entity managed by them is or has been involved as a debtor in insolvency, proceedings or comparable proceedings (e.g. bankruptcy), including details of the proceedings (length of time since the procedure, status and (if not ongoing) outcome of the procedure; any precautionary or attachment measures; the entity involved;

[26] It may not always be possible to obtain this information from the relevant authority. In such cases the information should be obtained instead from the supervised entity and/or the appointee.

[27] The joint ESMA and EBA Guidelines are being updated to capture the information exchange between the prudential authority and the competent AML/CFT authority.

whether the procedure was triggered by the appointee or the entity involved; and details on the personal involvement of the appointee, particularly if declared responsible for the insolvency);

- dismissal from employment or a position of trust, fiduciary relationship, or similar situation, or having been asked to resign from employment in such a position (excluding redundancies);
- suspension of any registration, authorisation (including a fit and proper authorisation), membership or licence;
- whether or not an assessment of reputation of the appointee as an acquirer or a person who directs the business of an institution has already been conducted by another competent authority (including the identity of that authority, the date of the assessment, and evidence of the outcome of this assessment) and the consent of the individual where required to seek such information to be able to process and use the provided information for the suitability assessment; and
- whether or not any previous assessment of the appointee by another authority has already been conducted (including the identity of that authority and evidence of the outcome of this assessment).

4. Information concerning any criminal or relevant[28] administrative or civil proceedings (including disciplinary actions) and investigations, sanctioning proceedings or measures:

    - the nature of the charge or allegation (whether criminal, civil or administrative, including disciplinary actions (e.g. disqualification as a company director, bankruptcy, insolvency and similar procedures) or involving a breach of trust) or any other proceedings;
    - the sanction or penalty (or, for pending proceedings, the likely sanction or penalty in the event of conviction) resulting from the proceedings;
    - the time that has passed since the alleged wrongdoing or misconduct;
    - the personal involvement of the appointee, particularly with regard to non-personal or corporate offences:

[28] Relevant civil or administrative proceedings include (but are not limited to) proceedings in the fields of banking, insurance activities, investment services, securities markets, payment instruments, money laundering, pensions, asset management or in any financial regulated sector including any formal notification of investigation or committal for trial, pending disciplinary actions or pending bankruptcy, insolvency or similar procedures, or breach of competition law. In any case, the information on administrative and civil proceeding must include proceedings that are relevant in accordance with the national law implementing the CRD V (Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures).

- in the case of alleged wrongdoing, proceedings, investigations or sanctions involving the appointee directly: the circumstances of and reasons for the involvement,
- 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,
- was the appointee subject to any remuneration clawbacks as a consequence of the alleged wrongdoing;

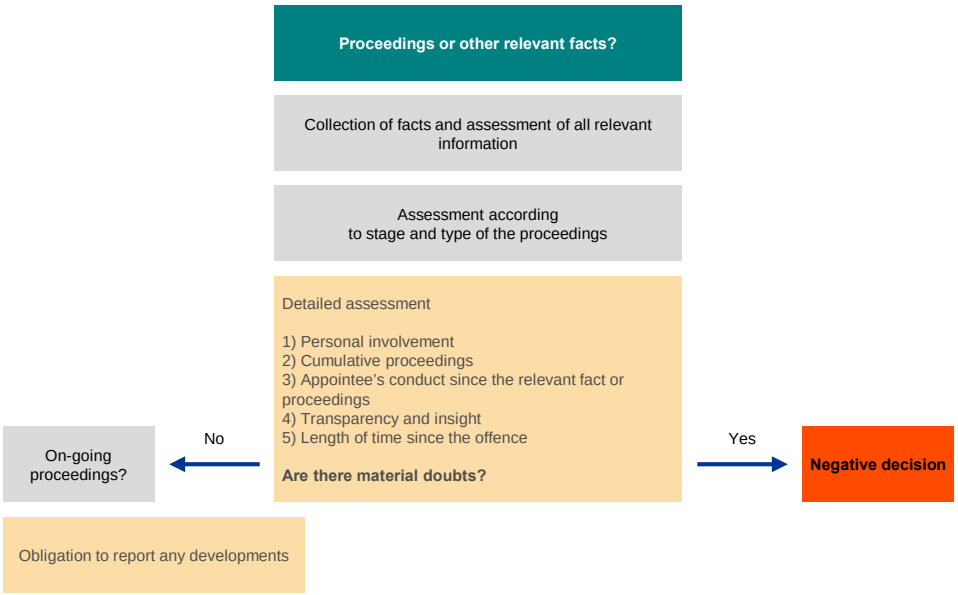
- the appointee's conduct since the offence;
- any professional insight shown by the appointee:
  - self-reflection in terms of what did they do to prevent or avoid the alleged wrongdoing given their role in the respective entity,
  - self-reflection specifying if they could have done more to avoid the wrongdoing,
  - self-reflection in terms of any lessons learned from the alleged wrongdoing;
- the stage of the proceedings reached (investigation, prosecution, sentence, appeal);
- assessment of the facts by the appointee and by the institution. The institution should assess the appointee's reputation taking the relevant facts into consideration and expressly state the reasons why it is considered that such facts do not impact on the appointee's suitability. The institution's management body should analyse the proceedings and confirm its confidence in the appointee. This is also important from the perspective of reputation risk for the institution;
- other mitigating or aggravating factors (e.g. other current or past investigations administrative sanctions, dismissal from employment or any position of trust).

3.2.2 Assessment approach

The flowchart below provides an overview of the reputation assessment process.

Figure 1

Overview of the reputation assessment process



The initial step is to collect the minimum information as specified in Section 3.2.1 above and assess whether it is complete and accurate. If, based on the information available, there are no proceedings or other relevant facts, it may be concluded that **the appointee is of good repute**.

If such proceedings or other relevant facts are identified, the impact of the following two elements is assessed:

1. the stage of proceedings; and

2. the type and hierarchy of proceedings, or other relevant facts.

The two elements must be assessed in parallel. The aim is to determine whether or not a material doubt exists as to the appointee's reputation, which requires a more thorough assessment.

(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 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.

(b) Assessing the impact of the type of proceedings or other relevant facts on an appointee's reputation – In parallel to assessing the impact of the stage of

proceedings, the impact of the type of proceedings or other relevant facts must also be considered. An alleged or proven wrongdoing that is close to the future duties of the appointee (proceedings under the laws governing financial services, such as banking, securities markets and insurance activities) will have a greater impact on the reputation of an appointee than other proceedings.

This section considers the types of proceedings or other relevant facts under the following headings and assesses their impact on an appointee's reputation. The list of proceedings is non-exhaustive and should be understood as guidance. Each case will be looked at on a case-by-case basis.

1. **Criminal proceedings** – Criminal proceedings will in general have the greatest impact on the appointee's good repute. However, the seriousness of the criminal proceedings and their relevance in the assessment can vary. Certain lesser types of criminal offence may have a greater impact when taken together with other relevant facts (cumulative effect) or when assessing the appointee's conduct since a previous offence.

2. **Relevant administrative proceedings or other regulatory investigations or measures** – The appointee's involvement in any relevant administrative 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 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, even when there is direct or personal involvement. In these cases, however, it is assessed whether there are other circumstances or acceptance of facts or convictions which give rise to a cumulative effect.

   However, if the established facts and evidence are particularly significant, then one relevant administrative proceeding or measure (or admission) may in itself be enough to cast a material doubt as to the appointee's good repute. Competent authorities should assess in any given case whether the proceedings or measure is particularly significant and seek further information, if necessary, to determine this. Examples of particular significance include a high financial sanction; direct involvement in a serious failure in the sound and prudent management of a financial institution; or proceedings concerning breaches of AML/CFT laws and regulations.

3. **Bankruptcy or insolvency proceedings** – An appointee's involvement in bankruptcy or insolvency proceedings is taken into account when assessing their good repute, since this may indicate poor financial and/or risk management which is not compatible with the sound and prudent management of a supervised entity. This includes both personal and corporate insolvency and is particularly relevant where the appointee was a member of the management body that became insolvent or required State-sponsored financial support. In the case of a declaration of bankruptcy or insolvency, the competent authorities should assess whether the insolvency or bankruptcy is the consequence of dishonest, reckless or culpable conduct of the appointee, if this information is available. If so, this may constitute a material doubt in respect of the appointee's good repute. The effect on the reputation of the appointee generally lasts five years after the final decision on the bankruptcy or insolvency, but this is assessed on a case-by-case basis (without prejudice to national law time-limits).

4. **Relevant civil proceedings** – In general, only relevant civil proceedings 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, 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. These may indicate behaviour that is incompatible with the sound and prudent management of an institution. Consequently, such relevant proceedings are always assessed.

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:

   (a) being a defaulting debtor (e.g. having negative records at a reliable credit bureau if available);

   (b) financial and business performance of entities owned or directed by the appointee or in which the appointee had or has a significant share or influence;

   (c) large investments or exposures and loans, insofar as they have a significant impact on the financial soundness of the appointee;

   (d) any evidence that the appointee has not been transparent, open and cooperative in their dealings with competent authorities;

   (e) any dismissal, suspension or being asked to resign from employment or any position of trust, fiduciary relationship, or similar situation, or having been asked to resign from employment in such a position following gross misconduct;

(f) 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;

(g) other relevant facts* such as findings of tribunals, arbitration or mediation; facts in the public domain; supervisory measures (e.g. any AML/CFT related inspections); credible and material reports (e.g. internal reports of the supervised entity, auditors, reports requested by the supervised entity or other third-party reports).

* As relevant facts do not normally have a “stage”, they are subject to a case-by-case assessment as to whether their gravity and/or relevance casts a material doubt (either individually if particularly significant or cumulatively) in respect of the appointee’s reputation.

Where the assessment carried out in accordance with the above does not raise any material doubts, the competent authority can be satisfied that there are no material doubts regarding the appointee’s good repute.

Where there are material doubts, further assessment is required as set out below.

- **Personal involvement:** The level of direct or personal involvement or responsibility in proceedings, particularly with regard to non-personal or corporate proceedings, may vary. The higher the level of the personal involvement, the higher the weight in the assessment. Proceedings (e.g. criminal, administrative, bankruptcy, insolvency or civil) and other relevant facts can refer to either a legal or a natural person. Proceedings and other relevant facts referring to legal persons will, in principle, cast a material doubt on the good repute of the appointee if the appointee was directly or personally involved in the matter. Such direct or personal involvement can also arise where the appointee had responsibility over a division or business line and where the proceedings (including sanctions or measures imposed) or facts demonstrate omission or inaction on the part of the appointee, or where the appointee failed as a key function holder, senior manager or member of the management body to act with due diligence, honesty and integrity. The level of responsibility of an appointee must be carefully assessed. Where there is clearly no direct or personal involvement, then no further assessment will be necessary. A clear example of no direct or personal involvement is when the appointee was not associated with the institution at the time of the wrongdoing.

- **Cumulative proceedings:** Current or past investigations, the imposition of administrative sanctions (by regulators, professional bodies, etc.), dismissal from employment or any position of trust, or negative records (e.g. inclusion in lists of unreliable debtors) which individually do not affect an appointee’s reputation may cumulatively have a material impact and are considered.

- **Appointee’s conduct since the proceedings or other relevant facts:** Good conduct of the appointee since the proceedings or other relevant facts should have a positive impact. The effect of any rehabilitation measure is also taken into account.

- **Transparency and insight:** Appointees should be fully transparent about any pending proceedings, both towards the institution, the ECB and the NCA. Any evidence that they have not been transparent, open and cooperative in their dealings with supervisory or regulatory authorities is in itself relevant to the assessment of propriety.
- **Length of time since the alleged offence:** The more time that has elapsed since the alleged wrongdoing, the less impact it should have in the assessment.

Where the assessment carried out in accordance with the above concludes that the material doubts are sufficiently mitigated, then the competent authority can be satisfied that the appointee is of good repute. Nevertheless, if any proceedings are still ongoing, the appointee and the institution will be obliged to report any developments to the NCA and the ECB.

If the assessment raises material doubts, this may, subject to national law, result in a negative decision.

3.3 Conflicts of interest and independence of mind

There is no definition of conflict of interest or independence of mind in the CRD or the CRR.

The joint ESMA and EBA Guidelines on suitability state in paragraph 26 (Title II) that for the assessment of the suitability of a member of the management body, several elements are relevant, including the appointee's ability to "act with honesty, integrity and independence of mind".

The notion of independence of mind, applicable to all members of a supervised entity's management body, should be distinguished from the principle of being independent (formal 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.

Formal independence of an appointee is therefore only assessed if the national legal framework of the participating Member State requires that a member of the management body in its supervisory function is formally independent. In these cases, paragraphs 88-93 (Title III) of the joint ESMA and EBA Guidelines on suitability should be taken into account for the assessment of the appointee, as applied in the participating country.

As far as independence of mind is concerned, paragraph 82 (Title III) of the joint ESMA and EBA Guidelines on suitability states that, "when assessing the independence of mind … institutions should assess whether or not all members of the management body have:

(a) the necessary behavioural skills, including:

(i) courage, conviction and strength to effectively assess and challenge the proposed decisions of other members of the management body;

(ii) being able to ask questions to the members of the management body in its management function; and

(iii) being able to resist ‘group-think’.

