

Regulatory News Alert

ECB Draft guide to fit and proper assessments

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Introduction

The European Central Bank (ECB) launched on 12 November a public consultation on a draft guide to fit and proper assessments. The objective of this draft guide is to explain in greater detail the policies, practices and processes applied by the ECB when assessing the suitability of members of the management bodies of significant credit institutions.

This draft guide covers all institutions under the direct supervision of the ECB (Significant Institutions), whether credit institutions or (mixed) financial holding companies, and in the case of licensing or qualifying holdings, Less Significant Institutions. This draft 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.

Article 4(1)(e) of the Council Regulation (EU) No 1024/2013 of 15 October 2013 (hereafter SSM Regulation) makes clear that fit and proper assessments should be seen as part of the ECB's supervision of the overall governance of credit institutions. The SSM Framework Regulation elaborates on the fit and proper field of competence in Articles 93 and 94 of Regulation (EU) No 468/2014 (SSM Framework regulation).

The ECB takes decisions regarding the suitability of the members of the management bodies of significant credit institutions after every fit and proper assessment. Appointments are declared by the credit institutions to the relevant National Competent Authority, the CSSF in Luxembourg, using where available national forms for notification. The CSSF then informs the ECB. Together they collect the necessary information, carry out the assessment and present a detailed proposal to the Supervisory Board and Governing Council of the ECB for a decision.

The supervised entities have the primary responsibility of selecting and nominating individuals for the management body who comply with the requirements for fitness and propriety ("suitability") and must provide the CSSF with all the information necessary for the fit and proper assessment in all cases. The supervisory process of the ECB as well as the application of the suitability

criteria should be commensurate with the size of the entity and the nature, scale and complexity of its activities, as well as the particular role to be filled.

Assessment criteria

Experience

Members of the management body must have sufficient knowledge, skills and experience to fulfil their functions both practical (gained in previous occupations) and theoretical (gained through education and training).

All members of the management body are expected to possess, as a minimum, basic theoretical banking experience relating to:

- financial markets;
- regulatory framework and legal requirements;
- strategic planning, and understanding of a credit institution's business strategy or business plan and implementation thereof;
- risk management including experience directly related to the responsibilities of the member;
- assessing the effectiveness of a credit institution's arrangements, ensuring effective governance, oversight and controls; and
- interpreting a credit institution's financial information, identifying key issues based on this information and appropriate controls and measures.

The assessment of the experience consists of a two-stage approach:

Stage 1 Assessment against thresholds

Experience is assessed against guiding presumptions of sufficient experience based on thresholds. For a CEO ten years of recent (not dating back more than 12 years) practical experience in areas related to banking or financial services, including a significant proportion of senior level managerial positions and five years for a Director.

Stage 2 Detailed assessment

If the thresholds for a presumption of sufficient experience are not met, the appointee can still be considered suitable if the supervised entity can adequately justify this. This will be analysed by conducting a full detailed assessment of the appointee's experience, 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.

Reputation

An appointee will be considered to be of good repute if there is no evidence to suggest otherwise and no reason to have reasonable doubt about his or her good repute.

Pending - as well as concluded - criminal or administrative proceedings may have an impact on the reputation of the appointee and the supervised entity. The supervisor must always be informed about legal proceedings. Based on all the relevant information available, the supervisor will assess the materiality of the facts and the impact on the reputation of the appointee and the supervised entity.

The appointee shall notably disclose:

- The nature of the charge of accusation (i.e. criminal, administrative, involves or not a breach of trust), the phase of proceedings reached (i.e. investigation, prosecution, sentence, appeal) and the likely penalty if a conviction ensues;
- Other mitigating or aggravating factors (e.g. other current or past investigations, administrative sanctions imposed, dismissal from employment or any position of trust, etc.).

Conflicts of interest and independence of mind

The supervised entity should have governance arrangements in place for disclosing, mitigating, managing and preventing conflicts of interest, whether actual, potential (i.e. reasonably foreseeable) or perceived (i.e. in the mind of the public). The supervisor will assess the materiality of the risk posed by the conflict of interest (political and professional on the current period or over the past two years and financial and personal on the current period).

