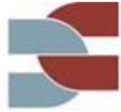

EUROPEAN ASSOCIATION OF CO-OPERATIVE BANKS

The Co-operative Difference : Sustainability, Proximity, Governance

Brussels, 2nd August 2021

ECB consultation on its revised Guide to fit and proper assessments and Fit and proper Questionnaire

EACB Comment Paper on ECB revised Guide to fit and proper assessments

ID	Chapter / Section/ Paragraph	Page	Amendment Deletion Clarification	Detailed comment	Explanation
1	**Foreword**	Page 3	GENERAL COMMENT		Overall, the EACB members are of the view that the revised Guide is very prescriptive and on occasions raises concerns from the perspective of the respect of constitutional/ fundamental rights and Level 1 regulation (CRD V in particular) or national law (ie ex-ante assessment). Furthermore, while detailed guidance could be helpful particularly from the operational point of view and to some extent in case of reassessments, the level of details is too high in parts of the Guide especially regarding experience, time commitment and reputation. That may indeed lead to a loss of transparency and predictability of the assessments. In addition, the Guide seems to make procedures even more granular and burdensome from an administrative perspective, an approach that appears more similar to Court proceedings.

					Moreover, among general concerns, we would like to point on the revised scope, namely the introduction of a suitability assessment of key function holders, despite the fact that the member States rejected the inclusion of KFH in the revision of the CRD V and potential implication of this extension. There is no provision regarding the assessment of KFH in CRDV and it might be incompatible with some national law rules. We would expect that the Guide does not go beyond the scope of Level 1 regulation and foresees a dedicated treatment for institutions having different governance structure (including dual governance). Special treatment should be also foreseen for institutions acting as subsidiaries of parent undertakings (particularly relevant for cooperative networks). We would also like to point on the new specifications of the Guide (experience; assessment of individual accountability of board members) which seem to imply the allocation of the individual responsibility on board members. The Guide should take into account that this approach as such could not be accepted in some of the European legislations. The alignment to the diverse corporate national laws is crucial. In addition, we would appreciate if the ECB could recall that the presumption of innocence is a general principle of law (and not only mention it as an incidental issue, cf. section 3.2, page 13). Due to the significant number of new requirements, we would also ask for a sufficiently long period of time before being required to comply with the revised version of the guide. More specifically, we believe that a transition period of at least 12 months

					should be granted (this period to be counted after the availability of the translation of the Guide to national languages). Sufficiently long transition period would be crucial in view of the substantial amount of time needed for internal processes to be completed and also time needed for specific committees to take necessary decisions. Additionally, as the Guide "raises the bar"/ and the new expectations will be higher, with regard to new appointments a sufficient time should be granted for banks to find suitable candidates .
2	**Guiding principles**	Page 4	A	"*The supervisory practices described in the Guide respect the principle of proportionality, namely that they are commensurate with the size, systemic importance and risk profile of the credit institutions under supervision***, the specifics of the appointee concerned and the nature of her or his future activity** *and the efficient allocation of finite supervisory resources*."	We welcome that ECB in its Draft Guide aims to respect the principle of proportionality (size, systemic importance and risk profile of the credit institutions). However, we advocate for explicitly extending the general commitment to proportionality also to proportionate application of the Draft Guide to all aspects concerning the relevant appointee and his/her future activity, e.g. according to the internal allocation of duties and responsibilities.
3	**Guiding principles**	Page 4	A	"*However, ~~where possible,~~ the ECB and the national competent authorities (NCAs) ~~strive to interpret~~* ***will apply the Guide in full compliance with*** *national rules ~~consistently with these policy stances.~~*"	According to the Draft Guide, "*ECB and NCAs strive to interpret national rules consistently with the policy stances*". We believe the interpretation of national law cannot depend on supervisory acts, the opposite applies: ECB and NCAs have to comply with national law. National law, if necessary, has to be amended following the transposition of the EU Directives, but not in view of the supervisory practices.
4	**Chapter 1 Scope of the ECBs fit and proper assessments**	Page 5	D	*~~"The Guide also covers the assessment of key function holders and of managers of significant institutions' branches established in other EU Member States or in third countries (within the~~*	There is no provision regarding the assessment of KFH in CRD V. The key function holders until now were only covered by the joint ESMA / EBA guidelines on the assessment of suitability of 2017.

				~~*scope of the applicable national law), across the participating Member States8.”*~~	An extension of the scope of the Guide would be contrary to some national laws (*e.g.* French law) and may result in a burdensome increase of cases to be dealt by national authorities, especially regarding cooperative banks. Some member states (e.g. France) are facing similar issues in relation to compliance with the Joint ESMA and EBA Guidelines on the assessment of suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU. We have important concerns regarding potential future developments at European level such as the introduction of a suitability assessment of key function holders by competent authorities in the CRD.
5	**Chapter 1 Scope of the ECBs fit and proper assessments** First (1st) and second (2nd) paragraph	Page 5	A	We propose the following additions to Chapter 1: ***In some institutions, there is a single management body ,the members of which are employed by the institution either on a full-time basis (internal Board) or part-time basis (external Board), which carries out both management and supervisory function of the management body (single structure), while in some institutions there are two separate bodies: a management body (either internal or external) performing the executive function (and usually part of the supervisory tasks) and another body (either internal or external) performing usually at least***	First, the terminology related to administrative bodies and management should be clarified. In particular, it would be useful to explain that institutions may have a single management body performing both management and supervisory functions (single structure) or two separate bodies (dual structure). This distinction was made during the CRD negotiations to reflect the fact that in some Member States, notably in Germany and Nordic countries, there are separate Supervisory Boards who exercise an oversight function over the actual management body . While as such dual system is recognized by Article 3 para. 2 of the CRD, it was not possible, however, at that stage of the negotiation process, to fully address the different nature of these