(b) conflicts of interest to an extent that would impede their ability to perform their duties independently and objectively”.

Members of the management body should be able to make their own sound, objective and independent decisions. This means they need to act with independence of mind, which is determined by their character and behaviour. Independence of mind can be affected by conflicts of interest. To that end, the CRD requires the management body to have governance arrangements in place preventing conflicts of interest and specifies that each member of the management body must act with independence of mind (Article 91(8) of the CRD).[29]

There is a conflict of interest if the attainment of the interests of the appointee adversely affects the interests of the supervised entity. Therefore, the governance arrangements of each supervised entity should include written policies on the identification and disclosure of all conflicts of interest, whether actual, potential (i.e. reasonably foreseeable) or perceived (i.e. in the mind of the public).[30] Such policies should also include measures to prevent, mitigate and manage conflicts of interest. Having a conflict of interest in itself does not mean that an appointee cannot be considered suitable. This will only be the case if the conflict of interest poses a material risk and adequate mitigation, management or prevention of the conflict of interest is not possible based on the written policies of the supervised entity, the applicable national law, or any other specific agreement reached by the supervised entity and the appointee in the particular case.

The Joint Supervisory Teams (JSTs) supervise the effectiveness of the written policies on conflicts of interest and compliance with them as part of ongoing governance supervision. However, the conflicts of interest of an appointee are also assessed as part of a fit and proper assessment with the objective of checking whether they are effectively mitigated or managed.

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[29] Acting with independence of mind is a pattern of behaviour, shown in particular during discussions and decision-making within the management body. The requirement also applies when there is no conflict of interest, as this does not necessarily mean that the appointee will act with independence of mind. To act with “independence of mind” in a new position will especially become visible and assessable once the appointee has assumed their new role.

[30] Situations where the appointee and the supervised entity have merely different – as opposed to conflicting – interests, or situations where conflicting interests do not pose any risk or have an adverse effect, for example a day-to-day consumer banking product with a low value and entered into at arm’s length conditions, need not be disclosed.

3.3.1 Information

When submitting a fit and proper application, the supervised entity should provide information on all actual, potential or perceived conflicts of interest, whether or not it considers a conflict of interest to be material.

In line with the joint ESMA and EBA Guidelines on suitability the following minimum set of information from the appointee and the supervised entity is considered relevant to conduct the assessment:

1. description of any personal relationship with other members of the management body and/or key function holders of the supervised entity, the parent undertaking or their subsidiaries; with any qualifying shareholders of the supervised entity, the parent undertaking or their subsidiaries; or with clients, suppliers or competitors of the supervised entity, the parent undertaking or their subsidiaries;

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;

3. description of any business, professional or commercial relationship over the past two years with the supervised entity, the parent undertaking or their subsidiaries; or with clients, suppliers or competitors of the supervised entity, the parent undertaking or their subsidiaries;

4. description of any financial obligations towards the supervised entity, the parent undertaking or their subsidiaries that are cumulatively above EUR 200,000 (excluding private mortgages[31]), or any loans of any value that are not negotiated at arm's length or that are not performing (including mortgages);

5. description of any financial interests in the supervised entity, the parent undertaking or their subsidiaries; or in clients, suppliers or competitors of the supervised entity, the parent undertaking or their subsidiaries;

6. whether or not the appointee is being proposed on behalf of any significant shareholder;

7. description of any positions of high political influence (either internationally, nationally or locally) held currently or over the past two years.

The supervised entity should assess whether the potential conflict of interest is material, justifying why if not, and indicating how the potential conflict of interest is proposed to be mitigated or managed, including a reference to the relevant parts of the

[31] Private mortgages of any value do not need to be disclosed (if they are performing, negotiated at arm's length and not contrary to any internal credit approval rules) if they are not of a commercial nature. Moreover, all personal loans (e.g. credit cards, overdraft facilities and car loans) to the appointee from one and the same entity (if performing, negotiated at arm's length and not contrary to any internal credit rules) do not need to be disclosed as long as they are cumulatively under the threshold of EUR 200,000. Note that such mortgages or loans should be disclosed if they are likely to become non-performing for any reason.

supervised entity's conflicts of interest policy or any bespoke conflict management or mitigation arrangements.

An interview with the appointee may be considered to collect further information about the behaviour of the appointee in respect of the potential conflict of interest.

Conflicts of interest of an appointee are assessed with the objective of checking whether these are effectively mitigated. Therefore, the measures to mitigate and manage conflicts of interest should be adequate having regard to the respective materiality of such conflicts.

3.3.2 Assessment approach

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. These situations will be assessed in detail on a case-by-case basis and the information provided by the supervised entity regarding the material or non-material nature of the conflict will be considered. The list below is, however, non-exhaustive and the competent authority may find that a (material) conflict of interest exists in other cases that are not covered by these situations and thresholds.

In this Section 3.3.2 , appointee must be understood as the appointee personally, but also their close relatives (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.

3.3.2.1 Personal conflict of interest

Where the appointee has any personal relationship with other members of the management body and/or key function holders of the supervised entity, the parent undertaking or their subsidiaries; with any qualifying shareholders of the supervised entity, the parent undertaking or their subsidiaries; or with clients, suppliers or competitors of the supervised entity, the parent undertaking or their subsidiaries.

Where the appointee is involved in any legal proceedings or out-of-court disputes against the supervised entity, the parent undertaking or their subsidiaries.

3.3.2.2 Business, professional or commercial conflict of interest

Where the appointee has any business, professional (such as holding management or senior position(s)), or commercial relationship with the supervised entity, the parent undertaking or their subsidiaries; or with clients, suppliers or competitors of the

supervised entity, the parent undertaking or their subsidiaries; or has had, over the past two years, any of such relationship with such entities.

Whether these relationships are material will depend on what (financial) value they represent to the business of the appointee or their close relatives or such entities.

3.3.2.3 Financial conflict of interest

Where the appointee has:

- a material financial obligation towards the supervised entity, the parent undertaking or their subsidiaries (e.g. loans or credit lines);
- a material financial interest (such as ownership or investment) in the supervised entity, the parent undertaking or their subsidiaries; or in clients, suppliers or competitors of the supervised entity, the parent undertaking or their subsidiaries.

Whether a financial obligation or financial interest is material will depend on the value it represents compared with the total assets of the debtor, the total loans to the debtor and the eligible capital[32] of the supervised entity. The status of the loan as performing or non-performing, as well as the conditions under which the exposure was granted may also have an impact on the qualification of the loan as material in a specific case. In principle, the following is considered to be material: financial obligations towards the supervised entity cumulatively exceeding EUR 200,000 (excluding private mortgages[33]) or any loans of any value that are not negotiated at arm's length or that are non-performing (including mortgages); and current shareholdings of more than 1% or other investments of equivalent value.

3.3.2.4 Political conflict of interest

Where the appointee, personally, has or has had over the past two years a position of high political influence, if this position is such that it exercises or appears to exercise undue influence over the appointee.

A position of high political influence can be at any level, such as a local politician (e.g. mayor), public employee (e.g. governmental job), president of a political party, member of cabinet, or member of a regional or national government.

The materiality of the conflict of interest will depend on the specific powers or obligations inherent in the political role, which would hinder the appointee from acting in the interest of the supervised entity (e.g. taking part in public decisions regarding the supervised entity, the parent undertaking and their subsidiaries).

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[32] As defined in CRR.

[33] In the sense of footnote no. 29.

Where the supervised entity is State-owned, the presence of a political member representing the State as shareholder in the management body is recognised. In such circumstances, a conflict of interest exists because the political representative has competing interests between, on the one hand, their party and voters and, on the other hand, the supervised entity.

The above does not prevent representatives of e.g. shareholders from becoming members of management bodies. However, in the event material conflicts of interests arise, these should be adequately addressed by the supervised entity.

3.3.3 Conflicts of interest statement

When the materiality of a conflict of interest is determined, the supervised entity is required to adopt adequate measures. The supervised entity should:

- perform a detailed assessment of the particular situation;
- decide which mitigating measures it will take based on its internal conflicts of interest policy or any bespoke conflict management or mitigation arrangements, unless national law already prescribes which measures must be taken;
- decide which measures it will take to prevent the conflict of interest, if it cannot mitigate or manage the conflict of interest adequately.

The supervised entity will be required to explain to the competent authority how the conflict of interest is being mitigated or managed. The fit and proper assessment will include a conclusion on the adequacy of the measures taken.

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. Some examples of recommendations, obligations or conditions are:

- prohibition to participate in any meeting or make any decision concerning a particular disclosed interest;
- resignation of a certain position;
- divestiture;
- specific monitoring by the supervised entity;
- specific reporting to the competent authority on the particular situation;
- cooling-off period for the appointee;
- obligatory publication by the supervised entity of the conflict of interest;
- any application of the “at arm’s length” principle;
- specific approvals by the whole management body to continue a certain situation;

- any arrangement regarding the diversity of the composition of the management body or avoidance of dominant decision-making (based on company law provisions, the supervised entity's corporate charter, etc.), for example a representation of minority shareholders or having a sufficient number of independent members on the management body to act as a counterbalance.

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.

3.4 Time commitment

3.4.1 Concept of time commitment

All members of the management body must be able to commit sufficient time to perform their functions in the institution.[34]

Time commitment is assessed on a case-by-case basis, taking the principle of proportionality into account.

The time a member of the management body can commit to their functions is affected by several factors, such as the number of directorships held; the size and the context of the entities where directorships are held and the nature, scale and complexity of their activities; the place or country where the entities are based; and other professional or personal commitments and circumstances.

As the holding of multiple directorships is an important factor which may affect time commitment, the CRD sets a limit on the number of "directorships"[35] which may be held by a member of the management body in a significant institution ("CRD significant institution"[36]).[37] Therefore, in addition to the requirement to commit sufficient time to perform their functions, members of the management body of a CRD significant institution must comply with the limitation of directorships set out in Article 91(3) of the CRD. The overall assessment of time commitment is sometimes referred to as the qualitative assessment, while the more formal counting of directorships as envisaged by the CRD is referred to as the quantitative assessment. Both aspects should be taken into account when assessing the time commitment of members of the

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34 Article 91(2) CRD.

35 The position of a member of the management body of an entity.

36 A credit institution defined as CRD significant according to the national law, based on a combination of qualitative and quantitative criteria (e.g. amount of assets, calculated either on a solo or consolidated basis).

37 A different interpretation of what is considered a "directorship" and "CRD significant institution" across participating Member States leads to different outcomes in the fit and proper assessments conducted.

management body. The methodology for the counting of directorships, developed from the rules provided for in the CRD, is covered in Section 3.4.3.1.

The CRD also includes the possibility for competent authorities to authorise members of the management body to hold one additional non-executive directorship (see Section 4.1).

3.4.2 Information

When submitting a fit and proper application, the credit institution should provide all relevant and necessary details that enable the competent authorities to assess whether the appointee has sufficient time to commit to the mandate. A minimum set of information should be provided in the underlying documentation (e.g. FAP questionnaire), which includes:

- an assessment by the credit institution and by the appointee of the time commitment expected for the role involved;
- a full list of mandates or positions (executive and non-executive directorships and other (professional) activities) requiring time commitment of the appointee and the (expected) time commitment for each mandate or position, including the number of meetings per year dedicated to each mandate and whether or not the privileged counting rules apply;
- whether any of the mandates carry any additional responsibilities, such as membership of committees, chair functions;
- whether the nature, type and size of the entity will demand more time (e.g. the entity is regulated, listed etc.);
- the term of the mandate;
- confirmation that ongoing learning, development and time in periods of particularly increased activity have been provided for;
- synergies between directorships (e.g. where the appointee is a member of the management body in numerous subsidiaries).

In addition, further information may be necessary to support a detailed assessment, in the light of individual circumstances and based on a proportionate approach, e.g.:

- whether the experience of the appointee generally or with respect to the credit institution is such that the appointee could carry out their duties with greater familiarity and hence efficiency;
- a description of the (i) objectives and (ii) non-commercial or commercial activities of the organisation where mandates or positions in respect of that organisation are excluded from the counting because the organisation does not pursue

predominantly commercial objectives, unless this is clear from public information;[38]

- the statutes or other documentation of the organisation regarding its objectives and activities (e.g. the annual report if available).

3.4.3 Assessment approach

The underlying assumptions for any assessment of time commitment are the following.

- Members of the management body in its management function are expected to "effectively direct the business of the credit institution". Generally, a member performing such function is expected to perform it full-time. Exceptions to this rule can be made, namely within groups if there are synergies between two or more positions. In such cases these synergies must be explained.[39]

- 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; to effectively oversee and monitor the management body's decision-making and to provide a counterbalance to the executive members. Therefore, members of the management body in its supervisory function should participate in meetings of the respective management body and its committees (if applicable) and allow sufficient time to prepare for and travel to such meetings. In addition, such members are expected to allocate sufficient time to keep up to date with relevant information and knowledge concerning the credit institution.

