

## Regulatory News Alert

### ECB Guide to fit and proper assessments

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**On The European Central Bank (ECB) published on 15 May 2017 the [Guide to fit and proper assessments](#).**

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 Commission de Surveillance du Secteur Financier (CSSF). 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.

This 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.

The objective of this 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.

#### **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.

Notably, basic theoretical 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;
- accounting and auditing;
- 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.

Additional experience might be deemed necessary based on the function applied for, the nature, size and complexity of the entity, or other factors.

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 an executive Director.

## **Stage 2 Complementary 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 complementary 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 cause for 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. Competent authorities 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, including the impact of the cumulative effects of minor incidents on the appointee's reputation.

The appointee shall disclose among others:

- The nature of the charge of accusation (i.e. criminal, administrative, involves 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**

Each member of management bodies is expected to act with 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. by the public). The supervisor will assess the materiality of the risk posed by the conflict of interest (political and professional during the current period or over the past two years and financial and personal during the current period).

If a conflict of interest is considered to be material, the supervised entity must adopt adequate measures. It must:

- perform a detailed assessment of the particular situation;
- decide which preventive/mitigating measures will be implemented, primarily based on its internal conflicts of interest policy.

The competent authority will assess the materiality of the conflict of interest and the adequacy of the measures adopted by the supervised entity. If some concerns remain, a condition could be imposed in respect of the individual application.

Possible conditions include:

- prohibition from participating in any meeting or decision-making concerning a particular disclosed interest;
- resignation from a certain position;
- specific monitoring by the supervised entity;
- specific reporting to the competent authority on a particular situation;
- cooling-off period for the appointee;
- obligation for the supervised entity to publish the conflict of interest;
- any application of the "at arm's length" principle;
- specific approvals by the whole management body for a certain situation to continue

The guide includes a table of situations where a material conflict of interest is presumed to exist.

## **Time commitment**

All members of the management body must be able to commit sufficient time to performing their functions in the institution.

Both an assessment of the number of "directorships" (quantitative assessment), and assessment of qualitative aspects will need to be conducted.

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

- a specification by the supervised entity of the time commitment required for the role;
- a full list of the mandates or positions from the appointee and the expected time commitment for each mandate or position;

- a self-declaration by the appointee that they have sufficient time to dedicate to all the mandates confirmed by the supervised entity.

A 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 (there are two exceptions to this rule).

## **Collective suitability**

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**

The ECB takes a proportionate and risk-based approach to the use of interviews in fit and proper assessments.

Interviews will be used in the case of new appointments to CEO (or equivalent) and Chairman positions at stand-alone banks and the top banks of groups. In all other cases, interviews may also be used as a tool for fit and proper assessments.

## **Assessment process**

A fit and proper assessment can be triggered by:

- 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 start 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 decision 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 can mean the ECB decision never becomes valid or is no longer valid: the appointee has therefore to resign from his/her position or cannot take up the position.
- 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 fitness and propriety, 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.

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