



EUROPEAN CENTRAL BANK

BANKING SUPERVISION

## Feedback statement

Response to the public consultation  
on the *Guide to assessments of  
licence applications* and the *Guide to  
assessments of fintech credit  
institution licence applications*

BANKENTOEZICHT

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# 1 Overview and analysis of responses

On 21 September 2017 the European Central Bank (ECB) launched a public consultation on two draft guides on assessments of credit institution licence applications and on assessments of fintech credit institution licence applications.<sup>1</sup> The public consultation concluded on 2 November 2017. In addition to soliciting written comments, the ECB also gave industry participants and other interested parties the opportunity to provide additional input at a public hearing with senior ECB representatives. This was held at the ECB premises in Frankfurt am Main on 28 October 2017. The ECB has given due consideration to all of the comments received during the consultation period and thanks all participants for their contributions.

This feedback statement presents an overall assessment of the comments received during the public consultation and aims to address the most relevant issues raised in them. Amendments to both guides have been made in response to these comments.

In total, the ECB received 16 responses. Contributions were submitted by three credit institutions, and several market and banking associations from both euro area and non-euro area Member States. Table 1 provides a breakdown of the responses to the consultation by category of respondent.

**Table 1**  
Responses to the public consultation<sup>2</sup>

Breakdown of responses by category of respondent

Category	Number of respondents	Percentage
Credit institution	2	12%
Market and banking associations	14	88%

The final versions of the guides, incorporating the comments received during the consultation, will be published on 23 March 2018.

<sup>1</sup> See [Guide to assessments of licence applications](#) and [Guide to assessments of fintech credit institution licence applications](#).

<sup>2</sup> The comments provided during the public hearing are not reflected in the figures in Table 1. They have, however, been taken into account in the final text.

## 2 Explanation of the guides and policy rationale

For some time the ECB and national competent authorities (NCAs) have been working closely together on joint practices and policies, building on the experience of the first three years of banking supervision at the European level. This cooperation ensures that all applications for bank licences are treated in a consistent manner across the entire euro area right from the very beginning of the process of interaction with each applicant. As a result of this joint work, two guides have been published with the aim of ensuring consistency in the implementation of the licensing assessment criteria in order to achieve common supervisory practices and increase transparency. The ECB conducted a public consultation on the two draft guides in September 2017, laying out the criteria used in the assessment of credit institution licence applications and fintech credit institution licence applications respectively. These licence applications, as set out in the guides, concern credit institutions as defined in Article 4(1)(1) of the Capital Requirements Regulation (CRR).<sup>3</sup>

Licensing promotes a level playing field throughout the EU and reduces the risk of entities circumventing banking regulation and supervision. With its two guides, the ECB aims, without being exhaustive, to enhance transparency regarding the assessment criteria and processes for the establishment of a credit institution within the Single Supervisory Mechanism (SSM) for all market participants and to ensure that fintech banks are held to the same standards as other banks. While the ECB aims to create the necessary scope for credit institutions to contribute positively to the financial market sector, it seeks to achieve this in harmony with its mandate of ensuring the safety and soundness of the European banking system. The two guides and this feedback statement are driven by these principles.

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<sup>3</sup> 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, p. 1).

## 3 Comments on the general licensing guide

The majority of respondents expressed their support for the goal of achieving high levels of transparency in the credit institution licensing process and for raising greater awareness of the procedure followed and criteria applied by the ECB in its assessment of licence applications.

The publication for consultation of the draft general licensing guide gave rise to a number of comments. In addition, some of the comments primarily addressing the content of the fintech guide also related indirectly to the general licensing guide. These latter comments are reflected in sections 4 and 5 of this feedback statement.

### 3.1 Scope of the ECB's authorisation competence

Two respondents submitted comments related to the scope of the ECB's competence to authorise credit institutions.

*One respondent suggested excluding the permission to issue covered bonds from the ECB's authorisation powers and instead leaving this within the remit of the NCAs.*

The ECB is currently in the process of considering arguments pro and con as to whether the permission to issue covered bonds falls within its tasks under Articles 4(1)(a) and 14 of the SSM Regulation, taking into account that (i) the ECB has exclusive competence to grant authorisations to take up the business of a credit institution, (ii) the competence to grant authorisations covers all activities that credit institutions are allowed to perform and (iii) the issuance of covered bonds falls under this authorisation requirement since it qualifies as "taking other repayable funds from the public", which is one of the criteria for classifying an entity as a credit institution. Since the ECB's competence includes the exclusive competence to grant authorisations to credit institutions, it covers significant and less significant credit institutions (part of the common procedures). As the ECB would apply the requirements of national law as they are, a common procedure would ensure that prudential assessments of the risks inherent to the issuance of covered bonds were made in a consistent manner. However, given that this issue is intertwined with the EU legal framework for covered bonds, a final decision by the Supervisory Board on the allocation of the relevant competences is still pending. Thus, an additional explanatory footnote on this issue has been added in the general licensing guide.