- Members of the management body in both the management and supervisory functions must have an understanding of the business of the credit institution. This includes understanding the risks and risk exposure of the business and the risk management strategy. Members are expected to have an appropriate understanding of areas of the business for which an individual member is collectively accountable with the other members of the management body. This requires understanding the institution's governance arrangements and structure which may require the member to commit time to undertake continuous learning and development.

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[38] Some participating Member States have established lists of non-commercial organisations (e.g. companies in the public interest, non-profit organisations, universities, chambers of commerce, culture, art and sport, associations, foundations, syndicates, churches). The ECB encourages the development of such lists. Whilst it is recognised that such non-commercial organisations are outside the counting rules (quantitative limits), nevertheless, presence on the management bodies of such organisations may have an impact on overall time commitment and need to be declared as part of the fit and proper application.

[39] In some participating Member States a director is called "executive" because they exercise executive functions within the group despite the fact that their role in the institution for which they are being assessed is in fact non-executive.

Members of the management body in both the management and supervisory functions should also be able to fulfil their duties in periods of particularly increased activity, such as a restructuring, relocation of the credit institution, an acquisition, merger, takeover or a crisis situation, or as a result of some major difficulty with one or more of its operations, taking into account that in such periods a greater time commitment than in normal periods may be required.

3.4.3.1 Quantitative assessment: multiple directorships

Limits on the number of directorships

Pursuant to Article 91(3) of the CRD, the number of "directorships" which may be held by a member of the management body in a CRD significant institution is limited to:

- one executive directorship with two non-executive directorships;
- four non-executive directorships.

However, directorships in organisations which do not pursue predominantly commercial objectives do not count for the above limits. Nevertheless, presence on the management body of such organisations may have an impact on the overall time commitment and need to be declared as part of the fit and proper application.

Certain multiple directorships count as a single directorship ("privileged counting"):[40]

- directorships held within the same group;
- directorships held within institutions which are members of the same institutional protection scheme;
- directorships held within entities in which the institution holds a qualifying holding.

The national laws transposing the CRD provide further guidance on how to interpret these concepts and how to apply the counting rules.

Application of privileged counting

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.[41]

The directorships held by a single appointee in each of the entities A to E in the example below will count as two directorships. (The directorships held by the

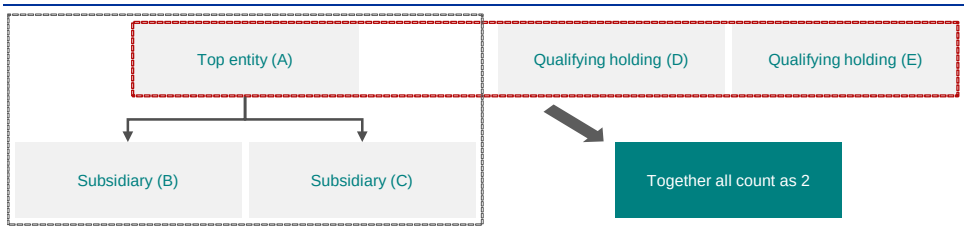
[40] Article 91(4) CRD.

[41] National legislation sometimes has a more restrictive approach, defining a group in a CRD context as being limited to the entities subject to prudential consolidated supervision.

appointee in entities A, B and C will count as one directorship. The directorships held by the appointee in entities D and E will also count as one directorship, because qualifying holdings within a group count as one).

Figure 2

Counting of multiple directorships



If the appointee does not hold a directorship in entity A, the privileged counting with regard to qualifying holdings still applies. For example, in Figure 3 below, the directorships held by an appointee in entities B, D and E will be counted as two. (The directorship held by the appointee in entity B, which belongs to the group, and the one directorship counted for the directorships held in the qualifying holdings of the same group (D and E) count together as two directorships.)

Figure 3

Counting of multiple directorships

If an appointee holds a mixture of executive and non-executive mandates within a group, the executive mandate should be counted over the non-executive mandate, and the appointee is deemed to hold an executive mandate.

All directorships in all entities should be counted whether they are remunerated or not.

As mentioned above, all directorships held within the same institutional protection scheme count as a single directorship. Where the application of this rule leads to a higher count of single directorships than the application of the rule of the counting of directorships within groups, the resulting lower number of single directorships should apply. (For example, where directorships are held within two groups, in both cases within undertakings that are and are not members of the same institutional protection scheme, only two single directorships should be counted.)

The CRD also provides that the competent authorities may authorise members of the management body to hold one additional non-executive directorship.[42]

Directorships in organisations which do not pursue predominantly commercial objectives

These mandates are not counted for the purposes of establishing the number of directorships held by a member of a management body (see the counting rules explained above). To determine whether an organisation[43] does not pursue predominantly commercial objectives, two elements have to be assessed: (1) the nature of the objectives (commercial or not); and (2) where it is concluded that the organisation does pursue commercial activities, whether these are "predominant".

Organisations which are presumed not to be pursuing predominantly commercial objectives for the purposes of Article 91(5) of the CRD are (i) non-profit sports or cultural associations; (ii) charities; (iii) churches; (iv) chambers of commerce/trade unions/professional associations; (v) organisations for the sole purpose of managing the private economic interests of members of the management body and that do not require any day-to-day management by the member of the management body; and (vi) organisations which are presumed to pursue predominantly non-commercial activities based on national regulatory provisions. Other organisations could still be considered not to be pursuing predominantly commercial objectives after assessment by the competent authority of the elements provided by credit institutions on the nature of the organisation and the predominance of the non-commercial activities.

3.4.3.2 Qualitative assessment: Two step assessment process

The ECB expects appointees to dedicate sufficient time to perform their functions in the supervised entity. However, what is "sufficient time" will vary depending on the size and activity of the supervised entity, the position of the appointee within the supervised entity and their knowledge and experience.

The assessment whether an appointee is able to commit sufficient time to their function involves two steps.

- **First step** – "Standard assessment" – based on the information provided, the ECB determines whether the declared time commitment is indeed sufficient or whether there are doubts, meaning that a detailed assessment is required.
- **Second step** – "Detailed assessment" – where doubts remain after the standard assessment, a detailed assessment is conducted and additional information might be requested.

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42 Article 91(6) CRD.

43 "Organisation" is a neutral term which does not specify a certain legal structure or definition under company law, tax law or other law. Therefore, the legal form of an organisation is not relevant in the context of Article 91(5) CRD.

The two-step approach is not a “box-ticking” exercise, but a case-by-case approach where all relevant factors are analysed and specificities considered. Provided indicators are indicative only and will not lead to an automatic negative decision.

First step – “Standard assessment”

The standard assessment of time commitment entails an assessment of the information provided under the FAP questionnaire with reference to the qualitative factors listed below.

If no concerns remain after consideration of these qualitative factors, the assessment is, in principle, concluded to be positive and no detailed assessment is necessary.

Conversely, if any concerns remain, a detailed assessment (outlined below) is carried out. The Report on declared time commitment of non-executive directors in the SSM[44] is also taken into account to assess whether a detailed assessment should be conducted.

The qualitative factors for determining the amount of time a member of the management body can dedicate to their function include:

1. **The appointee benefits from privileged counting or no-counting of directorships.**

2. **The indicated workload raises doubts for the following reasons.**

   (a) The indicated overall workload per year or per week is considered high.

   (b) The specified workload for the credit institution is below that indicated for comparable institutions, based on previous FAP assessments conducted by the ECB.[45]

   (c) A peer comparison[46] of the time commitment of different members of the management body of the same institution reveals inconsistencies, e.g. one appointee allocates significantly less time compared with others (fulfilling a similar role) without duly justified reasons.

   (d) A plausibility check reveals inconsistencies, such as the following.

      (i) The Chair allocates less time than ordinary non-executive members.

      (ii) The specified workload committed to the credit institution is considered extremely low.

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44 Report on declared time commitment of non-executive directors in the SSM, August 2019.

45 The specified workload may be checked against specific benchmarks available in the Report on declared time commitment of non-executive directors in the SSM.

46 See footnote 39.

(iii) Note: As a general rule, the number of days declared by an appointee should be calculated to consider the number of meetings of the management body to be attended, including preparation time and travel, and time to understand the business of the credit institution, including any annual training. Following the proportionality principle, a higher number of days should be necessary in institutions of greater complexity, nature and size (see qualitative factors). In the case an appointee (of a given credit institution) also holds a mandate in a parent entity or association which is dealing with the business of the institution, the institution should include in the declaration of time commitment the time spent in the parent entity or association where the business of the institution is being considered or, alternatively, a reference to the time allocated by the appointee. Where possible, such a reference should include the specific issues dealt with by the parent entity or association. The credit institution may be requested to provide this information if it is not submitted in the FAP questionnaire.

(iv) The workload is not consistent with that indicated in the same or previous FAP applications for the same appointee, e.g. workloads for the same or comparable entities deviate significantly.

(v) Any other relevant inconsistency.

3. **Other factors apply (based on information available to the NCA or the ECB), such as the following.**

(a) The attendance of meetings (if information is available) is low.

(b) Additional workload is imposed on the appointee, e.g. additional responsibilities such as committee memberships or directorships which benefit from counting exemptions (under Article 91(4) and (5) of the CRD).

(c) Other relevant information is provided by the JST.

Second step – "Detailed assessment"

If doubts remain after carrying out the standard assessment, the following factors may be taken into account (where relevant) in assessing the appointee's ability to commit sufficient time to the position.

A detailed assessment is always a case-by-case assessment and the list of factors to be taken into account below is non-exhaustive.

1. **Institution-related factors.** These factors concern characteristics of the supervised entity in which the appointment is made.

(a) Balance sheet size and complexity of operations

The necessary time commitment may be higher in the case of:

(i) large and/or complex institutions, particularly those that have the consolidating role at the group or sub-group level;

(ii) institutions having the character of a “bridge bank” or a “bad bank” where this is connected with implementation of complex resolution measures, such as the sale or write-down of non-performing loan portfolios.

The necessary time commitment may be lower in the case of:

(i) a credit institution with a small balance sheet size and a simple business model, such as a cooperative bank, or a small subsidiary or institution with low overall weight within a group;

(ii) a credit institution that is a specialised operator of a single line of business (such as leasing or factoring) within the group;

(iii) a credit institution where certain functions or operations (such as risk management, audit, IT) are carried out for the group.

(b) Specific “life-cycle” phase

The necessary time commitment may be higher in the case of a credit institution in a work-intensive phase of its business lifecycle, such as:

(i) primary establishment of banking operations, in the case of a new authorisation as an institution, or after the institution has converted into a supervised entity from, e.g. a payment institution;

(ii) far-reaching adjustments to the credit institution’s business model following, e.g. an acquisition in which the credit institution acted as an acquirer or was a target;

(iii) implementation of a recovery plan or a resolution plan, particularly where the imposed measures are linked to State aid and/or are contested through litigation;

(iv) other specific situations affecting the normal operations of the credit institution, e.g. the need to manage a pending reputational crisis or when early intervention measures are being applied by competent authorities.

The necessary time commitment may be lower in the case of a credit institution that for a period of several years has ceased to engage in “new” banking activities, i.e. that is operating in “run-off mode” until existing contracts are completed. However, if the run-off process involves State aid and/or material litigation, this may in turn increase the complexity of the member’s role and therefore their time commitment.

2. **Position-related factors.** These factors concern characteristics of the specific position within the credit institution for which the appointment is made.

The necessary time commitment may be **higher** in the case of positions generating specific duties, if already known at the time of assessment:

(a) positions that are executive (as opposed to non-executive) in character;

(b) positions including chairmanship roles (executive or non-executive); positions linked with the chairing of or participation in management body-level committees (e.g. nomination, remuneration, audit or risk committees); positions linked to exclusive oversight of specific independent areas (e.g. audit);

(c) positions linked to other specific mandates (e.g. positions with further responsibilities demanding permanent additional workload).

The necessary time commitment may be lower where the position benefits from specific synergies with parallel positions held by the appointee within the same group. This may be the case, in particular, where:

(a) the appointee performs the same role (e.g. non-executive member of the management body) in several subsidiaries that follow similar business models and/or are concentrated in the same geographical area ("horizontal" synergies);

(b) the appointee performs roles at several levels of a holding chain within the group where the scope of responsibilities performed by the appointee at the higher level (e.g. as the executive member of the management body of the higher-level entity) closely complements the responsibilities performed by the appointee at the lower level (e.g. as non-executive member of the management body of the lower-level entity) ("vertical" synergies);

(c) the appointee is a member of the management body in its supervisory function in the role of employee representative and holds a (full-time) position within the institution.

3. **Appointee-related factors.** These factors concern the qualifications, experience and circumstances of the appointee.