				some of supervisory tasks of the management body (dual structure). ***While these Guidelines apply to all of these administrative structures, they are applied to the dual structure taking into account the principle of proportionality on the basis of the respective roles and powers of the two administrative bodies in each institution. For instance, in small co-operative and savings banks with simple business model, significantly less theoretical knowledge and experience is required particularly from the members of the Supervisory Board than from the single management body in large, complex institutions.*** ***In centrally managed groups, including those referred to in CRR Article 10, the Guidelines shall be fully applied at the level of the parent undertaking or the central body, while the application at the level of subsidiaries or affiliated institutions will be proportionate to the level of independency of their management bodies and the complexity of the institution.***	bodies in different Member States. The CRD does not really foresee the proportionate extent of requirements to be applicable to the board (executive) or to the supervisory board. The different nature of these bodies should, therefore, be reflected across the Guide. Secondly, the draft guide does not distinguish between parent undertakings and subsidiaries, even though the roles and interactions of the management bodies of group companies may significantly vary depending on the level of centralization within the group. The need for differentiation is particularly relevant in co-operative networks within the meaning of CRR Art. 10, where the member institutions have the legal obligation to comply with the instructions issued by the central body and the role of the member institutions is limited mainly to acting as a customer interface (selection and maintenance of client relationships, granting of individual loans and receiving deposits), while the central body is responsible, among other things, for strategy, brand, product development, treasury functions, risk management and ICT.
6	**Chapter 1 Scope of the ECBs fit and proper assessments**	Page 5	**D**	"~~The guidance provided below can also be used to interpret the criteria applicable according to the relevant national provisions~~."	ECB and NCAs have to comply with national law. National law, if necessary, has to be amended following the transposition of the EU Directives, but not in view of the supervisory practices. In this view, we believe that the statement of the ECB: "*the guidance provided below can also be used to interpret the criteria applicable according to the relevant national provisions*", should be deleted or

					amended. There is no interpretation method to interpret national law in light of ECB supervisory practice. Criteria applicable according to the relevant national law should be interpreted in line with the national laws, while the ECB supervisory practices should be aligned.
7	**3.1 Experience** Section 3.1.1 “Experience Practical experience and theoretical knowledge”, First (1st) paragraph	Page 8	**A**+D	We propose the following changes: *“Members of the management body* ***as a whole*** *must have up-to-date and sufficient knowledge, skills and experience to fulfill their functions.* ~~*This also includes an appropriate understanding of those areas for which an individual member is not directly responsible, but still for which is collectively accountable together with the other members of the management body."*~~	The wording of this paragraph is not suitable and should be amended. Especially the wording “*areas for which an individual member is not directly responsible”-* may imply the possible individual responsibility of a member of the board. This could be problematic for some European legislations where the collegial liability is foreseen. Regarding the wording “sufficient knowledge”, we cannot expect each member of the management body to have the same understanding of all the topics therefore we propose specifying that the requirements apply to the management body as a whole/ in its entirety. Although we understand the importance of the Climate-change, it seems too early for a supervisor to assess the members of the management body on skills that are not really defined yet and that cover so many aspects. Certain period for acquiring knowledge in this field should be granted.
8	**3.1 Experience**	page 10	A	We would propose the following changes: “*Members of the management body must possess basic theoretical knowledge related to matters listed below.* ***However , different experiences may***	As regard the expectation to have a practical banking experience we would welcome a clear recognition of different experiences and training plans as sufficient

	3.1.1 Practical experience and theorical knowledge 3.1.3.1 Theorical knowledge First (1st) paragraph			***<u>complete the collective experience of the management body.</u>*** *This knowledge is presumed if the member has <u>practical banking experience.</u>*	to heal the lack of practical experience especially in regional cooperative banks (small or non-complex entities). We believe that facilitating rotation and diversity in the board is important.
9	**<u>3.1 Experience</u>** **<u>3.1.3.2 Practical experience</u>** **<u>Step 1</u>**	page 11	A	*"Step 1 – Assessment against thresholds* *The experience of the appointee is assessed against thresholds for the presumption of sufficient experience (see Tables 1 and 2 above,* ***wherever national law does not provide for different thresholds****). If these thresholds are met, then ordinarily the necessary experience is deemed to exist. As indicated above, different requirements apply to members of the management body in its management (executive) function and members of the management body in its supervisory (non-executive) function, as their roles and responsibilities are different by nature. The thresholds are without prejudice to national law and if they are not met, this does not however automatically mean that the appointee is not "fit and proper".*	Although at the end of the paragraph the Guide already clarifies that "the thresholds are without prejudice to national law", it would be better if, when referring the thresholds of Tables 1 and 2, the ECB could specify that it will apply different ones if provided by national law.
10	**<u>3.1 Experience</u>** 3.1.3.2 Practical experience	Page 12	D	[23] "~~Institutions are expected to assign responsibility for the management of climate-related and environmental risks within the organisational structure in accordance with the three lines of defence model~~."	According to footnote 23, the ECB expects institutions to "*assign responsibility for the management of climate-related and environmental risks within the organisational structure in accordance with the three lines of defence model*." Although we understand the importance of environmental risks and their management, we

					believe this expectation is overreaching and the reference to the tree lines of defence inappropriately broadens the scope. Where key-function holders are addressed, the reference to the three lines of defence is not necessary in the Guide. It is important to keep this in mind as not all executive positions in the three lines of defence are key-function holders. There are also other staff members within the three lines of defence which should not be affected. Therefore, the footnote should be removed or reduced.
11	**<u>3.1 Experience</u>** 3.1.4 Special cases Second (2nd) paragraph	Page 13	A	We would propose the following additions to Chapter 3.1.4: *"For small savings banks, ~~and/or~~ cooperatives**, <u>and other non-complex institutions</u>** the criteri~~on~~**a for <u>theoretical knowledge</u>** and experience are considered to be met, if the institution **<u>or the co-operative network</u>** provides an adequate and timely training plan for the appointee."* ***In some national jurisdictions a dual governance structure is used, with a body performing the supervisory function of the management body either fully or in part. In institutions, where the role of such body is limited to strategic oversight and appointment of the management body, while this latter is responsible for the direct supervision of the executive management of the supervised entity, the criteria for theoretical knowledge and adequate experience will be considered to be met, if an appointee has sufficient theoretical or practical knowledge in strategic planning and***	We appreciate that the criterion for experience can be considered met when an adequate and timely training plan for the appointee is provided by small savings banks and cooperatives . We think this useful possibility should be extended to non-complex institutions (such as regional cooperative banks) in general. In some jurisdictions, there is a dual governance structure, consisting of a management body, which performs both the management function and most of the tasks of the supervisory function, and another body, the role of which may be limited, in addition to appointing the members of the management body, to dealing with strategic issues and to exercising general oversight in the interest of the co-operative shareholders. The Supervisory bodies in local co-operative or savings banks also play the specific role of representing the local community, which is crucial for the mission of these banks to promote the overall welfare of the local community. It follows that the role of these bodies is very different from the