*One respondent referred to the statement in the guide that, given the exclusive competence of the ECB to grant licences within the SSM, licences should not be transferred to new entities, even if this is provided for in national law.*

The ECB's policies and supervisory practices are without prejudice to national law provisions, as stated in the introductory paragraphs of the guides. Therefore, although it is the ECB's policy that a licence should not be transferred without (renewed) authorisation of the institution to which the licensed activities are transferred, the statement in the draft guide was clarified.

## 3.2 Other issues

*A question was raised as to who should initially be contacted by the applicant, the NCA or the ECB.*

Full coordination and sharing of information takes place between the NCA and the ECB, even in the pre-application phase. However, the formal point of entry for the application remains the NCA. In this respect, no further adjustment to the guide is needed.

## 4 General comments on the fintech guide

The responses to the consultation demonstrate that there is broad cross-country and cross-sectoral support for ECB initiatives in this area. A majority of respondents supported the goal of achieving maximum transparency in the credit institution licence application process and for raising greater awareness of the procedure followed and criteria applied by the ECB in its assessment of licence applications. There was also strong support for the ECB's aim of harmonisation by upholding the same supervisory standards for all credit institutions and ensuring a technology-neutral approach to licence application assessments.

### 4.1 Scope and definition of fintech

*There were some comments concerning the connection between the two guides. Three respondents called for the link between them to be strengthened. The main argument put forward against having two guides was that it ran counter to the stated aim of creating a level playing field for all market participants. These same respondents pointed out that there were only a small number of specific considerations in the fintech guide that were solely applicable to fintech institutions and favoured the merging of the guides.*

The ECB takes the view that there is a need for two guides. There has been a steady increase in the number of applications and related questions from fintech banks. In response, in close cooperation with the NCAs, supervisors have agreed on a common approach to the licensing of such banks. Whereas the general licensing guide reflects general policies agreed upon by the Supervisory Board, the fintech guide includes specific considerations relevant to the supervisory assessment of banks with fintech business models. Furthermore, the guide is not only aimed at new fintech banks, but is also aimed at new specialised subsidiaries of existing credit institutions (both significant and less significant institutions). In view of the increasing number of licence applications originating from this sector, this will enable the ECB and the NCAs to ensure that risks specific to fintech banks are considered appropriately and proportionately.

Having a separate guide for fintech credit institutions serves to highlight the fact that fintech institutions, by virtue of the nature of their business models, raise particular issues of potential concern which demand the attention of supervisors and may need to be addressed so as to ensure the soundness of the banking system. However, it should be noted that fintech applications are assessed against the same criteria as those of any other bank and that no new or dedicated fintech licence requirements exist or are meant to be introduced by the guide. Thus, the fintech guide should be read in conjunction with, and viewed as complementary to, the general guide on the licensing of credit institutions.

To further emphasise this point, an addition has been made to the foreword to clarify that the intention of the fintech guide is not to raise barriers to entry into the market but to draw attention to specific areas of supervisory concern.

*In terms of the definition, five respondents asked for clarification of the ECB definition of a fintech bank. Specifically, it was felt that the wording in Section 1 could lead to the conclusion that any licensed institution applying financial technology in its day-to-day operations could be required to re-apply for a licence. In addition, the same respondents felt that it was not clear whether or not fintech solutions for certain banking functions would also require the provider to apply for a banking licence.*

The ECB, as the banking supervisor, is mandated to supervise credit institutions as defined in the CRR. As such, only entities whose activities encompass those of such an institution will require banking authorisation. The ECB acknowledges that all banks use technology (both in-house and in partnership with third parties) that could be classified as financial technology (fintech). However, it is not necessary for established institutions to obtain another licence for these activities. The application of fintech in the day-to-day operations of authorised institutions falls under the scope of ongoing on-site supervision. However, if a bank should choose to establish a subsidiary (be it a fintech bank or a traditional bank), the subsidiary would need to apply for a banking licence. Section 1.2 has since been altered to provide clarity on this point.

*One respondent proposed amending the foreword so that it states that all market participants are held to the same standards.*

The ECB as banking supervisor is responsible for the safety and soundness of the European banking sector. This being the case, the focus of these guides is on credit institutions and on ensuring a level playing field between more traditional institutions and fintech banks.



## 5 Comments related to specific aspects of the guides

While there was broad support for the ECB guides and in particular the aim of creating greater transparency for market participants with regard to the licence assessment process, a number of respondents nevertheless voiced concerns about some of the more specific points. These comments and the ECB's responses are outlined below.