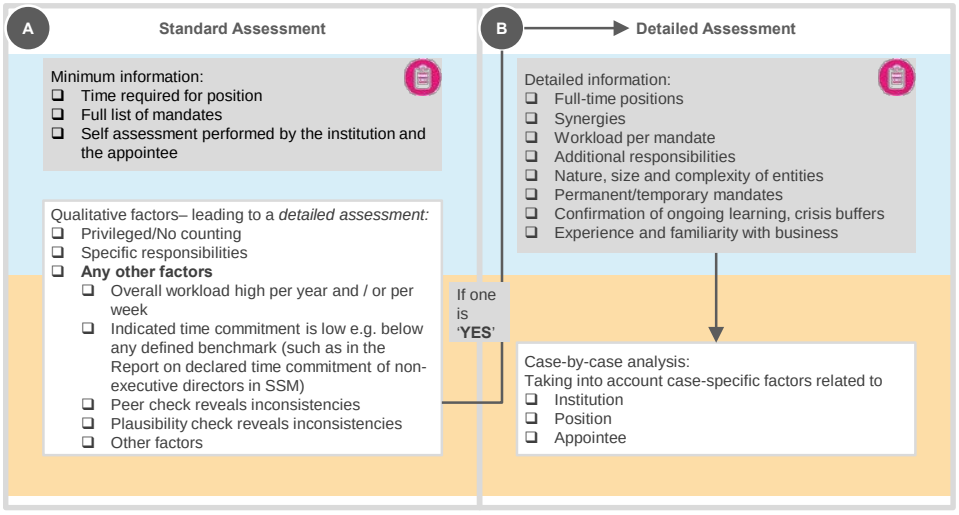
(a) The necessary time commitment may be **higher** in the case of an appointee for whom training needs have been identified owing to gaps in their theoretical knowledge and/or practical experience.

(b) If an appointee requires training for a period of time, this time should be deducted from the appointee's proposed time commitment particularly during the first year.

(c) The necessary time commitment may be lower where the appointee benefits from long-standing experience directly related to the position and/or familiarity with the business of the credit institution and/or of the group.

Figure 4

Time commitment assessment



3.5 Collective suitability of the management body

The management body as a whole must possess adequate collective knowledge, skills and experience to be able to understand the institution's activities, including the main risks.[47]

This section of the Guide sets out the steps taken to assess collective suitability in the context of fit and proper assessments. It is important to note that when putting an appointee forward for fit and proper assessment, the credit institution must also carry out an assessment of the collective suitability of the management body. This is in addition to the ongoing supervision by the JSTs of collective suitability.

The collective suitability requirement means that the credit institution is responsible for appointing a management body that is suitable and has the adequate collective knowledge, skills and experience necessary for the prudent and effective management of the institution. There should be a sufficient number of members with knowledge in each area to enable effective discussions and challenges to be made and robust decisions to be taken.

The members of the management body should collectively have the skills to present their views and to influence the decision-making process within the management body. This requires the credit institution to ensure both the individual suitability of the members of the management bodies and their collective suitability through the composition of the management body as a whole.

47 Article 91(7) CRD.

The relevant collective knowledge, skills and experience of the management body will depend on the key characteristics of the institution. When determining the composition of the management body as a whole, the credit institution should take into account its business model(s) and strategy, its risk appetite and actual risk profile, and the nature, scope and location of its business and activities.

In general, effective collective suitability will include an appropriate understanding of the following areas:

- the business of the credit institution and the main risks related to it;
- each of the material activities of the institution;
- the governance of the institution;
- the relevant areas of sectoral and financial competence, including financial and capital markets, solvency and models;
- managerial skills and experience;
- financial accounting and reporting;
- strategic planning;
- risk management, compliance and internal audit;
- information technology and security;
- climate-related and environmental risk;[48]
- local, regional and global markets where applicable;
- the legal and regulatory environment;
- the management of international and national groups and risks related to group structures where applicable.

These areas can be assessed by the credit institution using a suitability matrix[49] and also supported by ongoing supervision by the JST. The use of a suitability matrix as a self-assessment tool has been identified as a best practice by the EBA and ESMA in their joint Guidelines on suitability, and the ECB shares this view.

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[48] The management body is expected to consider the knowledge, skills and experience of its members in the area of climate-related and environmental risks in its assessment of the collective suitability of such members. Guide on climate-related and environmental risks: Supervisory expectations relating to risk management and disclosure, European Central Bank, November 2020.

[49] Annex I – Template for the assessment of collective suitability.

Climate-related and environmental risks and collective suitability of the management body

Climate-related and environmental risks are widely acknowledged as a source of significant financial risks. Several initiatives have been undertaken at the global, European and national level with the aim of contributing to the resilience of the financial system from a prudential supervisory perspective.[50] The management body of a credit institution is best placed to ensure that climate-related and environmental risks are taken into account when developing the institution's overall business strategy, business objectives and risk-management framework and to exercise effective oversight of climate-related and environmental risks.[51] In this specific field, collective knowledge, skills and experience of members of the management body is necessary for the achievement of a sound and effective management of the risks to which the institution is or may be exposed. An adequate understanding of climate-related and environmental risks by the management body in its supervisory function supports effective oversight.[52]

Diversity within the collective suitability of the management body

The ECB supports diversity, including the promotion of diversity within the management bodies of supervised entities.[53] Indeed the promotion of diversity within management bodies is anchored in the CRD. 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. The CRD considers gender balance to be of particular importance to ensure an adequate representation of

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50 From a prudential supervisory standpoint, see in particular the following regulatory developments and publications: Communication from the Commission, *Action Plan: Financing Sustainable Growth*, COM(2018) 97 final, March 2018; Regulation (EU) 2020/852 of the European Parliament and of the Council on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13); Regulation (EU) 2019/2089 of the European Parliament and of the Council amending Regulation (EU) 2016/1011 as regards EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks (OJ L 317, 9.12.2019, p. 17); Regulation (EU) 2019/2088 of the European Parliament and of the Council on sustainability-related disclosures in the financial services sector (OJ L 317, 9.12.2019, p. 1); *Guide for Supervisors: Integrating climate-related and environmental risks into prudential supervision*, Network for Greening the Financial System, May 2020; *Discussion paper on management and supervision of ESG risks for credit institutions and investment firms* (EBA/DP/2020/03), European Banking Authority, 30 October 2020; *Guide on climate-related and environmental risks: Supervisory expectations relating to risk management and disclosure*, European Central Bank, November 2020.

51 Expectation 3, *ECB Guide on climate-related and environmental risks: Supervisory expectations, relating to risk management and disclosure*, European Central Bank, November 2020.

52 Expectations 3.2, 3.3 and 3.4, *ECB Guide on climate-related and environmental risks: Supervisory expectations relating to risk management and disclosure*, European Central Bank, November 2020.

53 See, for example, the Opening Statement by Frank Elderson to the Economic and Monetary Affairs Committee of the European Parliament on 9 November 2020; Newsletter Article on 14 February 2018 on "Fit and proper for better governance"; Speech by Elisabeth McCaul on 3 December 2020 on "Bank boards and supervisory expectations".

population in banks' boards[54] and lays down requirements regarding the recruitment policy and the setting and achieving of a target for the underrepresented gender.[55]

Against this background the ECB assesses gender diversity as a component of collective suitability whenever national legislation allows. In Member States where national law requires institutions to make appointments in line with their internal policies or requires institutions to have a fixed percentage of members of the management body representing the underrepresented gender, the ECB makes a recommendation or imposes an obligation in the FAP decision to respect gender quotas in the current or upcoming appointments. It is important to note also that the FAP assessment on diversity is interlinked with day-to-day supervision: any identified failure to respect gender quotas is brought to the attention of the supervised entity in ongoing supervision. The ECB also makes reference in its FAP decisions to any relevant diversity findings in the governance assessments.[56] In order to further strengthen and streamline the assessment of diversity as a component of collective suitability, the ECB will further develop policies in this respect through its network with NCAs.

3.5.1 Information

In line with the joint ESMA and EBA Guidelines on suitability, when submitting a fit and proper application the following minimum set of information from the credit institution concerning the collective suitability of the management body is needed to conduct the assessment:

- a list of the names of the members of the management body, their respective roles, skills and main areas of expertise;
- a statement regarding the institution's overall assessment of the collective suitability of the management body as a whole, including a statement on how the appointee is situated in the overall suitability of the management body (i.e. following an assessment using the suitability matrix or another method chosen by the supervised entity or required by the relevant NCA). This should include the identification of any gaps or weaknesses, the measures adopted to address these and to what extent the appointee contributes to resolving all or some of these weaknesses.
- The information on the above is collected in the underlying documentation (e.g. FAP questionnaire).

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54 CRD recital 60 – the phenomenon of "groupthink".

55 An institution's recruitment policy should encourage it to select candidates from shortlists which include both genders. In addition, the nomination committee of "CRD significant" institutions should, among other things, evaluate the diversity of the management body, decide on a target for the representation of the underrepresented gender in the management body, and prepare a policy on how to increase the number of the underrepresented gender to meet the target. The target, policy and its implementation should be made public. See CRD, recital 60, Article 88(2) and Article 91(10).

56 For example, from outcomes of thematic reviews or from information collected during the Supervisory Review and Evaluation Process (SREP).

3.5.2 Assessment approach

The assessment of collective suitability takes into account the information provided in the underlying documentation (e.g. FAP questionnaire). Based on this information, the competent authority assesses the extent to which the appointee contributes to the collective suitability and to overcoming identified weaknesses. Furthermore, if applicable, compliance with national requirements on gender diversity is taken into account.

3.5.2.1 Practical examples

1. If an appointee is proposed to replace another director who is retiring and who had a particular knowledge that the credit institution really needs at the collective level of the management body because it has been identified as a critical area, for example in earlier self-assessments (e.g. knowledge of a particular highly specialised business area of the institution), the statement could explain how the appointee fills that gap.

2. Where the last self-assessment has identified some weaknesses in collective suitability, discussed and put into an action plan agreed between the JST and the institution; in such a case the statement could refer to how the appointment contributes to achieving the objectives of the action plan.

3. Where the credit institution has reoriented its activities (owing to mergers, divestitures or expansions) and the last self-assessment has anticipated the need for other types of knowledge and experience in the management body as a result of these new activities, the statement could identify which of these other types of knowledge and experience is covered by the appointee.

3.5.2.2 Remediation of gaps

The credit institution is primarily responsible for identifying gaps in the collective suitability through its assessment of the management body. As the supervision of collective suitability of the management body is a matter of ongoing governance supervision, the credit institution should report and discuss these with the JST. The JST might request 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.

3.6 Assessment of individual accountability of board members

Members of the management body of an institution (both in its management and supervisory functions) are expected to have an appropriate understanding of, and contribute to, areas of the business for which each member is collectively accountable

with the other members of the management body, even if an individual member is given sole responsibility for specific areas.

The above also requires an understanding of the institution's governance arrangements and structure, its business, risks and risk management strategy. For this purpose, members of the management body must be fully informed about all relevant matters so that they can actively contribute to, challenge and discuss management strategies and decisions on an ongoing basis.

The fact that a member of the management body does not hold a specific role or have sole responsibility for a given area does not exempt them from the need to have this understanding and hence to prepare for and intervene in board discussions and decisions in an informed and active way.

It follows that a member of the management body who has or had a position in the institution at the time when facts underlying certain findings (e.g. ML, fraud, or other findings arising from on-site inspections or legal proceedings) occurred may be responsible for those findings even if there is **no connection** between their individual roles and responsibilities in the management body and the given findings.

Without prejudice to any other specific circumstances that might be relevant in any given case, facts indicating that an appointee may be held **individually accountable** for not complying with their collective responsibility to properly address the issues which resulted in the findings could impact their suitability for the position.

The timing, relevance and severity of the given findings will be taken into account in the assessment of individual accountability.

The above approach is applied in conjunction with the fit and proper assessment criteria provided in Sections 3.1 – 3.3 of this Guide.

3.6.1 Scope

An assessment of individual accountability is carried out within the scope of a fit and proper assessment when the following cumulative criteria are met:

1. the appointee is[57] or was a member of the management body in one of the following entities at the time when the facts underlying the findings occurred (the "originating entity"):

   (a) a credit institution including all subsidiaries, European Economic Area branches and holding companies; or

   (b) a regulated financial sector entity, as defined in the CRR;[58] and

[57] The appointee the subject of the assessment may be applying for a new role in the same entity, e.g. an internal promotion or change of role.

[58] Article 4, point (27) CRR.

2. where the appointee is seeking appointment or reappointment for the position of Chair, CEO and/or executive member of the management body in one of the following entities (the “destination entity”):

   (a) a supervised entity at the highest level of consolidation of a significant supervised group;

   (b) a credit institution with the largest total value of assets in a significant supervised group, if this entity is different from that referred to in point (i) above;

   (c) a significant supervised entity that is not part of a significant supervised group; or

   (d) a supervised entity with total assets of EUR 30 billion or more.

3.6.2 Findings

Findings identified by a supervisor as recent, relevant and severe are taken into account when considering the individual accountability of an appointee. The findings may be supervisory, regulatory or judicial in nature and refer to legal or regulatory breaches or deficiencies in the institution’s activity.

Findings are understood as sufficiently established facts identified by a body or authority competent to supervise and ensure compliance with rules and regulations and/or to impose measures[59] in the event of breaches or deficiencies.

Findings of the following bodies or authorities are considered:

(a) a competent authority,[60] a competent judicial or prosecution authority;

(b) a tax, competition or data protection authority; or

(c) authorities supervising non-banking financial institutions.