				understanding of the institution's business environment as well as of its business strategy and accomplishment thereof.	management body in its supervisory function of e.g. large commercial banks. For these reasons, it should be explicitly expressed in the Guidelines that the requirements on theoretical knowledge and experience (as well as time management) of members of these kinds of administrative bodies will have to be comparable to members in the management bodies in more independent administrative structures.
12	**3.2 Reputation**	Pages 13-21	A+D		As a general remark, ECB overburdens the reputation assessment. A high degree of reputation and high personal standard should undoubtedly apply to members of the management body of credit institution. This must not lead to assumptions made by the ECB based on administrative or non-final decisions. Furthermore, we wanted to point out that criminal law and administrative law are highly nationalised areas of law. In certain Member States the differentiation between administrative or criminal legal punishment might be completely different than in other Member States. Therefore, we advocate that administrative punishment is only taken into account in limited cases, not as a general rule. We also believe the ECB should not infringe the human right of presumption of innocence by taking pending criminal procedures into account.
13	**3.2 Reputation** **Fourth (4th ° paragraph**	Page 13	D	We propose the following deletions "… ~~Whilst t~~**T**here is a presumption of innocence applicable to criminal proceedings**.**~~, the very fact~~	It goes against the principle of presumption of innocence as such enshrined in the European

				~~that an individual is being prosecuted is relevant to propriety…"~~	Convention of Human Rights (i.e. Article 6 right to fair trial). ECB should therefore respect the legitimacy of final decisions made by entitled authorities or jurisdictions. ECB should not issue any opinion on its own on these topics.
14	**3.2 Reputation** **Last paragraph**	Page 14	A/D	The ECB has neither fact-finding competences nor investigatory powers with regard to anti-money laundering and combating the financing of terrorism (AML/CFT) breaches or money laundering/terrorist financing (ML/TF) offences and relies in this respect on information provided by the competent AML/CFT and criminal authorities respectively. However, the ECB ~~evaluates these facts and~~ conducts its own assessment from a prudential perspective.	The ECB should respect the legitimacy of final decisions made by entitled authorities or jurisdictions. ECB should not issue any opinion on its own on these topics. Otherwise, it would not respect the principle of innocence.
15	**3.2 Reputation** 3.2.1 Information Second (2nd)) paragraph, point 3 and 4	Page 14 15	A +D	We, therefore, propose the following deletions and additions to Chapter 3.2.1: 3. Information concerning the following: ▪ *~~investigations, enforcement or supervisory proceedings, or~~ sanctions by a competent authority in* ***institutions, where the appointee has been a member of the management body or the senior management;****~~which the appointee has been directly or indirectly involved~~;* ▪ *refusal of registration, authorisation, membership or licence to carry out a trade, business or profession; or the withdrawal, revocation or termination of registration, authorisation, membership or licence; or*	Much of the required information is, in our opinion, too vaguely defined, irrelevant for the assessment or overlapping with other requirements, unnecessarily burdening the FAP process. In particular, in point 3 the relevance of administrational proceedings should be limited to violation of applicable rules or other gross misconduct. In point 4 the assessment should be limited to a predetermined period of time that corresponds to the deletion of relevant information in the national crime registers, , and minor offences (where the

				expulsion by a regulatory or government body or by a professional body or association, ***where the refusal, withdrawal or expulsion is based on a violation of applicable rules or other gross misconduct,*** *and the grounds for the refusal, withdrawal or expulsion;* ▪ *statement of whether or not the appointee or any entity managed by them is or has been involved as a debtor in insolvency, proceedings or comparable proceedings (e.g. bankruptcy), including details of the proceedings (length of time since the procedure, status and (if not ongoing) outcome of the procedure; any precautionary or attachment measures; the entity involved; whether the procedure was triggered by the appointee or the entity involved; and details on the personal involvement of the appointee, particularly if declared responsible for the insolvency);* ▪ *dismissal from employment or a position of trust, fiduciary relationship, or similar situation, or having been asked to resign from employment in such a position,* ***where the dismissal is based on a violation of applicable rules or other gross misconduct*** ~~*(excluding redundancies);*~~ ▪ ***an earlier*** *suspension of* ~~*any registration, authorisation (including*~~ *a fit and proper authorisation*~~*), membership or licence;*~~ ▪ *whether or not an assessment of reputation of the appointee as an acquirer or a person who directs the business of an institution has already been conducted by another*	sanctions are limited to a fine or other such pecuniary sanctions) in fields not related to finance or insurance (such as traffic or taxation of personal income) should be excluded. In addition, it should be clarified that assessments made by authorities in sectors other than finance or insurance, are not relevant. Where the Draft Guide takes into account whether "*the appointee was subject to any remuneration clawbacks as a consequence of the alleged wrongdoing*", we believe this sentence should be removed as clawbacks subject to the CRD may apply, however there may be no direct link to an appointee and the ECB will in general not be able to prove or debunk a direct link. In addition, still in point 4, when asking for professional insight, this is going too far, from our point of view, to ask for "*self-reflection in terms of what did they do to prevent or avoid the alleged wrongdoing given their role in the respective entity, self-reflection specifying if they could have done more to avoid the wrongdoing, [and] self-reflection in terms of any lessons learned from the alleged wrongdoing*". From a practical level, we are afraid not to be able to provide these very specific elements.

				competent authority ***responsible for the supervision of credit institutions, investment firms or insurance companies (****including the identity of that authority, the date of the assessment, and evidence of the outcome of this assessment) and the consent of the individual where required to seek such information to be able to process and use the provided information for the suitability assessment; and* ▪ ~~*whether or not any previous assessment of the appointee by another authority has already been conducted (including the identity of that authority and evidence of the outcome of this assessment).*~~ 4. *Information concerning any criminal proceedings or* ~~*relevant*~~ *administrative or civil proceedings (including disciplinary actions)* ***related to the professional capacity of the appointee*** ~~*and investigations, sanctioning proceedings or measures*~~ ***within the period of time that corresponds to the deletion of relevant information in the national crime registers , excluding minor offences in fields not related to finance:*** • *the nature of the charge or allegation* ~~*(whether criminal, civil or administrative), including disciplinary actions (e.g. disqualification as a company director, bankruptcy, insolvency and similar procedures) or involving a breach of trust) or any other proceedings;*~~	