The draft guide includes comprehensive information on degree and type of connection and threshold if applicable.

When the materiality of a conflict of interest is determined the supervised entity must adopt adequate measures. It must:

- perform a detailed assessment of the particular situation;
- decide which mitigating measures it will take based on its internal policy.

Each member of the management body is expected to act with independence of mind.

Conflicts of interest and independence of mind

All members of the management body must be able to commit sufficient time to performing their functions in the institution. The size and the situation of the entities where the directorships are held and the nature, scale and complexity of the activities.

The minimum set of information required from the supervised entity is as follows:

- a specification of the time commitment required for the role;
- a full list of the mandates or positions equiring time commitment from the appointee;
- a self-declaration by the appointee that they have sufficient time to dedicate to all the mandates confirmed by the supervised entity.

Member of the management body in a CRD IV significant institution is limited to: one executive directorship with two non-executive directorships; or four non-executive directorships.

The guide details the exemptions and propose a calculation model.

Conflicts of interest and independence of mind

The supervised entity has the primary responsibility of identifying gaps in the collective suitability through the self-assessment of its management body, for example based on a suitability matrix.

Interviews

Interviews are an opportunity to probe an appointee on his or her practical experience or to test whether an appointee is well informed about the supervised entity 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 assurance about specific elements of his or her fitness and propriety. For the supervisor, an interview also provides an opportunity to meet the appointee and to set out his or her expectations with regard to the engagement between the appointee, the supervised entity and him or herself.

Interviews will be mandatory in the case of new appointments for CEO and Chairman positions at stand-alone banks and the top banks of groups. In all other cases interviews may be used on a discretionary basis as a tool for fit and proper assessments.

Assessment process

A fit and proper assessment can be triggered by:

- a change in the management body, owing to a new appointment, a change of role or a renewal;
- new facts or any other issue; or
- a licensing or qualifying holding procedure.

New appointments starts with notification of the CSSF by the supervised entity of the (proposed) appointment of a new member of the management body. The CSSF and the ECB collect all the necessary documentation and carry out a joint assessment, while ensuring:

- that the assessment is carried out in accordance with the substantive criteria provided in [national law](#);
- compliance with the requirements under Union law; and
- consistency with the outcomes of other fit and proper assessments.

Decision

A formal ECB decision is taken after every fit and proper assessment. This is approved by the ECB Supervisory Board and adopted by the ECB Governing Council under the non-objection procedure set out in Article 26 of the SSM Regulation.

An appointee is either considered fit and proper or not. However, the ECB has the power to include recommendations, conditions or obligations in positive decisions.

- Positive decisions with recommendation: An issue has been identified and needs to be addressed
- Positive decision with condition: The ECB shall only impose a condition where this is necessary to ensure that the appointee satisfies the applicable fit and proper assessment criteria. Failure to comply with a condition means that either the ECB decision never becomes valid or is no longer valid.
- Positive decision with obligation: The ECB decision can also include an obligation to provide specific types of information for the purposes of the ongoing fit and proper assessment or to take a specific action relating to fit and proper, affecting not the appointee but the whole supervised entity.

Removal of members from management body

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 significant supervised entity who do not fulfil the requirements set out in the acts referred to in the first subparagraph of Article 4(3) of the SSM Regulation.

Deadline

The public consultation on the draft guide to fit and proper assessments closes on 20 January 2017.

The ECB will hold a public hearing at its premises in Frankfurt am Main on 13 January 2017.

Your contacts

Martin Flaunet

Partner | Banking & Securities Leader

Tel: +352 45145 2334

mflaunet@deloitte.lu

Laurent Berliner

Partner | Governance, Risk & Compliance

Leader, EMEA Financial Services Industry

Risk Advisory Leader

Tel: +352 45145 2328

lberliner@deloitte.lu

Jean-Philippe Peters

Partner | Governance, Risk & Compliance

Tel: +352 45145 2276

jppeters@deloitte.lu

Deloitte Luxembourg

560, rue de Neudorf

L-2220 Luxembourg

Tel: +352 451 451

Fax: +352 451 452 401

www.deloitte.lu

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