The following non-exhaustive list of information with regard to the above-mentioned bodies and authorities may be considered:

(a) supervisory measures (warning, instruction, penalty payments, sanctions etc.);

(b) settlement agreements;[61]

(c) final court decisions even where an appeal is pending; and/or

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59 Defined according to the national provisions implementing Articles 64 to 67 and 102 to 104 CRD.

60 These include but are not limited to national AML/markets authorities, the ECB, other NCAs, third-country regulators (e.g. the US Securities and Exchange Commission (SEC), the UK Financial Conduct Authority (FCA), or the Swiss Financial Market Supervisory Authority (FINMA)).

61 Where possible in accordance with national legislation.

(d) on-site inspection reports and SREP[62] letters, if these result in supervisory measures being taken.

Recent and relevant findings

Findings are relevant where:

- they relate to a breach of laws and regulations (for example on banking, financial services, securities markets, insurance activities, AML/CTF, corruption, market manipulation, competition, data protection or insider dealing); and
- the breaches or deficiencies were brought to the attention of the management body.

The length of time elapsed since the findings is also taken into account.

Severe findings

For an assessment of individual accountability to be carried out within the scope of the fit and proper assessment, the findings must also be severe. Findings are deemed to be severe where they have had a significant impact on the entity, the market or on consumers.

The following non-exhaustive list of indicators should be considered, by way of example:

(a) there are structural root causes or systemic deficiencies as found by the competent court or authority;

(b) the infringement persisted for some time (i.e. it was not a one-off event);

(c) the findings reveal the existence of criminal activity, fraud, a failure in consumer confidence, or systemic financial risk;

(d) as a result of the findings, the institution was liquidated, required State aid, or was subject to resolution tools;

(e) the level of severity of the penalty or measure imposed as a result of the findings, under the national legal framework.

[62] Supervisory Review and Evaluation Process

Table 3

General summary of the assessment of recent, relevant and severe findings

Elements of findings	Indicator	Examples
Findings	Facts are identified by a body or authority competent to supervise and ensure compliance with rules and regulations and act upon deficiencies or breaches (e.g. impose sanctions, supervisory measures).	*A competent authority; a competent judicial or prosecution authority; tax, competition or data protection authority; and authorities supervising non-banking financial institutions.* *Supervisory measures (warning, instruction, penalty payments, sanctions etc.), settlement agreements, final court decisions even where an appeal is pending, and/or on-site inspection reports and SREP letters if these result in supervisory measures being taken.*
Recent	The length of time since the findings is taken into account.	*The more time that has elapsed since the findings, the less impact it should have in the assessment.*
Relevant	Findings related to breaches of laws and regulations.	*Breaches of banking, financial services, securities markets, insurance activities AML/CTF, corruption, market manipulation, competition, data protection or insider dealing laws and regulations.*
Severe	Findings that have had a significant impact on the entity, the market or on consumers.	*Structural root causes or systemic deficiencies.* *Revealed existence of criminal activity, fraud, failure in consumer confidence or systemic financial risk.* *Resulted in the institution being liquidated, requiring State aid or was subject to resolution tools.*

3.6.3 FAP criteria and detailed assessment

The information obtained in relation to the findings must be assessed to determine whether the appointee can be considered individually accountable for them. The outcome of that assessment may have an impact on the appointee's suitability for the position, based on one or more of the following fit and proper criteria.

1. **Reputation:**[63] where the appointee held or holds a position of influence and failed to challenge, oversee, or take steps to prevent the issues which resulted in the findings, despite the fact they did not have individual responsibility for the area(s) in question. The appointee's behaviour may have contributed to the issues, raising concerns that they did not act in a manner that is in line with high standards of conduct, honesty and integrity. This is aggravated when the findings have also had an impact on the reputation of the entity.

2. **Independence of mind:** an appointee's inaction with regard to the findings may indicate a pattern of behaviour of failing to engage actively in their duties, failing to assess and actively challenge proposed decisions or an inability to take sound, objective and independent decisions and display judgement when performing functions and tasks.[64] These raise concerns as to an appointee's ability to demonstrate courage, conviction and the ability to resist and question groupthink.

3. **Knowledge, experience and skills:**[65] an appointee's inaction with regard to the facts underlying the findings may raise doubts as to their possessing the knowledge, experience and skills for the position of Chair, CEO or executive

63 See Section 3.2 on reputation.

64 Joint ESMA and EBA Guidelines on suitability, Title III, paragraph 82.

65 Joint ESMA and EBA Guidelines on suitability, Title III, paragraphs 58-61.

member of the management body, regardless of what their direct past role or responsibilities were. These may include but are not limited to:

- knowledge of the entity's strategy, risk profile, governance arrangements and responsibilities, the structure of the group; and/or
- active promotion of the appropriate culture, corporate values and behaviour across all members of the management body.

A detailed assessment of all the relevant facts and circumstances surrounding the concept of individual accountability is conducted, inter alia by considering what the following were, at the relevant times:

(a) the level of awareness of the appointee (e.g. not aware, partially aware or fully aware);

(b) the nature of the roles and responsibilities of the appointee (e.g. first line, second line or third line of defence);

(c) the type of behaviour shown by the appointee (e.g. neglectful, passive or active);

(d) other aggravating or mitigating circumstances (e.g. governance structures, small size of the management body, low SREP governance scores, governance-related issues regarding the function of the management body).

3.6.4 Process

The approach to individual accountability may be applied in the following situations:

(a) where the findings refer to the same entity for which the appointee's fit and proper assessment or reassessment is being carried out;

(b) where the findings refer to an entity that is different from the one for which the appointee's fit and proper assessment or reassessment is being carried out.

The situations described in (a) and (b) above entail a slightly different approach in terms of process. The following case scenarios can arise:

(a) appointee A is being promoted, changing role or being reappointed (to a Chair, CEO or executive position) in the entity to which the findings refer;

(b) appointee B is being appointed (to a Chair, CEO or executive position) in a new entity, but the findings occurred in an entity where the appointee held a directorship in the past;

(c) appointee C already holds a Chair, CEO or executive position in a new entity and a reassessment is conducted based on severe findings that occurred in an entity where the appointee held a directorship in the past;

(d) appointee D holds a Chair, CEO or executive position in the same entity where the severe findings occurred, and a reassessment is conducted by ECB.

3.6.5 Collection of information and fit and proper interview

To assess whether the appointee can be held individually accountable for issues in the originating entity or destination entity, factual information is obtained from the originating entity, the destination entity the appointee, and/or the competent authority of the entity to which the facts underlying the findings refer.

Where individual accountability is assessed, a specific fit and proper interview is be conducted, unless there is a good reason not to (Section 6). The purpose of the interview is to gather information from the appointee on the underlying facts and ultimately, within the context of the fit and proper assessment, to take an informed decision on the appointee's suitability for the position.

In the case of reassessments, please refer to Section 5.2.

3.6.6 Outcome of the assessment

The detailed assessment of individual accountability will result in one of the following outcomes:

- a positive decision with no ancillary provisions, where suitability can be confirmed despite the concerns;
- a positive decision with ancillary provisions, or a positive decision outlining supervisory expectations with regard to the supervised entity; and/or supervisory expectations as to future behaviour of the appointee; or
- a negative outcome, where suitability cannot be confirmed owing to the severity of the individual accountability and the lack of sufficient mitigating factors.

These possible outcomes do not preclude the competent authorities from closely monitoring the appointee's suitability and taking further measures as part of the ongoing governance supervision of the supervised entity.

4 Fit and proper-related authorisations

4.1 Additional non-executive directorship

Competent authorities may authorise members of the management body to hold one additional non-executive directorship, in accordance with Article 91(6) of the CRD. The ECB must inform the EBA regularly of such authorisations.

The onus is on the institution to demonstrate that the additional mandate is justified on the grounds of sufficient time commitment. However, holding such an additional directorship should be the exception rather than the rule, and each application for authorisation will be considered on a case-by-case basis. Such grounds for the justification of the additional mandate therefore have to be substantiated by the applicant.

The minimum set of information required from the institution and the factors that are taken into consideration in the assessment are set out below.[66]

4.1.1 Information

The minimum set of information to be provided is as follows:

(a) a full list of directorships, other positions and special duties requiring a time commitment;

(b) the number of days dedicated to each directorship, other positions and special duties and an overview of the main tasks;

(c) self-declaration by the appointee and confirmed by the institution that they have sufficient time to dedicate to the additional mandate;

(d) grounds to justify the additional mandate (exceptional circumstances).

Assessment approach

The factors that are taken into consideration in the assessment are as follows:

(a) whether the person holds a full-time occupation or an executive mandate;

(b) whether the person holds any additional responsibilities, such as membership of committees (e.g. the person is Chair of the audit, risk, remuneration or nomination committee in an institution);

[66] These requirements are in line with the specifications for the application of Article 91 (6) CRD as set out in the ECB Guide on options and discretions available in Union law, consolidated version, November 2016.

(c) whether the entity is regulated or listed, the nature of its business activities or cross-border business activities, internal group structures and whether or not there are synergies;

(d) whether the person already benefits from the privileged counting of directorships;

(e) whether the mandate is temporary only, i.e. for less than the duration of one whole term;

(f) whether the person's experience of the management body or the entity is such that they could carry out their duties with greater familiarity and hence efficiency.

4.2 Combining the functions of Chair and CEO

Pursuant to Article 88(1)(e) of the CRD, the Chair of the management body in its supervisory function of a credit institution must not exercise simultaneously the functions of a chief executive officer (CEO) within the same institution, unless justified by the institution and authorised by the competent authorities.[67]

In order to ensure that the governance of the management body is not compromised in any way, the ECB considers that authorisation should be granted only for the period where the justifying circumstances continue to exist, as presented by the institution in the application. After a period of six months from the adoption of the ECB decision authorising the combination of the two functions, the credit institution should assess whether the justifying circumstances do in fact continue to exist and inform the ECB accordingly. The ECB may withdraw the authorisation where it determines that the outcome of the assessment regarding the continuing existence of the exceptional circumstances is not satisfactory. Where the Chair is permitted to assume executive duties, the institution should have measures in place to mitigate any adverse impact on the supervised entity's checks and balances.[68]

The institution should provide information on the grounds which justify combining the functions (e.g. exceptional circumstances, a temporary situation) and clarify how it proposes to ensure that the governance of the management body is not compromised in any way.

Authorisation is not granted if national law precludes the Chair from holding any executive function. When assessing the governance of the management body and the exceptional grounds for combining the functions, the factors described below are taken into account.

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67 National law implementing the CRD may go further and simply exclude the possibility to combine the Chair-CEO functions.

68 For example, by designating a member of the management body or a senior independent member of the management body as lead member, or by having a larger number of non-executive members within the management body in its supervisory function.

If exceptional circumstances are sufficiently demonstrated, but concerns remain about the governance of the management body, a condition may be imposed (in particular that the combination will only be allowed for a short period of time).

Assessment approach[69]

The ECB will assess the following factors:

- the specific reasons why the situation is exceptional; in this regard, the ECB would not consider the fact that the combination is allowed under national law to be sufficient;
- the impact on the checks and balances of the credit institution's framework of corporate governance and how such impact will be mitigated, taking into account:
    - the nature, scale, complexity and variety of activities; the particularities of the governance framework with regard to applicable company law or specificities in the corporate charter of the institution; and how these allow or prevent the separation of the management function from the supervisory function;
    - the existence and scale of cross-border activities;
    - the number, quality and nature of the shareholders: in general, a diversified shareholder base or the admission to listing on a regulated market may not support granting such authorisation, whereas the 100% control of the entity by a parent company which is fully compliant with the separation of functions between its Chair and its CEO, and closely monitors its subsidiary, may support granting such authorisation.

It is clearly the responsibility of the credit institution to demonstrate to the ECB that it will put in place effective measures consistent with relevant national law in order to mitigate any adverse impacts on the checks and balances of the credit institution's corporate governance framework.

4.3 Process to apply for authorisation to hold an additional non-executive directorship or to combine Chair and CEO functions

The SSMFR does not envisage a specific procedure for applications for authorisation for a member of the management body to hold one additional non-executive directorship (Section 4.1) or to hold simultaneously the functions of Chair and CEO

[69] These factors are in line with the specifications for the application of Article 88 CRD as approved by the Supervisory Board at its meeting on 16 July 2015 as part of the policy decisions on options and national discretions. ECB Guide on options and discretions available in Union law, consolidated version, November 2016.

(Section 4.2). Therefore, Article 95 of the SSMFR applies, and the following procedural aspects are taken into account for both kinds of application.

Application by the credit institution or by the appointee?

Neither Article 91(6) nor Article 88(1)(e) of the CRD specify who is to apply for these authorisations. Article 95(1) of the SSMFR expressly states that the applications are submitted by the credit institution. Depending on national law, the credit institution may submit the application on its own behalf or on behalf of the individual concerned.

When does the application have to be submitted?

The application for authorisation must be submitted ex ante, i.e. before the member of the management body takes on an additional non-executive directorship or the functions of Chair and CEO are combined.