				• *the sanction or penalty (or, for pending proceedings, the likely sanction or penalty in the event of conviction) resulting from the proceedings;*
				• *the time that has passed since the alleged wrongdoing or misconduct;*
				• *the personal involvement of the appointee, particularly with regard to non-personal or corporate offences:*
				  ◦ *in the case of alleged wrongdoing, proceedings, investigations or sanctions involving the appointee directly: the circumstances of and reasons for the involvement,*
				  ◦ *in the case of alleged wrongdoing, proceedings, investigations or sanctions involving entities in which the appointee holds or has held mandates: details on the roles and responsibilities of the appointee in the respective entities, in particular as regards the business affected by the findings (e.g. was the appointee a member of the management body or a key function holder at the time of the alleged wrongdoing and/or responsible for a division or business line to which the proceedings (including sanctions or measures imposed) refer,*
				  ◦ ~~*was the appointee subject to any remuneration clawbacks as a consequence of the alleged wrongdoing;*~~	

				• *~~the appointee's conduct since the offence~~;* • *any professional insight shown by the appointee:* • *~~self-reflection in terms of what did they do to prevent or avoid the alleged wrongdoing given their role in the respective entity,~~* • *~~self-reflection specifying if they could have done more to avoid the wrongdoing,~~* • *~~self-reflection in terms of any lessons learned from the alleged wrongdoing;~~* • *the stage of the proceedings reached (investigation, prosecution, sentence, appeal);* • *assessment of the facts by the appointee and by the institution. The institution should assess the appointee's reputation taking the relevant facts into consideration and expressly state the reasons why it is considered that such facts do not impact on the appointee's suitability. The institution's management body should analyse the proceedings and confirm its confidence in the appointee. This is also important from the perspective of reputation risk for the institution;* • *other mitigating or aggravating factors (e.g. other current or past investigations administrative sanctions, dismissal from employment or any position of trust).*	
16	**3.2 Reputation** 3.2.2. Assessment approach	Page 18	D	"~~**However, if the established facts and evidence are particularly significant, then one relevant administrative proceeding or measure (or admission) may in itself be enough to cast a**~~	In particular, ECB should delete the sentence "one relevant administrative proceeding or measure (or admission) may in itself be enough to cast a material

				~~***material doubt as to the appointee's good repute.***~~"	doubt as to the appointee's good repute" as this cannot be generalised due to national specificities.
17	**3.2 Reputation** 3.2.2. Assessment approach Point 3	Page 19	A D	*"An appointee's involvement in bankruptcy or insolvency proceedings is taken into account when assessing their good repute, since this may indicate poor financial and/or risk management which is not compatible with the sound and prudent management of a supervised entity. This includes both personal and corporate insolvency and is particularly relevant where the appointee was a member of the management body that became insolvent* ~~***or required State-sponsored financial support***~~*."*	ECB should amend its criterion under point 3 whether "the appointee was a member of the management body that became insolvent or required State-sponsored financial support" as state-sponsored financial support may not always raise doubts to good repute. In the financial crisis after 2008 for example state-aid was broadly granted to a majority of institutions. In case of another impactful global macroeconomic crisis public financial support may be necessary.
18	**3.2 Reputation** 3.2.2. Assessment approach Point 5	Page 19	A D	The list in point 5 should be, therefore, replaced by a general provision e.g. as follows: *Other relevant facts for the assessment of the appointee's good repute (other than proceedings) – An appointee should uphold high standards of integrity and honesty. Where there are no proceedings or other measures (as described in points 1-4 above), other relevant facts may nevertheless affect an appointee's reputation. The following*~~*, non-exhaustive,*~~ *factors are considered in the assessment of reputation, honesty and integrity:* *(a)* ~~*being a defaulting debtor (e.g. having negative records at a reliable credit bureau if available);*~~	The list in point 5 is very wide and partially unclear to provide an adequate legal certainty and predictability and may thus violate the constitutional rights of the appointees to earn their living (i.e. respect for the private life). Consideration of numerous factors in the assessment of reputation: The scope of the information which have to be provided was expanded, since not only findings relating to criminal/civil and administrative proceedings are relevant in the assessment of reputation (personal reliability), but also other findings that affect reputation must be considered. For example: - Negative records in credit default databases

				~~(b)~~ *financial and business performance of* ***<u>the appointee or</u>*** *that of the entities owned or directed by the appointee or in which the appointee had or has a significant share or influence,* ***<u>raises serious concerns about the appointee's capability to make well-advised financial or business decisions. evidenced by serious financial trouble due to other than exceptional external factors</u>*** *;* ~~*(c) large investments or exposures and loans, insofar as they have a significant impact on the financial soundness of the appointee;*~~ *(d)* ~~*any*~~ *evidence that the appointee* ***<u>has intentionally refused to respond to a specific request by the competent authority to provide supervisory information or else co-operate with the competent authority or has intentionally provided inadequate or misleading information</u>*** ~~*not been transparent, open and cooperative in their dealings with*~~ *competent authorities or refused a specific request ;* ~~*(e) any dismissal, suspension or being asked to resign from employment or any position of trust, fiduciary relationship, or similar situation, or having been asked to resign from employment in such a position following gross misconduct;*~~ ~~*any other evidence that suggests that the appointee acts or has acted in a manner that is not in line with high standards of conduct;*~~	- Performance of entities owned or directed by the appointee or in which the appointee had or has a significant share or influence - Large investments or loans that have an impact on the candidate's financial stability - Any evidence that the candidate has not been transparent, open and cooperative with competent authorities - Any dismissal, suspension or being asked to resign from employment or any position of trust, fiduciary relationship, or similar situation, or having been asked to resign from employment in such a position following gross misconduct - Any other fact in the public domain of freely available information - Supervisory measures (AML/ CTF examinations) = findings **The requirement to consider any other fact in the public domain in the assessment of reputation is seen very critically.** **On the one hand, this raises the question of feasibility (especially when it comes to obtaining the relevant information), and on the other hand, it creates the possibility of conflicts with national law (e.g. labour law, data protection law).**

				~~(f) any other evidence that suggests that the appointee acts or has acted in a manner that is not in line with high standards of conduct;~~ ~~(g) other relevant facts* such as findings of tribunals, arbitration or mediation; facts in the public domain; supervisory measures (e.g. any AML/CFT related inspections); credible and material reports (e.g. internal reports of the supervised entity, auditors, reports requested by the supervised entity or other third-party reports).~~	
19	**3.2.2 Assessment approach**	Page 20			Considering personal involvement in case of doubt on the reputation, notably in case of non-personal or corporate proceedings should not be introduced in the guide. In France, the individual responsibility of the members of the Board does not exist as the management body is a collective body with collective responsibility. Responsibility cannot be individualised. The only situation where individual responsibilities could be identified would be in case of criminal prosecution. The assessment of individual involvement or responsibility with regard to non-personal or corporate proceedings would be unlawful under Finish and French law at least.
20	**Section 3.3 Conflicts of interest and independence of mind**	Page 21 et seq.			In 2018, the ECB was already anticipating current, potential or perceived conflicts of interests which the EACB criticized. It is recalled that there is no definition of the concepts of conflicts of interest and independence of mind in CRD or CRR.

