



EUROPEAN CENTRAL BANK
BANKING SUPERVISION

Template for comments

ECB Guide to fit and proper assessments and fit and proper Questionnaire

Institution/Company

Banking and Payments Federation of Ireland

Contact person

Mr/Ms

First name

Surname

Email address

Telephone number

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General comments



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Timeframes. We expected the Guide to provide more clarification in respect of the timeframes for each step within the process. Currently the timeframes from initial application to interview and interview to final decision vary widely and can take 3 months or more (per section 7.2 it should not exceed 4 months). This makes it difficult to have a position filled within 6 months as the candidate in many cases will not resign from their current position until a positive decision is received. They may then have a significant notice period or cooling off period to complete prior to starting in the position. It would be beneficial to both candidates and institutions to have a shorter application timeframe so as to manage candidate expectations as well as the hiring process and interim role holder arrangements. In cases where a specific interview is required a longer timeframe (up to 4 months) is more understandable but a shorter process for applications which require one interview would be appreciated.

Interim role-holders. The Guide does not address the process to be followed in relation to interim role holders i.e. candidates who are proposed to step into the role until a suitable permanent candidate has been identified and approved. Due to the length of the fitness and probity process in many cases an interim role must be filled for 6 months or more. Clarification regarding the process to be followed and whether a full application is required for interim role holders would be beneficial. We would argue that subjecting the interim role holder to the full application process is generally unwarranted, and would be unnecessarily time consuming. We propose that an offline agreement between the institution and JST / NCA should be sufficient to agree a suitable candidate to take up an interim position until a permanent candidate is selected and an application is submitted.

Timing. The authorities give themselves up to four months to opine on the suitability of a candidate. This is counterproductive, in that such an extended period makes it more difficult for the bank to recruit suitable candidates (they may elect to take a competing offer from a non-financial firm or they may have family commitments [e.g. schools for children, employment for spouse, etc.] that clash with such an extended period of uncertainty.

Qualifications. There appears to be a bias (particularly in the case of the Central Bank of Ireland) in favour of persons "who have done the job before". Although this may make sense for an individual position, it should not be a requirement.

Disclosure to the candidate. The questionnaire could be significantly improved via the inclusion of a position-specific (e.g. INED) cover memo that details the ECB expectations regarding that position (e.g. in the case of Independent Non-Executive Directors - INEDs disclosure of time commitment by director and personal accountability of director).

Accountability. For INEDs the questionnaire should state explicitly the degree to which the candidate will be held personally responsible for violations that the entity may commit. Again, the candidate should affirm separately.

Template for comments

ECB Guide to fit and proper assessments

Please enter all your feedback in this list.

When entering feedback, please make sure that:

- each comment deals with a single issue only;
- you indicate the relevant chapter/subsection/paragraph/page, where appropriate;
- you indicate under "Type of comment" whether your comment is a proposed amendment, clarification or deletion.

Deadline: Midnight of 2 August 2021

ID	Chapter	Section	Paragraph	Page	Type of comment	Detailed comment	Concise statement as to why your comment should be taken on board	Name of commenter	Personal data
3	3. Assessment criteria	3.1.3 Assessment approach	3	9	Clarification	Where it is stated "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." Please elaborate what is meant by an indication to the contrary and provide examples.	More detail required to ensure the candidate selected meets the ECB criteria.		Publish
8	3.2 Reputation	3.2.1 Information			Clarification	<ul style="list-style-type: none"> • There are restrictions in some countries such as France in relation to the use of criminal records however where it is deemed necessary for the role the branch can ask to check a copy of the criminal record during an interview however copies cannot be retained on file or uploaded to the ECB. It should also be noted that in French law a candidate cannot be discriminated against on the basis of a criminal record unless the offence specifically impacts the role e.g. theft or fraud. • In Ireland an employee can complete a self-attestation however criminal records/vetting are only available by law to very specific industries not including banking and it is an offence under the Irish Data Protection Act 2018 to ask an employee to make an access request for data to provide it to an employer which would include their criminal records. The Central Bank of Ireland F&P guidance currently allows for an attestation only. Under current Irish law it would be problematic to provide this data other than by self-attestation. • Credit checks on employees are not permitted in France. • In Italy in the banking sector, article 38 of the collective agreement of 2015 only authorizes the employer to ask the applicants for their criminal record not older than 3 months and a record of ongoing criminal procedures. 			

11	5 Situations that trigger a fit and proper assessment other than new initial appointments	5.3.3 Part 2: General guidance on whether or not a new fact may trigger a reassessment	Table 4	62	Amendment	Please amend the example of new fact which states "Findings that the individual concerned infringed the supervised entity's internal governance rules, such as its internal policy on conflicts of interest" to state 'materially' infringed. Breaches of internal policy may be considered minor breaches e.g. missed mandatory training	Amendment requested to simplify process.		Publish
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Template for comments

Fit and proper Questionnaire

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ID	Section	Question	Page	Type of comment	Detailed comment	Concise statement as to why your comment should be taken on board	Name of commenter	Personal data
8	5. Conflicts of interest	IMPORTANT: throughout Section 5 "you" means "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.	19	Amendment	Propose to amend "...or a manager" to "or held a pre-approved control function". Alternatively please elaborate regarding what is a 'manager' as the meaning is very subjective.	Amendment requested to simplify process and reduce confusion for candidates.		Publish