Coordination with FAP applications submitted at the same time

When a request for authorisation for a member of the management body to hold one additional non-executive directorship or for the combination of the Chair-CEO function is submitted at the same time as an application for an initial (or renewal) suitability assessment (Article 93 of the SSMFR) or reassessment (Article 94 of the SSMFR), the assessments can be consolidated in the interests of simplicity and efficiency.

It is for the credit institution to provide the ECB and the NCA with all the information necessary to enable the ECB to reach a decision on all of these matters (i.e. FAP assessment, additional non-executive directorship procedure and Chair-CEO procedure).

5 Situations that trigger a fit and proper assessment other than new initial appointments

5.1 Changes of role, renewals and departures from office

The composition of a management body does not remain static. All dynamics in the management body are covered by the broad term “change” in Article 93 of the SSMFR. This term can refer to:

- a new initial appointment, i.e. a new member joins the management body in either its management function or its supervisory function (this will mean a FAP application and initial assessment);
- a change of role in the management body for an existing member;
- a renewal of the mandate of an existing member;
- a departure from office of a member meaning that they leave the management body, irrespective of the particular circumstances (removal, retirement, non-renewal, etc.).

This Section covers the last three types of change in a management body.

5.1.1 General rule

The manner in which a credit institution notifies the NCA of the change is determined in accordance with national law[70] (e.g. form of application, letter).

5.1.2 Changes of role

For the purposes of the application “change of role” means the following:

1. a non-executive member is proposed to be appointed as executive director, or vice versa;
2. a member is proposed to be appointed as Chair, Chair of one of the specialised committees in the management body, or CEO.

National law may provide that other changes in role require a new FAP assessment.

[70] The ECB is seeking to harmonise in due course the methods of notification in participating Member States.

The criteria that are the most concerned by a change in role are the individual knowledge, skills and experience of the member, but also time commitment, conflicts of interest[71] and collective suitability. Reputation will usually not be affected by a change of role.

5.1.3 Renewals

Where a FAP decision is required under national law, such decision is taken by the ECB. Unless national law requires a full in-depth reassessment of all five fit and proper criteria, the appointee will be considered suitable where no new facts have arisen since their last suitability assessment.

5.1.4 Departures from office

Departures from office also lead to changes in the management body. However, no decision is taken by the ECB in the case of departures from office, but the ECB may hold an exit interview with the individual concerned to better understand the circumstances in which they are leaving the management body to provide input for the ongoing supervision of the credit institution.

5.2 Reassessments[72]

Members of the management body and must at all times remain suitable for the role they are appointed for. The emergence of new facts (i.e. any facts not known by the competent authorities at the time of the initial assessment, including any other issues that may affect the initial assessment of suitability) may trigger a reassessment of the member of the management body[73] by the ECB. This, in severe cases, may lead to the removal of such member (Article 16(2)(m) of the SSM Regulation). Such new facts may emerge from different sources (see Section 5.2.1.1.).

Reassessments are a form of effective supervision, but they are usually an exceptional course of action for severe situations, requiring specific circumstances and separate procedural guarantees.

Suitability must be met on an ongoing basis. An individual's fitness and propriety can be reassessed at any time.

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71 Conflicts of interest may be an issue where the member holds other roles within the same group of which the supervised entity is part. For example, if an individual is proposed to become non-executive director in the parent undertaking, but they remain executive director at subsidiary level, this may be a new conflict of interest.

72 For the section 5.2. on Reassessments, please note that the entire part highlighted in green is new to the Guide, but was already included in the internal FAP Handbook. The parts highlighted in green are also new to the Handbook.

73 Where key function holders are assessed in the participating Member State and reassessment of a key function holder is is also required in accordance with national law.

Reassessments are distinguished from the application of administrative sanctions or measures, such as administrative pecuniary penalties or a temporary ban on exercising functions, against a member of the management body who, according to the conditions set out in national law, is responsible for breaches of prudential requirements (Article 65(2) of the CRD in conjunction with Article 67(2)(d) and (f) of the CRD). Unlike such administrative sanctions or measures, reassessments at the initiative of the competent authority involve a prudential assessment based on available evidence, and do not necessarily require an actual breach of prudential requirements.

5.3 Assessment approach

Figure 5

Assessment approach

When the ECB receives new information, it assesses (if necessary along with the NCA): (i) whether this information contains facts that are considered new; and (ii) whether these new facts have sufficient evidential value and could impact on the suitability of a member of the management body or key function holder, potentially leading to a reassessment (this is known as the **pre-screening phase**). If during the pre-screening phase the ECB concludes that new facts are relevant and may potentially impact on the suitability of a member of the management body or key function holder, it initiates the reassessment process (Step 1 and, if necessary, Step 2[74]). Otherwise Step 1 should not be initiated. Without prejudice to the above, findings or facts related to AML that may affect the suitability of members of the management body are always be subject to Step 1.

The reassessment process is always based on any new facts that may affect an initial assessment of suitability and hence could impact on the suitability of a manager (Article 94(2) of the SSMFR). During **Step 1** the ECB in cooperation with NCAs, conducts the prudential assessment of new facts, their materiality and how severely they impact on the suitability of an individual. If the ECB concludes that the new facts are material and may severely affect the initial assessment it may issue a new decision (**Step 2**).[75]

The reassessment process does not always include both steps, as it may end at any time. The reassessment process **may end with Step 1**, if the facts are not sufficiently

74 Step 2 will take place only if an ECB decision is required.

75 Step 2 is without prejudice to the methodologies used by NCAs within the reassessment procedures which fall within their competence and are based on their national law.

material; if the impact of the facts on suitability is not considered sufficiently severe; if the new facts cannot be linked to any of the members of the management body or key function holders; or if other measures serve to end the process (e.g. a resignation, or other measures taken by the ECB or the credit institution as a result of supervisory dialogue). Similarly, the reassessment process may also end with Step 2 but without a final ECB decision (e.g. if the member of the management body or key function holder resigns during Step 2).

5.3.1 Step 1 reassessment (prudential assessment of new facts, their materiality and severity of their impact)

Step 1 is a part of the overall reassessment process. It **always** involves a full **prudential assessment** of the new facts, their materiality and the severity of their impact by the ECB in cooperation with NCAs. Step 1 will always take place before Step 2.

Step 1 includes: 1) information gathering; 2) information analysis; and 3) conclusion on the materiality of the facts and severity of their impact and on how to proceed.

1. Information gathering

New facts are any facts that are not known by the competent authorities at the time of the initial assessment. New facts may emerge from the following sources (the list is not exhaustive).

(a) The supervised entity, members of its management body, key function holders.

(b) The competent authority: as part of ongoing supervision or through on-site inspections, the competent authority monitors the suitability of members of the management body. If the competent authority finds evidence of any changes (e.g. new supervisory measures imposed or sanctioning procedures initiated) that may affect the suitability of a member, this may lead to a reassessment by the competent authority.

(c) Other sources: information received from the public (e.g. press, whistle-blowers, public enquiries, other public bodies (e.g. NCAs, other market authorities), other ECB business areas and other credible and material reports (e.g. internal reports of the supervised entity, auditor reports, reports requested by the supervised entity or other third-party reports).

The supervised entity has an obligation to notify the NCA of any new facts that may affect an initial assessment of suitability of a member under one or more of the four fit

and proper criteria[76] or any other issue which could impact on the suitability of a manager without undue delay once they are known to the supervised entity or relevant manager (Article 94(1) of the SSMFR). In turn, the NCA must notify the ECB without undue delay of such new facts or issues.

The credit institutions are primarily responsible for the initial and ongoing assessment of the suitability of the members of the management body and key function holders.[77] Thus, the supervised entity should also conduct its own reassessment of the suitability of the members of the management body or key function holders who may potentially be affected by the new facts or issues. The supervised entity should on its own initiative, or on request of the competent authorities, submit its reassessment to the NCA or to the ECB.

The scope of the information

Information for the purpose of a reassessment may be considered **relevant** when it relates to facts with the following characteristics:

- new with sufficient evidential value;
- material and relevant from a fit and proper perspective;
- linked to a member of the management body who is subject to a fit and proper assessment;
- raise a doubt concerning the suitability of a member of the management body or key function holder.

Examples of relevant information include the following:

- information providing insights on the new facts, detailed description of the new facts, timeline of events (e.g. court decisions, on-site inspection findings, findings of prosecutors, decisions of supervisory or other public authorities, board minutes, audit reports etc.);
- information referring to the root causes, where the new facts relate to deficiencies in the supervised entity;
- information relating to the persons concerned and the positions held (e.g. positions held as members of the management body, key function holders, membership of relevant committees);
- information relating to the supervised entity's supervisory history (supervisory findings of the JST, e.g. deep dive assessments, SREP; supervisory findings of NCAs, e.g. previous fines, administrative measures; documents of the

[76] Collective suitability is not included given the impact on the management body as a whole and not on one individual.

[77] Without prejudice to the assessment carried out by competent authorities for supervisory purposes (Title II, paragraph 25 of the joint ESMA and EBA Guidelines on suitability).

supervised entity, e.g. self-assessments of management bodies, their committees, board minutes);

- information highlighting the link between the new facts and the roles and responsibilities of the member of the management body or key function holder concerned (documents specifying the reporting lines or describing roles and responsibilities, such as governance manuals, internal organigrams, company charters, letters of appointment or job descriptions, corporate governance codes, previous FAP applications, internal regulations, public governance reports);
- the supervised entity's own internal reassessment;
- interviews and hearings of members of the management body and key function holders, and other relevant persons if available.

2. Information analysis

The ECB considers: (1) the nature of the new fact; (2) if the new fact has sufficient evidential value; and (3) if the new fact is material or not. Whether a new fact is material enough depends on: (1) its seriousness taking into account all relevant aggravating and mitigating circumstances; and (2) the type of fact involved (a non-exhaustive list of examples is given in Table 4. Figure 6 provides guidance on the factors to be taken into account). Furthermore, the fact must affect an initial assessment of suitability of the member of the management body or key function holder under one or more of the four fit and proper criteria in Article 91 of the CRD (collective suitability is not included given the impact on the management body as a whole and not on one individual). This assessment is always based on supervisory judgement.

In conducting the prudential assessment of the new facts and their materiality, the ECB in cooperation with the NCA considers the following:

1. all relevant information pertaining to new facts, including an assessment of what has occurred;
2. which members of the management body or key function holders are affected by the new facts and which supervised entity/entities may be concerned (this involves a mapping of the relevant roles and responsibilities of the members of the management body or key function holders at the time the facts occurred);
3. the extent to which the suitability of any individuals is affected and which FAP criteria should be reassessed.

3. Conclusions of Step 1 reassessment

If the new facts are so material and the impact on the suitability of the member concerned is so severe, that an ECB decision is needed (either negative or positive addressing supervisory findings), **the ECB will proceed to Step 2**.

5.3.2 Step 2 reassessment (adoption of a final ECB decision)

Where the facts are material and their impact is severe and an ECB decision is required, then the ECB will proceed to Step 2. Initiating Step 2 does not automatically lead to a negative decision or removal of the individual. Step 2 may result in a negative decision, a positive decision with ancillary provisions, or a positive decision with any other supervisory expectations or warnings, as appropriate.

If not done during Step 1, the supervised entity is requested to provide the ECB with its internal suitability reassessment in Step 2, and an interview with the individuals concerned can be conducted.

5.3.3 Part 2: General guidance on whether or not a new fact may trigger a reassessment

It is not possible to list exhaustively all the new facts that may impact the initial assessment of the suitability of an individual. The prudential assessment of relevant indicators under Step 1 is always conducted on a case-by-case basis, in line with the sections of this Guide on each assessment criterion. However, the following elements may be considered as guidance.

The quality and conclusiveness of the source of information is essential when evaluating the materiality of new facts in a reassessment. Against this background, the potential relevance of the following sources depends on the respective level of conclusiveness:

- The press/media, complaints, information from whistle-blowers, external reports (e.g. from law firms, consultants) per se should not be considered to have enough evidential weight to trigger a reassessment.
- In the case of material findings, the following may be regarded as very likely to trigger a reassessment: (i) supervisory measures with material findings, for example if a direct connection with the individual concerned has been established (including in on-site inspections); (ii) criminal and administrative proceedings related to material facts (for which a direct responsibility can already be established), or where the facts are deemed to be sufficiently well established, even if an appeal is pending; and (iii) external reports with relevant findings having an impact on the suitability of the individual(s) concerned. With regard to AML, the outcome of on-site inspections and measures applied by AML or prudential competent authorities, or the existence of AML-related court or administrative authorities' decisions will always trigger a Step 1 reassessment.

- Final court and/or administrative decisions, where no appeal is pending, and settlements, including where related to AML issues as mentioned above, should trigger a reassessment.

The decision wheel in Figure 6 shows all the factors that are taken into account when assessing materiality or severity.