					Therefore we question whether the ECB is entitled to define them which imply obligations and what would be the legal basis for that.
21	**3.3 Conflicts of interest and independence of mind** **3.3.1 Information**	Page 23	**A**	*"In line with the joint ESMA and EBA Guidelines on suitability the following minimum set of information from the appointee and the supervised entity is considered relevant to conduct the assessment:* *1. description of any personal relationship with other members of the management body and/or key function holders of the supervised entity, the parent undertaking or their subsidiaries; with any qualifying shareholders of the supervised entity, the parent undertaking or their subsidiaries; or with clients, suppliers or competitors of the supervised entity, the parent undertaking or their subsidiaries;* *[…]* *5. description of any financial interests in the supervised entity, the parent undertaking or their subsidiaries; or in clients, suppliers or competitors of the supervised entity, the parent undertaking or their subsidiaries;* *[…]* ***The information listed above should be collected and assessed by the Supervised Entity in accordance with national law (or "within the times and through the means prescribed under national law").***	The timing and means to collect some relevant information might be disciplined under national law. This is the case, for instance, for the disclosure of related parties of members of management body of Italian banks. Under Italian national law, such information is collected after the appointment of the board member and therefore could not be available in case of ex-ante assessments until after the appointee has taken up her/his role.

22	**3.3 Conflicts of interest and independence of mind** **6.4 Procedural aspects**	Pages 22, 23, 66	A	"*There is a conflict of interest if the attainment of the interests of the appointee adversely affects the interests of the supervised entity. Therefore, the governance arrangements of each supervised entity should include written policies on the identification and disclosure of all conflicts of interest, whether actual~~,~~* ***or*** *potential (i.e. reasonably foreseeable) ~~or perceived (i.e. in the mind of the public)~~.*" "*When submitting a fit and proper application, the supervised entity should provide information on all actual~~,~~* ***or*** *potential ~~or perceived~~ conflicts of interest, whether or not it considers a conflict of interest to be material.*" "*The members of the interview panel, and in particular the Chair, are selected on the basis of an appropriate seniority and taking into account any potential ~~or perceived~~ conflict of interest.*"	The ECB lists note only actual, potential but also perceived conflicts of interest. It should be noted that notably, the EBA&ESMA Fit and proper Guidelines, paragraph 83 refer solely to actual or potential conflicts : (" When assessing the existence of conflicts of interest referred to in paragraph 82 (b), institutions should identify actual or potential conflicts of interest in accordance with the institution's conflict of interest policy24 and assess their materiality. "-) We believe that "*perceived conflicts of interests*" are not relevant for the F&P assessment and should therefore be deleted in the Draft Guide. Actual and potential conflicts of interest relate to intrinsic features of appointees while "perceived" conflicts of interest may not even be known to the appointee concerned and should therefore not be included in the assessment.
23	**3.3 Conflicts of interest and independence of mind** 3.3.1 Information Point 4 Point 6	Page 23 and 25	A+D+C	"*4. description of ~~any~~ financial obligations towards the supervised entity, the parent undertaking or their subsidiaries ~~that are cumulatively above EUR 200,000 (excluding private mortgages31), or any loans of any value that are not negotiated at arm's length or that are not performing (including mortgages)~~.* ***The substantiality depends on what (financial) value the interest or obligation represents to the financial resources of the appointee. The following would in principle be considered non-material:*** • ***all non-preferential (i.e. under standard market conditions of the relevant bank) secured,***	Inter alia, according to the Draft Guide any financial obligations that are cumulatively above EUR 200,000 (excluding private mortgages) are to be taken into account in the assessment. We do not understand reasoning of the ECB to amend the current expectation in this regard. We strongly believe that the wording of the Guide 2018 should be kept. It does not appear justified to limit the exemption to private mortgages, as other secured, performing and non-preferential loans also do not bear a higher risk of financial conflict of interest. We would also welcome a clarification that membership in a cooperative credit institution itself

				personal loans (such as private mortgages and private real estate insured loans) that are performing; • ***all other non-preferential performing, secured loans under €200,000;*** • ***current shareholdings ≤1% or other investments of equivalent value;"*** "~~*6. whether or not the appointee is being proposed on behalf of any significant shareholder;*~~" "In principle, the following is considered to be material: financial obligations towards the supervised entity cumulatively exceeding EUR 200,000 (excluding ~~private mortgages~~ **financial obligation as described under 3.3.1 point 4.**) or any loans of any value that are not negotiated at arm's length or that are non-performing (including mortgages); and current shareholdings of more than 1% or other investments of equivalent value."	is not relevant for the F&P assessment and does not automatically constitute a conflict of interest. One of the assessment criteria of conflict of interest is "*whether or not the appointee is being proposed on behalf of any significant shareholder*". We do not understand the reason behind this paragraph and advocate for a removal. Significant shareholder might recommend appointees, in practice it will be difficult to draw a line between recommendation and proposal. However, also e.g. the Member State can be a significant shareholder and propose appointees without this resulting in a conflict of interest. In any case, the appointment of an appointee is still subject to formal decision by the relevant body. It should be also noted that the current footnote "31" refers also to both private mortgages and (up to 200K) personal loans as exposures that do not need to be reported. For certainty, we would suggest aligning the text of the footnote (if kept in the final text) with the amended provision of the Guide.
24	**3.3 Conflicts of interest and independence of mind** 3.3.1 Information Point 1	Page 23 and 24	A	*1. description of any personal relationship with other members of the management body and/or key function holders of the supervised entity, the parent undertaking or their subsidiaries; with any qualifying shareholders of the supervised entity, the parent undertaking or their subsidiaries; or with clients, suppliers or competitors of the*	The scope of the information which has to be submitted for the assessment of a conflict of interest as well as the group of persons (relevant for the assessment) is extended. Personal relationships are defined in a very broad sense (any personal relationship, especially "clients",

