Template for comments

Consultation on the draft ECB guide to fit and proper assessments

Please enter all your feedback in this list.

When entering your feedback, please make sure:
- that each comment only deals with a single issue;
- to indicate the relevant article/chapter/paragraph, where appropriate;
- to indicate whether your comment is a proposed amendment, clarification or deletion.

Deadline:	20 January 2017	

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Chapter	Paragraph	Page	Type of comment	Detailed comment	Concise statement why your comment should be taken on board	Name of commenter	Personal dat
1		1	Amendment	De Brauw: we suggest to add a new chapter or a Q&A Annex to the guide, which answers common practical questions. For example: (i) are appointees allowed to join a meeting of the management board in order to prepare themselves for the interview and their future tasks? (ii) are appointees allowed to record the interview? (iii) how is it possible to speed up the process of the assessment? (iv) a list with examples of questions asked by the ECB during the interview. (v) a list with examples of notifications with respect to the assessment of good reputation, honesty and integrity.	De Brauw: the amendment would give the appointees and the credit institutions more insight in the practical process of the fit and proper assessment. We experience that such practical information is regularly asked for by appointees. Therefore, a Q&A, would improve the document as a practical guide as proposed by the ECB.	van Loopik, Mariken	Publish
3 - Principles	Principle 5	8	Amendment	De Brauw: we suggest to add to Principle 5 "Principles of due process and fairness" that the ECB takes a constructive attitude towards the application process, the credit institution and particularly the appointee. We refer to practice in the UK and to a similar recommendation of the Committee Ottow to improve the Dutch fit and proper assessment in its report 'External evaluation assessment process AFM and DNB by the Committee Ottow', page 109,110. In addition, notion can be made that the fit and proper assessment is a sensitive and delicate process, e.g. with respect to reassessments or negative decisions. Furthermore, the confidentiality of the process should be underlined.	constructive approach and that the ECB acknowledges that the fit and proper assessment can be a sensitive and delicate process.	van Loopik, Mariken	Publish
5 - Assess crit	5.1	11	Amendment	De Brauw: in our view the two-stage approach focuses too much on the experience of the candidate within the banking or financial services sector. This does not encourage the diversity of the management body. We suggest to explicitly mention that it is possible for persons outside the banking sector or financial sector to apply for a position in the management body of a credit institution if this person adds specific relevant experience to the rest of the management body. We refer to the public hearing in which the ECB indicated that the experience requirement will not be applied in a mechanic way and that the ECB would also allow persons from outside the banking or financial services sector to have a position in the management body.		van Loopik, Mariken	Publish
5 - Assess crit	5.3	14, 15	Clarification	De Brauw: we suggest to clarify that only a material conflict of interest can exist if such conflict would also exist under national law (in particular corporate law).	De Brauw: this clarification would help to better understand the ECBs approach with conflicts of interests.	van Loopik, Mariken	Publish
5 - Assess crit	5.2	13	Clarification	De Brauw: we suggest to clarify when the appointee or the supervised entity needs to notify the existence of legal proceedings. In particular, we would appreciate a clarification whether the ECB expects to be provided with information about legal proceedings against an entity where the appointee was employed. For example: if the appointee was a manager of department X of a bank, and that bank faces legal proceedings which only affect the department Y of the bank and the appointee had no involvement in it; does the appointee need to notify this? In other words: will it be sufficient to only notify the legal proceedings of which the appointee is reasonably aware and which directly affected his performance? Other question: legal proceedings which are not yet public may be very sensitive business information and/or price sensitive information.	De Brauw: practical clarifications on the notifications about legal proceedings will help the appointee and the supervised entity to collect and to provide the necessary information to the ECB.	van Loopik, Mariken	Publish
5 - Assess crit	5.4	17	Clarification	De Brauw: please clarify that companies that are set up for the sole purpose of managing the private economic interests of the candidate, provided that they do not require day-to-day management by the appointee, are considered to be entities which do not pursue predominantly commercial objectives within the meaning of article 91 (3) CRD IV. See also page 31 of the Consultation Paper, 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. As we assume that the ECB will follow these guidelines, our suggestion is only necessary if the ESMA and EBA Guidelines would change on this point.	De Brauw: the clarification in the Joint ESMA and EBA Guidelines is important in practice. As these guidelines are not formal yet, we emphasise that this interpretation is important in practice and should be maintained. As we assume that the ECB will follow these guidelines, our suggestion is only necessary if the ESMA and EBA Guidelines would change on this point.	van Loopik, Mariken	Publish
6 - Interviews	6.3	21	Amendment	De Brauw: for a good preperation of the interview by the appointee, the notification about the interview should be sent timely and should also specify the length of the interview and the names and the titles of the persons within the interview panel. This should be added to paragraph 6.3.	De Brauw: our suggestions will give the appointee the opportunity to prepare himself better for the interview.	van Loopik, Mariken	Publish
7 - Assess proc	7.1	23	Clarification	De Brauw: the ECB states: "A proportionate approach is applied to most of the smaller entities falling under the direct supervision of the ECB []. In these cases a simpler procedure and simplified template is used. However, the assessment of whether all the fit and proper criteria are fulfulled remains the same." We suggest two clarifications: (1) A clarification would be helpful to understand what this simpler procedure and simplified template entails. In the Netherlands and likely also in other member states, there are no specific templates or forms for smaller entities. (2) We would appreciate if the ECB could clarify what "smaller entities" are. For example, in member states with relatively small economies the largests banks of the member state will be under supervision of the ECB, but it is possible that the ECB will view these banks as small compared to other banks under its supervision. Does the ECB take the balance sheet into account (and if so, what is considered to be small?) and/or the position of the bank within a member state?		van Loopik, Mariken	Publish
7 - Assess proc	7.2 and 3 (principle 6)	24 and 8	Amendment	De Brauw: if new facts may become known, the ECB and NCA may decide on a case-by-case basis to prompt a reassessment. It is important to have a clear distinction between ongoing supervision, fit and proper assessment investigation of the new facts and enforcement. Therefore, the persons who decide about the question whether there is a good reason for a reassessment cannot be the same persons who decide about the outcome of the reassessment itself. This should also be made clear in Principle 6 of Chapter 3 "Interaction with ongoing supervision". We refer to the Committee Ottow which has published this recommendation for the Dutch practice of the fit and proper assessment 'External evaluation assessment process AFM and DNB by the Committee Ottow', page 84, and 107.	De Brauw: this procedural amendment is important for a good distinction between ongoing supervision, fit and proper assessment, investigation and enforcement. A clarification of the reassessment procedure in the ECB's guide may take away doubts that the reassessment is in the hands of the daily ongoing supervisory teams of the credit institution and that it can be used as an unfair means of pressure.	van Loopik, Mariken	Publish
7 - Assess proc		22	Amendment	De Brauw: in the UK and the Netherlands, an external advisor is or will be added to the team of the supervisors who are responsible for the suitabilty assessments. This advisor is someone with good reputation in the financial services sector and does not work for the ECB. The advisor may act as a sounding board for the supervisors,	De Brauw: adding an external advisor to the ECBs team may improve the assessment procedure. It underlines the independent nature of the test.	van Loopik, Mariken	Publish