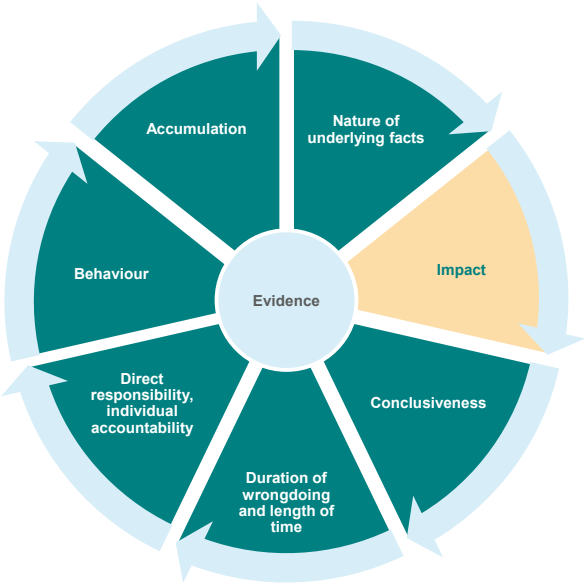
Materiality of new facts with regard to reputation and skills, knowledge and experience

The guidance described in the following sub-sections outlines how the materiality of new facts under Step 1 is assessed against the FAP assessment criteria.

Reputation

The reputation of an appointee may be affected by new facts. The factors that are generally considered in a case-by-case assessment are described in Section 3.2 on reputation and include mitigating circumstances.

Figure 6
Decision wheel



For ongoing criminal or administrative proceedings, the more advanced and final the stage, the greater the evidential weight and the more likely that a material fact may trigger a reassessment. However, also in cases of ongoing proceedings the ECB may consider already triggering a Step 1 reassessment. Ongoing criminal or administrative proceedings and enforcement of supervisory measures under the laws governing banking, financial services, securities markets, insurance activities, including,

e.g. laws on AML/CFT, corruption (in criminal proceedings), market manipulation, or insider dealing among others are likely to be material. Other criminal or administrative proceedings that are either not connected or less connected to the role and responsibilities of the individual(s) concerned do not in principle trigger a reassessment unless warranted owing to specific circumstances. Final court and/or administrative decisions and settlements, including relating to AML issues, bear maximum evidential value and so trigger a reassessment.

There may be instances of ongoing proceedings or investigations where an authority has sufficiently established relevant facts linked to the involvement of the individual(s) concerned, thereby potentially having an impact on their suitability, even if no court decision has yet been issued or an appeal is pending. Subject to those facts being material and available to the competent authority, a prudential reassessment of the suitability of the concerned individual(s) is undertaken at this stage.

Skills, knowledge and experience (including the ability to independently challenge)

In other instances, the nature of the new facts can be associated with poor performance, which in turn may bring the skills of the individual concerned into question including their ability to avoid groupthink and independently challenge proposed decisions of the management body.[78]

Regarding **skills, knowledge and experience**, performance-based findings may question an individual's ability to ensure the sound and prudent management of the supervised entity, and hence lead to a reassessment of this criterion. For a performance-related issue to affect the fulfilment of the criterion, it should be significant or recurring in such a way that affects the sound and prudent management of the supervised entity. The performance of a member of the management body or key function holder may also have an impact on the prevention of breaches, e.g. of prudential requirements, the supervised entity's internal rules, conditions or obligations previously imposed by the competent authority, or AML/CFT rules. Losses or consequences may be significant and are therefore relevant from a materiality perspective. A long duration of poor performance is an important materiality indicator. Similarly, the lack or insufficiency of follow-up to warnings or expectations from the competent authority, provided that any actions prescribed fell within the remit of the powers enjoyed by the individual concerned, is also an important materiality indicator. The level of cooperation between the individual concerned and the competent authority is also taken into consideration.

[78] Pursuant to the joint ESMA and EBA Guidelines on suitability, members of the management body in its supervisory function should be able to provide constructive challenge to the decisions and effective oversight of the management body in its management function, including the ability to resist groupthink (Title III, paragraphs 66 and 82).

Focus on AML

Given the key role of governance supervision in fighting AML, as stated also in the European Commission's 2020 AML Action Plan,[79] new facts related to AML that may affect the suitability of a member of the management body or key function holder will always be the subject of a Step 1 reassessment.

[79] Communication from the Commission on an Action plan for a comprehensive Union policy on preventing money laundering and terrorism financing, 7 May 2020.

Table 4

Non-exhaustive list of examples of new facts

New facts that may affect the suitability of a member of the management body/key function holder
Conclusion or commencement of any criminal proceedings or relevant civil or administrative proceedings (including convictions under appeal and bankruptcy, insolvency or similar proceedings)
Conclusion or commencement of disciplinary actions (including disqualification as a company director, discharge from a position of trust)
Refusal of registration, authorisation, membership or licence to carry out a trade, business or profession, or such termination, withdrawal or revocation
Conclusion or commencement of sanctioning proceedings by public authorities or professional bodies or pending investigations or past investigations or enforcement proceedings
Deliberations by the management body of the supervised entity regarding a member of the management body's (or key function holder's) reputation where there were any material conclusions
Performance-related issues that prompted a resignation from duties in entities other than the supervised entity
Findings that the individual concerned deliberately provided wrong information to the competent authority and/or acted with a lack of transparency
Findings that the individual concerned infringed the supervised entity's internal governance rules, such as its internal policy on conflicts of interest
Findings that the individual concerned did not intentionally follow up on material supervisory recommendations, namely within SREP, that could impact on the sound and prudent management of a supervised entity
Findings that the member of the management body acted in breach of their fiduciary duties of care and/or loyalty and not in keeping with the types of behaviour expected to ensure sound and prudent management of a supervised entity, in line with high standards of conduct
Material supervisory findings, as defined above and measures (e.g. outcome of inspection by the prudential or competent AML/CFT authority, measures applied by the prudential or competent AML/CFT authority)
External reports (e.g. from law firms or consultants) with relevant findings having an impact on the suitability of the individual concerned
Imposition of administrative measures or sanctions by the competent AML or prudential competent authority related to AML shortcomings
Initiation of criminal proceedings or criminal convictions based on AML or prudential authorities' material findings
Change of role or additional responsibilities that do not automatically require a new assessment
Findings (or multiple findings) that the individual concerned was unable to prevent severe breaches or failures relating to their areas of responsibility in the supervised entity
Findings (or multiple findings) that the individual concerned did not comply with an earlier condition, imposed in the context of the relevant suitability assessment, that can be linked to performance (e.g. probationary period)
Findings (or multiple findings) that the individual concerned takes decisions that negatively impact on the sound and prudent management of a supervised entity
New mandate or new function (internal or external) that has an impact on the ability of the individual concerned to commit sufficient time to the supervised entity
New mandate or new function that has an impact on time commitment, where the supervised entity was already requested to monitor and review time commitment as part of the initial approval
Significant internal reshuffling of the division of work between members of the management body
Occurrence of a crisis situation in a supervised entity
Repeated non-attendance at meetings of the management body caused by lack of availability
New mandate, function, interest or exposure of any description that may raise a potential material conflict of interest

6 Interviews

6.1 Purpose

Interviews are one of the ways in which information about the appointee can be collected to supplement the written information provided by the credit institution and the appointee and any information from any other source. They are an opportunity to probe an appointee's practical experience or to test whether an appointee is well informed about the credit institution and relevant market developments. Interviews can also be used to explore issues of integrity and propriety or to verify facts in order to gain more clarity about specific elements of an appointee's fitness and propriety.

An interview also provides an opportunity for representatives of the competent authority to meet the appointee and set out the expectations with regard to the interaction between the appointee, the credit institution and the authority.

6.2 ECB approach to interviews

The aim of interviews is to **complement and/or verify** (i) the documentation submitted by the appointee and/or credit institution or (ii) information that the competent authority has obtained by other means. Therefore, interviews are one of the tools used in the information gathering phase of the fit and proper assessment to determine the relevant facts.[80]

This Section sets out the scope of and approach to interviews as **a tool for the initial fit and proper assessment**. It does not cover the ongoing governance supervision regarding fit and proper requirements.

The ECB takes a proportionate and risk-based approach to the use of interviews in fit and proper assessments.

Interviews are **mandatory** for **new appointments** to the positions of CEO and Chair of the management body[81] at stand-alone banks[82] and top banks of groups[83]. If the top entity in a group is a holding company, mandatory interviews are required for such new appointments in the largest bank in the group. In the case of cooperatives, they

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80 In line with Article 9 SSM Regulation.

81 There is a variety of governance structures in Member States. In its Guidelines on internal governance the EBA recognises this and explains how to apply the Guidelines to different structures (see paragraph 32 and Title II, chapter B, 14. "Organisational functioning of the management body", which describes the role of the Chair of the management body). Therefore, the term "Chair of the management body" should be interpreted in such a way that the objective of the Guide is best achieved and that is the best fit with the specific governance structure of the institution.

82 A significant supervised entity that is not part of a significant supervised group.

83 A supervised entity at the highest level of consolidation in the participating Member State of a significant group.

are required for such new appointments in the central body or central body association.

In duly justified cases, the ECB may decide that an interview is not necessary, for example where an appointee to the position of CEO is already one of the current members of the management body or was recently interviewed.

In all other cases, interviews may also be used on **a discretionary basis** as a tool for fit and proper assessments (e.g. if there are specific concerns about an appointee's fitness, integrity or propriety).

An **informative interview** covers all elements of suitability including, but not limited to, the following:

(a) the duties and responsibilities of the appointee;

(b) the knowledge, skills and experience that the appointee brings to the post, taking into consideration academic qualifications as well as managerial and professional experience;

(c) the appointee's:

- views on the main risks and challenges faced by the credit institution and their proposed and current role in managing such issues;
- ability to interpret the credit institution's financial information, identify key issues based on this information and put in place appropriate controls and measures;
- ability to assess the effectiveness of the credit institution's arrangements to, inter alia, deliver effective governance, oversight and controls for the business and, if necessary, to oversee changes in these areas;
- knowledge of climate-related and environmental risks;[84]
- market knowledge (awareness and understanding of the wider environment in which the credit institution operates);
- awareness and understanding of the regulatory framework in which the credit institution operates;
- awareness and understanding of the NCA/ECB's expectations of the appointee;

[84] 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 (see also Section 3.5).

- concurrent responsibilities that potentially have an impact on the ability of the appointee to carry out their role in the management body.

If any concerns remain after this interview, **a second, specific interview** may be conducted that focuses on the facts giving rise to these concerns. Such facts may include:

(a) past or pending criminal or relevant administrative or civil proceedings (see Section 3.2);

(b) any evidence that the appointee has not been transparent, open and cooperative in their dealings with supervisory or regulatory authorities;

(c) refusal of any registration, authorisation, membership or licence to carry out a trade, business, or profession; or revocation, withdrawal or termination of such registration, authorisation, membership or licence; or expulsion by a regulatory or government body or by a professional body or association;

(d) any dismissal from employment or from any position of trust, fiduciary relationship, or similar situation, or having been asked to resign from employment in such a position;

(e) disqualification by a competent authority from acting as a person who directs the business of an institution; and

(f) previous disqualification from acting as a member of a management body.

The ECB may also decide to only conduct a specific interview, e.g. if it is already clear from the written documentation that there are specific concerns regarding the fitness and propriety of the appointee.

The ECB can require individuals to provide all information necessary to fulfil its tasks. It can conduct all necessary investigations concerning any individual and, to that end, the ECB has the right to obtain oral explanations from any person (Article 10(1)(e) of the SSM Regulation). If national law transposing the CRD provides the NCAs with specific powers to conduct interviews, the ECB can directly use those powers.[85]

6.3 Timing

The timing of a fit and proper assessment is subject to national law. The timing of the interview must be considered in the context of the time frame of the overall assessment, irrespective of whether it is for an ex ante approval of an appointment or for an ex post notification. In the case of an ex ante approval of an appointment, interviews must be conducted before the appointee is approved.

[85] Article 9 SSM Regulation.

For reviews on an ex post basis, the interview should be conducted within the time frame of the fit and proper assessment and, where possible, before the appointee takes up the position.

6.4 Procedural aspects

Interviews are conducted in a transparent, open and objective manner. As the information collected is intended to be used for the fit and proper decision, interviews are conducted in accordance with the principles of procedural fairness, ensuring compliance with the relevant national law.

Notification

The appointee and the credit institution are given adequate notice in writing of the date, time and place of the interview. Without prejudice to national law, the interview panel can decide to provide documents or other information to the appointee in advance.

An appointee may choose to bring a legal adviser to the interview. However, this is not standard practice and would not be expected to occur in the ordinary course of events.

Interview panel

The members of the interview panel, and in particular the Chair, are selected on the basis of an appropriate seniority and taking into account any potential or perceived conflict of interest.

Interview

Interviews must be conducted in an orderly and structured way and in a timely manner to guarantee the objectivity and quality of the assessment. The ECB agrees with the appointee on the language to be used in the interview. If the credit institution already communicates with the ECB in English, interviews are usually conducted in English. However, flexibility will be used whenever the situation warrants the use of a language other than English.

In the case of credit institutions that have not opted to communicate with the ECB in English, the appointee may agree to the interview being conducted in English. Otherwise, the ECB will agree with the appointee on the language to be used in the interview.