	3.3.2.1 Personal conflict of interest			*supervised entity, the parent undertaking or their subsidiaries;* *Where the appointee has any personal relationship with other members of the management body and/or key function holders of the supervised entity, the parent undertaking or their subsidiaries; with any qualifying shareholders of the supervised entity, the parent undertaking or their subsidiaries; or with clients, suppliers or* *competitors of the supervised entity, the parent undertaking or their subsidiaries.*	"suppliers" or "competitors"). The guide has to be specified to the effect that such personal relationships are only seen as a conflict of interest if these personal relationships can influence the decisions of the appointee. Only material conflicts of interest should therefore be examined in detail in the context of a fit and proper assessment. In the previous Guide there was a definition of a "close personal relationship": *"A close personal relationship includes spouse, registered partner, cohabitee, child, parent or other relation with whom the person shares living accommodation."* We suggest including such a definition in the new Guide as well.
25	**3.3 Conflicts of interest** 3.3.2 Assessment approach, Second (2nd) paragraph	p.24	A	We would propose the following changes: (…) *close relatives (spouse, registered partner, cohabitee,* ***dependent*** *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.*	This definition of *close relatives* includes persons who the appointed are sharing the living space with. We wonder whether the ECB is entitled to define this term in such detail, which imply obligations and what would be the legal basis for that.
26	**3.3 Conflicts of interest and independence of mind**	Page 25	A	*Where the appointee has:* • *a material financial obligation towards the supervised entity,* ***its subsidiaries*** *or the parent*	The Guide seems to consider the financial relations of the appointee with subsidiaries not only of the supervised entity but also of its parent company. This unnecessarily and excessively broadens the scope of the information to be collected and assessed. We

	3.3.2 Assessment approach **Third (3rd) paragraph**			*undertaking ~~or their subsidiaries~~ (e.g. loans or credit lines);* *• a material financial interest (such as ownership or investment) in the supervised entity,* ***its subsidiaries or*** *the parent undertaking ~~or their subsidiaries~~; or in clients, suppliers or competitors of the supervised entity, the parent undertaking or their subsidiaries.*	suggest the amendments to this part of the Guide as we do not see what type of influence the appointee of a supervised entity could exercise on a different subsidiary of its parent company.
27	**3.3 Conflicts of interest and independence of mind** **3.3.2 Assessment approach** **Third (3rd) paragraph**	Page 25	C	*In principle, the following is considered to be material: financial obligations towards the supervised entity cumulatively exceeding EUR 200,000 (excluding private mortgages 33) or any loans of any value that are not negotiated at arm's length or that are non-performing (including mortgages); and current shareholdings of more than 1% or other investments of equivalent value.* *[33 In the sense of footnote no. 29]*	We would seek for clarification from the ECB regarding the interaction between the quoted provision and the provision under point 4 of paragraph 3.3.1 Information. It is not clear if according to the text of the new Guide, situations that are not deemed material will no longer have to be reported. On a separate note, under footnote 33, the cross-reference shall be to footnote no. 31 instead of no. 29.
28	**3.3 Conflicts of interest** 3.3.2 Assessment approach **Subsection 3.3.2.4**	Page 26	A	We, therefore, propose the following additions to Chapter 3.3.2 after subsection 3.3.2.4: **"3.3.2.5 Special cases** ***In small savings banks, co-operatives and other non-complex institutions, where a member of the management body is not personally responsible for business decisions,*** **a** ***business relationship with or financial obligation to the institution does not, as such, constitute a financial conflict of interest, provided that the business relationship***	In supervised institutions with a dual structure, where the role of the Supervisory Board (or Supervisory Councils as they are called in some banking groups) is limited to strategic oversight and appointment of the Board of Directors, while the Board of Directors is responsible for the direct supervision of the executive management of the supervised entity, the members of the Supervisory Board have no possibility to influence in individual business decisions. The assessment of financial conflict of interests should, therefore, assessed less

				or financial obligation is negotiated at arm's length. ***In a cooperative governance structures for example in those with a dual governance structure, a business relationship or a financial obligation of the member of the management body in its supervisory function to the institution does not, as such, constitute a conflict of interest, provided that the business relationship or financial obligation is negotiated at arm's length."***	stringently for such Members of the Supervisory Boards. In regional member institutions of co-operative networks, operating largely in rural areas, the availability of appointees could be next to nil, if loans from or other business relationships with the institution would constitute a conflict of interest, in particular in connection with the proposed requirements on skills and knowledge. These situations should, therefore, be reflected in the Guidelines.
29	**3.3 Conflicts of interest** 3.3.3 Conflicts of interest statement last paragraph	Page 27	D	We would suggest deleting ~~*"An ancillary provision may be targeted to the supervised entity's conflicts of interest policy, namely, to pursue the supervised entity's interests or to better monitor internally potential conflicts of interest; or to create specific committees within the management body to assist the supervisory function of the management body in situations where there is a potential conflict of interest"*~~	The creation of *specific committees within the management body* has no legal ground and is likely to complicate our governance systems. In addition, banks already have to put in place new committees, because of level 1 regulation. Moreover, some Member States already provide for specific procedures to be applied as far as conflict of interests is at stake. Especially regional banks could not face the burden of the creation of more committees. As a consequence, we would like this specific ancillary provision to be deleted. On a subsidiary basis, if such an ancillary provision should be maintained, such assistance should be granted by an existing committee, *e.g.* the nomination committee, so as to mitigate the impacts in terms of governance.
30	**3.4. Time commitment**	Page 28/29	A	We, therefore, propose the following addition to Chapter 3.4.2:	The minimum set of required information is disproportionally extensive for cooperative

	3.4.2 Information			***In a cooperative governance structures for example in those with a dual governance structure, where the management body in its supervisory function does not perform a substantial part of the supervisory tasks of the management body, the minimum set of information is limited to the assessment by the institution and by the appointee of the time commitment expected for the role involved and, by the appointee, assessment of the time available.***	institutions particularly with a dual structure in respect of the members of the management body in its supervisory function, where that management body does not perform a substantial part of the supervisory tasks of the management body. It should be clear that a number of days per year is sufficient (not a number of hours).
31	**Section 3.4 Time commitment** Section 3.4.2. Information Second (2nd) paragraph , bullet points	Page 28 and top of page 29	D	Under Section 3.4.2 “Time commitment”, Section 3.4.2. “Information”, we suggest deleting last two bullet points: • ~~*a description of the (i) objectives and (ii) non-commercial or commercial activities of the organisation where mandates or positions in respect of that organisation are excluded from the counting because the organisation does not pursue predominantly commercial objectives, unless this is clear from public information;*~~[38] ~~*• the statutes or other documentation of the organisation regarding its objectives and activities (e.g. the annual report if available).*~~	Providing this type of information (statutes, annual reports, etc.) in practice could be very troublesome.
32	**3.4. Time commitment** 3.4.3 Assessment approach	Page 29	A	We propose to amend the first bullet point of this Section: *“3.4.3 Assessment approach*	In our opinion, the draft text does not adequately cover the governance structure, where there is an external Management Body performing both management and (a substantial part of) supervisory functions and an internal Executive Management Team (“internal Board”) consisting of full-time senior

