



Public consultation

on the draft ECB guide to fit and proper assessments

Questions and answers

1 What is the purpose of the guide?

The guide aims to provide transparency on the policies, practices and procedure of ECB Banking Supervision regarding fit and proper assessments carried out in the framework of the Single Supervisory Mechanism (SSM). The guide informs the supervised entities, potential candidates to certain managerial positions at significant banks, and the wider public about the fit and proper assessment criteria and procedure. It incorporates the ECB's policy stances on fit and proper assessments and aims to support the supervised entities, which are primarily responsible for appointing suitable board members and may contribute to speeding up the assessment process. All this contributes to harmonising the assessment approach and ensuring a level playing field within the SSM. Managerial positions may include those overseeing the key control functions of a bank (for example, the chief risk officer and chief compliance officer) depending on national regimes.

2 What are the criteria for a fit and proper assessment?

Fit and proper assessments for newly appointed directors are conducted at the request of the institution in accordance with the respective national law. These assessments are carried out by applying the five fit and proper criteria included in the Capital Requirements Directive (CRD IV): i) reputation, ii) experience, iii) conflict of interest and independence of mind, iv) time commitment, and v) collective suitability of the management body.

3 How does the draft ECB guide relate to the EBA guidelines on this issue and their current consultation?

ECB Banking Supervision contributes to the work of the European Banking Authority (EBA), which has the responsibility at the regulatory level to provide for a more harmonised interpretation of the CRD IV requirements by publishing guidelines. ECB Banking Supervision seeks to harmonise the implementation of the EU requirements. In particular, it has the task of ensuring that the single rulebook for financial services is applied in the same manner to all the institutions participating in the SSM.

The guide does not replace the EBA guidelines. The ECB and National Competent Authorities (NCAs) within the SSM comply with the EBA guidelines. Changes in the EBA guidelines may lead to changes in ECB Banking Supervision's policies, practices and procedures.

For information on the currently ongoing EBA consultation, please see the [EBA website](#).

4 What is the procedure for the consultation of the draft ECB guide?

The consultation period will end on Friday 20 January 2017. The ECB will then take all comments received into consideration and will adapt the guide where necessary. The ECB will also consider any changes the EBA may make following the consultation of its guidelines. The ECB is likely to publish the final Guide to fit and proper assessments and an explanation of how it has addressed issues arising from the consultation in the second quarter of 2017.

5 Are the rules spelled out in the guide legally binding?

The draft guide aims to harmonise the implementation of assessment criteria applicable to fit and proper assessments. Such harmonised implementation aims to achieve common supervisory practices. In addition, institutions are expected to take the guide into consideration in their assessments of the suitability of their board members. The guide itself is not, however, a legally binding document.

6 Will it be applicable only to banks directly supervised by the ECB or also to other banks?

The ECB only takes fit and proper decisions in respect of directors of the banks it directly supervises. For banking groups, the ECB supervises the board members of both the top entity of the group and the board members of all subsidiaries within the group.

Fit and proper decisions for the less significant banks are still taken by the national supervisors, except in the context of the authorisation of new bank licenses.

7 Will you systematically start to question previous fit and proper assessments now or is there a grandfathering arrangement?

The ECB does not systematically re-assess all sitting directors. The ECB has the power to 1) assess new appointments; 2) assess re-appointments or changes in position if national law requires this; and 3) conduct re-assessments whenever an issue is identified in the course of ongoing supervision that has an impact on the suitability of board members.

In the case of either re-appointments or appointments to another position, an assessment will be conducted if required by national law. In some countries a new assessment must be conducted when either the term of the board member is extended, or if a member of the board becomes the chair of the board. In the latter case, the ECB assesses whether the board member complies with the higher requirements set out for a chair.

Notwithstanding the above, if during its supervisory activities the ECB comes across fit and proper issues regarding the members of management bodies already in office, those issues can trigger fit and proper re-assessments whenever they affect the fitness and proper standing of such members. In both cases, (re-)assessments are always carried out according to the existing due and fair process requirements, on a case-by-case basis and in accordance with the applicable legal and regulatory criteria.

8 Why are the rules different across euro area countries?

SSM fit and proper supervision is based on European law (CRD IV, SSM Regulation and SSM Framework Regulation). Since the fit and proper requirements stem from a Directive (CRD IV), the ECB has to apply the national laws of the 19 euro area countries that transpose the Directive requirements into national law. Where the Directive leaves room for Member States to determine how the European law will be implemented, national differences may exist. So some differences in fit and proper supervision would only be overcome by regulatory changes. The EBA also confirmed the existence of these differences in its Peer Review Report on suitability in 2015. The same principles, set out in five essential criteria, apply to all candidates. A different interpretation of the criteria may also lead to national differences. The SSM fosters homogeneity in the implementation of these EU requirements.

In particular, the SSM has already led to a more harmonised interpretation of assessment criteria (e.g. the level of experience required and situations which create material conflicts of interest); to more aligned procedures (e.g. a single methodology and harmonised notification templates); and to the agreed use of certain supervisory tools (e.g. interviews).

9 For which positions do you require fit and proper assessments – just board members or the heads of the key control functions in a bank (heads of compliance, risk and internal audit)?

Institutions have different governance structures. The board may include people overseeing key control functions (chief risk officer and chief compliance officer, for example). In that case, newly appointed heads of control functions will be subject to a suitability assessment as members of the board. If that is not the case, the guide will also apply to key function holders to the extent possible under the national law.

10 **Do you allow CEOs to become chairpersons directly after they have left their role as CEO?**

Such a change of role is often regulated by either the national law or by a corporate governance code or both. These often require that there be a cooling off period before the candidate takes up the role of chairman or chairwoman.

Becoming the chair of the same institution directly after resigning as chief executive officer (CEO) is an issue of ongoing governance supervision. It may therefore have an impact on the fit and proper assessment, especially the criterion of independence of mind.

11 **Do you allow the CEO to perform the chairperson role at the same time?**

The ECB considers that there should be a clear separation of the executive and non-executive functions in credit institutions and that the separation of the functions of chairperson and CEO should be the rule. Sound principles of corporate governance require that both functions be exercised in line with their responsibilities and accountability requirements. In line with the corporate governance principles for banks issued by the Basel Committee on Banking Supervision (July 2015) and the European Banking Authority's guidelines on Internal Governance (GL 44), the combination in one person of the positions of chair and chief executive officer (CEO) may be authorised by the ECB in exceptional cases and only where corrective measures are in place to ensure that the responsibilities and accountability obligations of both functions are not compromised by their being combined.

12 **Have you ever refused a candidate proposed by a bank?**

No fit and proper decisions are made public. The ECB does not expect there to be a high number of refusals as banks have the primary responsibility of selecting board members who comply with all the fit and proper criteria. Banks are already aware of that obligation and the guide to fit and proper assessments will support them by providing transparency on ECB Banking Supervision policies, practices and procedure regarding fit and proper assessments.

In addition, the ECB's decisions resulting from fit and proper assessments are not always simply positive or negative. Sometimes the ECB imposes requirements on the candidate and the bank to address specific concerns; for example, the candidate may be required to do specific training or to relinquish a function outside the bank owing to a conflict of interest or time commitment issue, or the institution may be requested to keep the ECB informed on a pending legal proceeding.

In addition, fit and proper assessments are based on due and fair process. If the ECB has concerns regarding the fulfilment of the legal criteria by a candidate, they will be shared with the bank and the candidate. Banks may decide to reconsider the application if it becomes clear that the concerns cannot be fully addressed.