### 5.1 The suitability of the management body and shareholders

*One respondent had reservations concerning the suggestion that fintech banks should consider appointing a Chief Technology Officer (CTO) to the management board. Specifically, it was argued that any board member would also need to have sufficient experience in all other areas in which the credit institution was involved. It was felt that this would present an unnecessarily high barrier for fintech banks, given that such a requirement could conceivably be required of any institution which applies technology in its day-to-day operations. A reference was made in this regard to the ECB's Guide to fit and proper assessments.<sup>4</sup>*

Given the nature of the business model of fintech banks, the ECB understands this as implying that members of a fintech bank's management body should have relevant technical knowledge and practical experience enabling them to understand the risks of the business model and to fulfil their functions. An indicator that such a requirement has been met would be that a fintech bank has appointed a CTO as a member of the executive board. The ECB Guide to fit and proper assessments stresses the principle of proportionality with regard to function-specific and minimum requirements. The level of experience required of a board member depends on the main characteristics of the specific function and of the institution. As such, while the CTO of a fintech bank should be expected to have a certain degree of knowledge of the bank's core functions, this can nevertheless be balanced by the academic and professional backgrounds of the other members of the management body. In this regard, the fintech guide and the Guide to fit and proper assessments guide are compatible.

*Three respondents objected to the aspect that shareholders should have management and technical competence in the area of financial activities, including financial services.*

The draft guide gave the impression that all shareholders should have management and technical competence in the area of financial activities, including financial services. The text in section 3 on the suitability of shareholders has therefore since

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<sup>4</sup> [ECB Guide to fit and proper assessments](#), May 2017.

been altered so as to clarify that only those shareholders with a qualifying holding should be expected to meet these requirements. Where there are no qualified holdings, the 20 largest shareholders or members will be assessed on their level of technical competence in these areas. This is in line with CRD IV.

## 6 Structural organisation

Respondents to the draft guides alluded to a number of issues concerning structural organisation, with a particular focus on credit risk and outsourcing.

### 6.1 On credit risk approval and governance

*Three respondents indicated the need to clarify that Section 4.1 on credit risk approval, as part of the review of governance, does not pertain exclusively to fintech credit institutions. It was argued that there is no clear connection between the use of technology and a specific requirement for the credit scoring model.*

While the ECB accepts that the need to have a clear established process for loan approvals does not pertain exclusively to fintech credit institutions, it nevertheless believes that particular supervisory attention to the function is warranted where fintech credit institutions are concerned. This is particularly relevant given the importance of innovative models and technologies in credit scoring among fintech credit institutions and their impact on the institution's risk profile.

### 6.2 IT risk, outsourcing and data governance

*Three respondents had reservations concerning the ECB's suggestion that fintech banks could be more susceptible to cyber attacks. They pointed out that fintech banks were likely to have more modern IT systems than more traditional institutions and in many cases these would be better understood by the IT teams of the institution.*

While IT and cyber security is important for all banks, from a risk perspective it is especially important for fintech banks, given that a substantial portion of their core business is based on technology-enabled innovation. The particular attention paid by supervisors to IT-related risks in fintech banks is warranted, and this extra focus is also in line with SSM supervisory priorities.

*Five respondents did not feel that it was proportionate to target only fintech banks with regard to the use of outsourcing and cloud services, particularly as this ran counter to the Basel Committee on Banking Supervision's assertion that such services were now being explored by a number of financial services providers.*

This particular point has been taken on board. It should be clear that all banks must meet regulatory requirements concerning outsourcing and the use of cloud services.

## 6.3 On the exit plan

*Two respondents did not agree with the recommendation that fintech credit institutions prepare an exit plan. It was pointed out that such a plan could not be connected to the type of technology used and that fintech banks were not so systemically important that placing such a high barrier to entry was warranted. Furthermore, one respondent alluded to the fact that fintech banks, like any other bank, should be required to submit a plan if required to do so under the Bank Recovery and Resolution Directive.*

The ECB notes that fintech banks typically operate with innovative and untested business models which have yet to be proven to be sustainable in the long term. Due to particular challenges that may arise in the running of their business, the preparation of an exit plan is intended to ensure the soundness and robustness of the whole system.

## 6.4 On capital and liquidity

*One respondent indicated that Section 6 of the draft guide was not sufficiently detailed on the assessment criteria regarding capital and liquidity requirements, which are fundamental issues for credit institutions.*

The ECB agrees that the applicable capital and liquidity requirements are key aspects for credit institutions and would like to clarify that guidance regarding capital and liquidity requirements for any newly licensed bank will be added to the Guide to assessments of licence applications at a later stage as part of a separate public consultation. More specific guidance can be established at that stage.