Where appropriate,[86] the interview might be recorded[87] or minutes might be drafted after the interview and then subsequently agreed and signed by the appointee.[88]

[86] In principle, a specific interview should be recorded and sent to the appointee for their agreement.

[87] Depending on national provisions, interviews could be recorded in writing, by audio-visual equipment or by a stenographer.

[88] Data protection rules must be complied with, including Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

7 Notifications, decisions and ancillary provisions

7.1 Notification of intended appointments

The joint ESMA and EBA Guidelines on suitability[89] point out the desirability of a higher level of harmonisation of the existing national frameworks in respect of the point in time when fit and proper assessments should be made. National legislation requires institutions either to notify the NCAs before the intended appointment or after the appointment of the respective board member. This harmonisation would ensure a higher level of consistency within the SSM, which would in turn contribute to strengthening the predictability of supervisory outcomes, thereby avoiding possible reputational risks for appointees and for credit institutions.

As a result of the existing fragmentation, in some participating Member States appointees can take up their position only after they have been authorised by the ECB, while in others they can take up their position prior to authorisation.

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.

Supervisory practice

[The following invitation is limited to the appointments (CEO and/or other executive members of the management body) and institutions listed below: Proportionality and scope.]

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:

- submit a fit and proper questionnaire and CV for the newly proposed member of the management body as soon as there is a clear intention[90] to appoint them;

[89] Joint ESMA and EBA Guidelines on suitability, Background and rationale, paragraph 49 and Title VIII, paragraph 174.

[90] This is the case, for example, if the relevant body or committee of the credit institution has made a decision to this effect, even if this decision is subject to the approval of other bodies or feedback from the competent authorities.

- indicate the date of their appointment and the date on which the duties will be effectively taken up;
- provide any other documents required under national law as soon as they are available.

This is already the practice among most of the large [credit] institutions in the participating Member States and allows the ECB to frontload its assessment and, where possible, notify its decision before or soon after the appointees effectively take up their duties. Notably, this supervisory practice is not intended to depart from applicable national law, rather it sets out a practical arrangement involving the institutions, the ECB and the NCAs.

Proportionality and scope

In the interests of proportionality, the above invitation is limited to the following:

- proposed new appointments of the CEO and/or other executive members of the management body; and
- the largest [credit] institutions in the participating Member States, namely:
  - a supervised entity at the highest level of consolidation of a significant supervised group; or
  - a credit institution with the largest total value of assets in a significant supervised group, if this entity is different from that referred to in point (i) above; or
  - a significant supervised entity that is not part of a significant supervised group.

7.2 Types of decision

An appointee is either considered fit and proper or is rejected. However, the ECB has the power to include recommendations, conditions and/or obligations in positive decisions in order to address certain concerns. If any concerns cannot be adequately addressed through these ancillary measures, a negative decision needs to be taken.

Time frame

A formal ECB decision is taken after every fit and proper assessment by the deadline provided for in national law, if applicable.

Without prejudice to any deadline set out in national law, the joint ESMA and EBA Guidelines on suitability provide that the time taken to adopt a decision should not

exceed four months from the date on which the application or notification is provided by the credit institution.

Hearings

If the ECB intends to adopt a decision with an adverse effect, i.e. to object to the requested authorisation, or a positive decision subject to certain ancillary provisions,[91] a right to be heard is granted to the parties concerned (the supervised entity and, where relevant, the appointee). In such cases, both the supervised entity and, where relevant, the appointee, are given a time limit of at least two weeks to make written submissions (or request an oral hearing) pursuant to Article 31(3) of the SSMFR.

As a rule, hearings are conducted in writing. The written submissions must be assessed by the ECB and may lead to changes in the final decision.

However, the right to be heard does not apply in cases in which the conditions or obligations have been agreed in advance with the parties concerned (the supervised entity and, where relevant, the appointee).

ECB decision and notification

Before the formal decision-making process, the ECB can discuss the fitness and propriety of appointees informally with the supervised entity at any time (without prejudice to the supervised entity's own obligation to assess individuals).

Unless adopted by means of delegation,[92] a decision is approved in draft form by the ECB's Supervisory Board and subsequently submitted to the Governing Council for adoption under the non-objection procedure.

The ECB decision-making process for supervisory matters is described in detail in the SSM Supervisory Manual.[93]

The ECB notifies the supervised entity of the final ECB decision.

In the case of an application for an additional non-executive directorship, the ECB also informs the EBA of EBA of its final decision[94].

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91 Such provisions comprise all conditions and obligations other than those related to monitoring and reporting.

92 In accordance with Decision (EU) 2017/935 of the European Central Bank of 16 November 2016 on delegation of the power to adopt fit and proper decisions and the assessment of fit and proper requirements (ECB/2016/42) (OJ L 141, 1.6.2017, p. 21).

93 SSM Supervisory Manual – European banking supervision: functioning of the SSM and supervisory approach, March 2018.

94 See Article 91(6) CRD.

7.3 Positive decision with a condition

Conditions enable positive fit and proper decisions to be taken which are subject to specific requirements imposed on the supervised entity and/or the appointee in order to satisfy the applicable fit and proper assessment criteria.

Under the principle of proportionality, the ECB must opt for the least intrusive decision with respect to fit and proper assessments. Compared with a negative decision, a conditional decision has less of a reputational and prejudicial impact on the supervised entity and/or appointee. In addition, in some situations the use of conditions may make it possible for the ECB to ensure the suitability of management bodies while at the same time allowing for a sufficiently diverse pool of appointees (e.g. by allowing new entrants into the banking sector), and thereby stimulating innovation and good decision-making in supervised entities.

7.3.1 Supervisory practice

7.3.1.1 The use of conditions

The ECB may issue a positive decision in a fit and proper (re-)assessment that is subject to conditions. A condition is a requirement imposed on the supervised entity (and which may also have direct implications for the appointee) without which a negative decision would be issued. The ECB only imposes a condition if this is necessary to ensure that the appointee satisfies the fit and proper assessment criteria. A decision can be subject to one or more conditions.

The ECB may only impose conditions **if all of the following circumstances are met.**

(a) The ECB could adopt a negative decision

The basis for the ECB to impose a condition on a fit and proper decision is that the appointee does not meet all the fit and proper requirements but any shortcoming for full compliance is considered as easily remediable. If the appointee fails to comply with the condition imposed, he/she would consequently no longer be deemed to be approved.

(b) The condition is well-defined and can be fulfilled within a well-defined time frame

The condition is set forth as a concrete and specific requirement with a clearly delimited time frame and, wherever possible, it is agreed with the parties concerned (the supervised entity and, where relevant, the appointee). The time frame for the condition should be relatively short and in cases in which the appointee has already assumed their function in the management body the time frame should **ideally not be longer than six months**. If a decision has several conditions, they may have different time frames.

(c) The content of the condition is based on the assessment criteria established in applicable national law

Pursuant to Article 4(1)(e) and Article 4(3) of the SSM Regulation and points (24) and (26) of Article 2, and Article 93 of the SSMFR the ECB has the power to take positive and negative decisions in fit and proper assessments, even if an explicit decision is not required under national law. A fortiori, the ECB has the power to impose conditions instead of rejecting the authorisation of an appointee and may impose conditions in situations in which the appointee does not meet one or more of the criteria set out in Article 91 of the CRD and as implemented in national law.

7.3.1.2 Types of condition

A condition can be imposed as a condition precedent or subsequent relative to the point in time at which the ECB decision takes effect. In the case of conditions subsequent, non-compliance with the requirement(s) imposed (by the condition) on the supervised entity and/or appointee, leads to the approved and notified ECB decision ceasing to produce legal effects. Conditions subsequent do not prevent the appointee from taking up the position and therefore do not have an impact on the internal corporate procedures.

In the case of conditions precedent, non-compliance with the requirement(s) imposed on the supervised entity and/or appointee by the condition suspends the effects of the notified ECB decision until the condition is met. This means that the appointee cannot take up the position in the supervised entity until the condition is met.

If a decision is adopted subject to a condition, the supervised entity must report to the ECB in a timely manner on the fulfilment of the condition. The modalities of this reporting are specified in the ECB decision.

7.3.1.3 Addressees of a condition

In principle a condition is addressed to the supervised entity since the supervised entity is the applicant under the supervisory procedure. It may however have an impact on the appointee concerned who needs to take action or refrain from certain action.

7.3.1.4 Execution of conditions

Conditions must be sufficiently clear as regards what is expected from the supervised entity and/or appointee (see above) and they are therefore “self-executing”. In this context, “self-executing” means that the condition is drafted in such a way that its occurrence can be easily monitored and verified by reference to the requirements set

forth in the ECB decision, and can therefore be established without the need for a further decision.

7.3.1.5 Failure to comply with a condition

Failure to comply with a condition means that the ECB approval either never becomes effective or it ceases to be effective.

If the appointee is already acting as a member of the management body and refuses to step down, the ECB can use supervisory powers to remove the individual concerned from the management body. [95] Such a step requires a new, specific ECB decision.

7.4 Positive decision with an obligation

An ECB decision can also include an obligation to provide specific types of information for the purposes of the ongoing fit and proper assessment or an obligation to take specific action relating to fitness and propriety. Unlike a condition, non-compliance with an obligation will not automatically affect the fitness and propriety of the appointee.

Examples of obligations include the following:

- reporting on pending legal proceedings;
- monitoring of the time that the appointee commits to the supervised entity;
- improvements required in written policies on conflicts of interest;
- improvements required in terms of collective suitability.

7.5 Positive decision with recommendations or expectations

Where all the fit and proper requirements have been met, but an issue has been identified and needs to be addressed, the ECB may include recommendations or set out expectations within the fit and proper decision itself. The use of such non-binding instruments also aims to encourage best practice in the supervised entities and point to desirable improvements.

[95] This is based on the power laid down in the SSM Regulation Article 16(2)(m) “to remove at any time members from the management body of credit institutions who do not fulfil the requirements set out in the acts referred to in the first sub-paragraph of Article 4(3)” or similar powers under national law.

7.6 Other types of power

Reassessments and removals

The power to reassess the fitness and propriety of an individual at any moment in time is provided in Article 94 of the SSMFR. The ECB can include in its decision specific foreseeable grounds that could lead to a reassessment. Additionally, under Article 16(2)(m) of the SSM Regulation, the ECB has the power to remove at any time members from the management body of a credit institution who do not fulfil the requirements set out in the acts referred to in the first sub-paragraph of Article 4(3) of the SSM Regulation.

For more details, please refer to Section 5.2.

Useful links

CRD[96] – sets forth the criteria for fit and proper assessments.

SSM Regulation[97] – Competence of the ECB to conduct assessments.

SSM Framework Regulation[98] – provides more detailed requirements with regard to fit and proper assessments.

Joint ESMA and EBA Guidelines on suitability – provide guidance for interpreting fit and proper provisions under the CRD and common criteria for assessing the individual and collective knowledge, skills and experience of members of the management body as well as the good repute, honesty and integrity and independence of mind of members of the management body (including key function holders).

Annex I – Template for the assessment of collective suitability – suitability matrix as a self-assessment tool (identified as a best practice by the EBA and ESMA in their joint Guidelines on suitability has been and the ECB shares this view).

EBA Guidelines on internal governance – the guidelines complement the various governance provisions in the CRD, taking into account the principle of proportionality, by specifying the tasks, responsibilities and organisation of the management body, the organisation of institutions and groups, including the need to create transparent structures that allow for the supervision of all their activities and specifies requirements for the three lines of defence and, in particular, the risk management, compliance and audit functions.

Report on declared time commitment of non-executive directors in the SSM, August 2019 – a report on the results of a benchmarking exercise conducted by the ECB on the declared time commitment of non-executive directors in euro area countries.

Guide on climate-related and environmental risks: Supervisory expectations relating to risk management and disclosure, European Central Bank, November 2020 – sets forth supervisory expectations regarding the role of the management body and governance framework with respect to climate-related and environmental risks.

ECB Guide on options and discretions available in Union law, consolidated version, November 2016 – sets out the ECB's policy on specific provisions related to governance arrangements, namely on combining the functions of Chair and CEO and holding one additional non-executive directorship.

SSM Supervisory Manual – European banking supervision: functioning of the SSM and supervisory approach, March 2018 – describes the organisational set-up of the

96 See Articles 3, 74, 88, 91 and 121, and recitals 55 – 60 of the CRD.

97 See Article 4(1)(e), Article 6(4), Articles 9, 10 and 11 and Article 16(2)(m) of the SSM Regulation.

98 See Articles 28, 29, 93, 94 and 95 of the SSM Framework Regulation.

Single Supervisory Mechanism (SSM) and defines the methodologies, processes and procedures for banking supervision in the euro area.

Basel Corporate governance principles for banks – the Basel Committee's guidance draws on principles of corporate governance published by the Organisation for Economic Co-operation and Development (OECD).

Link to the new ECB FAP questionnaire

Link to the IMAS portal – the IMAS portal allows banks supervised by the ECB to submit information related to supervisory processes, track their status and exchange information with supervisors. Significant banks can use the IMAS Portal to submit their applications for fit and proper assessment, track the status of these assessments and exchange related information with supervisors.

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