	First (1st) paragraph			*The underlying assumptions for any assessment of time commitment are the following.* ~~•~~ *Members of the management body in its management function are expected to "effectively direct the business of the credit institution". ~~Generally~~**Ideally** , a member performing such function ~~is expected~~ **should be able** to perform it full-time. Exceptions to this rule can be made, namely within groups if there are synergies between two or more positions. In such cases these synergies must be explained.*[39]	management. In such structure it is not necessary nor realistic to assume that the management body members would be full-time as in smaller national markets it is not possible to find such appointees, who would meet all the other fap requirements.
33	**3.4. Time commitment** 3.4.3 Assessment approach	Page 29	A	We also propose the following addition after the introductory bullet points: ***In cooperative governance structures for example in those with a dual governance structure, Sections 3.4.3.1 and 3.4.3.2 do not apply to the members of a management body in its supervisory function, where that management does not perform a substantial part of the supervisory tasks of the management body.***	In our opinion, the draft text does not adequately cover the governance structure, where there is an external Management Body performing both management and (a substantial part of) supervisory functions and an internal Executive Management Team ("internal Board") consisting of full-time senior management. In such structure it is not necessary nor realistic to assume that the of the Management Body members would be full-time as in smaller national markets it is not possible to find such appointees, who would meet all the other fap requirements.
34	**3.4. Time commitment** 3.4.3 Assessment approach Section 3.4.3.1 "Quantitative assessment":	Page 30	C		Our members raise concerns how the national authorities will verify the multiple mandates (at least as far as cooperatives are concerned). The issue is of practical nature – it would be challenging for the authorities.

	multiple directorships				
35	**3.4. Time commitment** 3.4.3 Assessment approach 3.4.3.1 Quantitative assessment: multiple directorships Directorships in organisations which do not pursue predominantly commercial activities	Page 32		We propose the following addition in the second paragraph in the section titled "Directorships in organisations which do not pursue predominantly commercial activities": **"*The following list is non-exhaustive.*** *Organisations which are presumed not to be pursuing predominantly commercial objectives for the purposes of Article 91(5) of the CRD are* ***for example*** *(i) non-profit sports or cultural associations; (ii) charities; (iii) churches; (iv) chambers of commerce/trade unions/professional associations; (v) organisations for the sole purpose of managing the private economic interests of members of the management body and that do not require any day-to-day management by the member of the management body; and (vi) organisations which are presumed to pursue predominantly non-commercial activities based on* ***national specifics, for example*** *regulatory provisions* ***or the statutes****. Other organisations could still be considered not to be pursuing predominantly commercial objectives after assessment by the competent authority of the elements provided by credit institutions on the nature of the organisation and the predominance of the non-commercial activities.*	It should be clarified that the list of "*organisations which are presumed not to be pursuing predominantly commercial objectives*" is non-exhaustive. This could be achieved by adding a sentence that the organisations listed serve as examples, but other organisation might qualify as not pursuing predominantly commercial objectives. Regarding point vi), "organisations which are presumed to pursue predominantly non-commercial activities based on national regulatory provision" we advocate for refining the wording. Although we welcome the reference to national specifics, we want to raise awareness that the predominantly non-commercial activity of an organisation may highly depend on national specifics, i.e. the practice might lead to the qualification of an organisation as predominantly commercial or non-commercial rather than a national provision. Therefore, the wording should be extended accordingly by e.g. the statutes and national specifics.
36	**3.4. Time commitment**	Page 32	C	The ECB expects appointees to dedicate sufficient time to perform their functions in the supervised entity. However, what is "sufficient time" will vary	A two-step assessment process is foreseen, and a distinction is also made between a quantitative and a

	3.4.3 Assessment approach 3.4.3.1 Quantitative assessment (multiple directorships) 3.4.3.2. Qualitative Assessment (two step assessment process)			depending on the size and activity of the supervised entity, the position of the appointee within the supervised entity and their knowledge and experience. The assessment whether an appointee is able to commit sufficient time to their function involves two steps. • First step – “Standard assessment” – based on the information provided, the ECB determines whether the declared time commitment is indeed sufficient or whether there are doubts, meaning that a detailed assessment is required. • Second step – “Detailed assessment” – where doubts remain after the standard assessment, a detailed assessment is conducted and additional information might be requested.	qualitative procedure. The ECB guide contains extensive provisions on the qualitative procedure. With regard to the mandates, the information that has to be provided was expanded. In addition, the following information has to be provided according to the Guide: - Duration of the mandate - Number of meetings per year per mandate and whether the privileged counting method is applied - Indication of synergies between mandates, if any - Statutes or other documents indicating non-profit status. The following aspects should be taken into account in the qualitative assessment and the time required per mandate: - The functionaries must be familiar with the risk strategy, the business strategy, governance requirements. - If there are circumstances that require increased resources (e.g. restructuring, M&A transactions, crisis situation), this must be taken into account. - The supervisory board should assess and challenge the decisions of the board, should attend meetings and have up-to-date knowledge (training, preparation time).

					Here it has to be considered in the assessment process that the CRD empowers the NCAs to approve an additional supervisory mandate.
37	**3.4. Time commitment** 3.4.3 Assessment approach 3.4.3.2 Qualitative assessment: Two step assessment process Subsection First step – “Standard assessment”	Page 33, 34	D and A	We propose the following amendment: *“2. The indicated workload raises doubts for the following reasons:* .. ~~*(c) A peer comparison of the time commitment of different members of the management body of the same institution reveals inconsistencies, e.g. one appointee allocates significantly less time compared with others (fulfilling a similar role) without duly justified reasons.*~~ *(d) A plausibility check reveals inconsistencies, such as the following.* ~~*(i) The Chair allocates less time than ordinary non-executive members.*~~ *(ii) ...* *(iii) Note: As a general rule, the number of days declared by an appointee should be calculated to consider the number of meetings of the management body to be attended, including preparation time* ~~*and travel*~~*, and time to understand the business of the credit institution, including any annual training.* ***<u>Travel time should be included to the extent it cannot be used as preparation time.</u>***	The Draft Guide included a list of reasons which raise doubts whether the time commitment is sufficient, including: • a peer comparison, meaning that where one appointee allocates significantly less time compared with others, this raises doubts. We believe the ECB should delete any “peer comparison” as it does not generate any additional value and interferes in private life. Time commitment assessment is an individual assessment, therefore not justified. The time needed e.g. for preparation may depend highly on the member and on many factors, including e.g. knowledge, synergic effects, speed of reading, etc. • the chair allocates less time than ordinary non-executive members. We believe this assumption for the inappropriateness of time commitment should also be removed, as it cannot be generalised. Also, the workflow depends on individual allocation of duties within the institution. The Chair may have additional knowledge, work e.g. as a lawyer and therefore need significantly less time for preparation. We rather believe in an individual case-by-case assessment. In the Section First step – “Standard assessment” point 2 (d) (iii) the travel time should not be

				~~*(iv) The workload is not consistent with that indicated in the same or previous FAP applications for the same appointee, e.g. workloads for the same or comparable entities deviate significantly.*~~	automatically included in the number of the days as the travel time e.g. in a train or an airplane can often be used for preparing for the meeting. • inconsistency of the workload with that indicated in the same or previous applications for the same appointee. Change of workload does not necessarily have to raise doubts. It should be considered that such inconsistency could be the result of participation in trainings or development and therefore could in fact lead to a higher efficiency and therefore, should be perceived positively.
38	**3.4. Time commitment** 3.4.3 Assessment approach 3.4.3.2 Qualitative assessment: Two step assessment process Subsection Second step – "Detailed assessment"	34-36	A + D	We propose the following amendments: "*The necessary time commitment may be higher in the case of:* *(i) large and~~/or~~ complex institutions, particularly those that have the consolidating role at the group or sub-group level;* ~~*(ii) institutions having the character of a "bridge bank" or a "bad bank" where this is connected with implementation of complex resolution measures, such as the sale or write-down of non-performing loan portfolios.*~~ *The necessary time commitment may be lower in the case of:* *(i) a credit institution with a small balance sheet size ~~and~~ **or** a simple business model, such as a cooperative bank, or a small subsidiary or institution with low overall weight within a group;*"	We advocate to refine several aspects regarding situations where the necessary time commitment may be higher or lower: • large and/or complex institutions, particularly those that have the consolidating role at the group or sub-group level: higher. However, we want to raise the question whether this assumption is justified. The mere size of an institution is not really relevant for the time commitment if the complexity is low. Therefore, we advocate for amending the wording to "large and complex institutions". • a credit institution with a small balance sheet size and a simple business model, such as a cooperative bank: lower. In this vein, a big but very simple business model (lower complexity) will require less time, therefore the wording should be changes to "institution with a small balance sheet size or a simple business model"

				“The necessary time commitment may be higher in the case of a credit institution in a work-intensive phase of its business lifecycle, such as: *..* ~~*(iii) implementation of a recovery plan or a resolution plan, particularly where the imposed measures are linked to State aid and/or are contested through litigation;”*~~ *“The necessary time commitment may be higher in the case of positions generating specific duties, if already known at the time of assessment:* ~~*(b) positions including chairmanship roles (executive or non-executive); positions linked with the chairing of or participation in management body-level committees (e.g. nomination, remuneration, audit or risk committees); positions linked to exclusive oversight of specific independent areas (e.g. audit);”*~~	• character of a “bridge bank” or a “bad bank”: higher. We do not understand the reason behind this assumption as it implies a reduced business activity: bridge institution only critical functions, bad bank only sale and write-down of assets. • implementation of a recovery plan or a resolution plan or when early intervention measures are being applied by competent authorities: higher. We call for rethinking this assumption as recovery and resolution plans are created in advance with the aim to save time and act swiftly later, which contradicts the higher time necessity. Early intervention measures are executed by the authority and will not require a higher time commitment. If a recovery option is chosen as early intervention measure, the aforementioned applies. • chairmanship: as described above, should be assessed case-by-case. We advocate for deleting this paragraph and want to point out that in our opinion “exclusive oversight of specific independent areas (e.g. audit)” is a contradiction.
39	**Section 3.5 Collective suitability of the management body** third (3rd) paragraph	Page 37	D	We would suggest modifying the sentence as follows: "*There should be sufficient ~~and diversified~~ ~~number of members with~~ knowledge* ~~***in each area***~~ *to enable effective discussions and challenges to be made and robust decisions to be taken.* "	The quoted paragraph together with other parts of the Revised Guide (see our comment e.g. section 3.1 Experience)) indicate the revised ECB approach to be focused (more than in the past) on each member of the management body, on an individual basis, where for instance in France or Finland law the collegial nature of the body is foreseen by the national law.

					We believe it needs to be clarified that not every member of the management body must have an appropriate understanding, but the management body as whole (collectively). It is e.g. sufficient that one member of the management body has understanding in a listed area ensuring collective suitability, however, not every member has to have the same degree of understanding. Particularly the quoted paragraph might in our view suggest that there should be at least two experts on each subject, which is not necessarily always achievable in practice (i.e. to have one expert per area (including the environment) This goes against the principle of the collegiality of management boards and the practice of calling on experts from time to time.
40	Chapter 3 **Section 3.5 Collective suitability of the management body**	Page 38,39	A	*In general, effective collective suitability will include an appropriate understanding of the following areas:* •*the business of the credit institution and the main risks related to it* •*each of the material activities of the institution* •*the governance of the institution* •*the relevant areas of sectoral and financial competence, including financial and capital markets, solvency and models* •*managerial skills and experience* •*financial accounting and reporting*	The requirements on knowledge for collective suitability are described in detail. These requirements essentially correspond to those for the assessment of individual suitability. Climate and environment-related risks: collective knowledge, skills and experience regarding climate and environment-related risks of the members of the management body are required for a sound and effective management of the risks. This is a new requirement, for the fulfilment of which (as stated above) a sufficient transitional period should be granted.

				•strategic planning; *•risk management, compliance and internal audit;* *•information technology and security;* *•climate-related and environmental risk;* *•local, regional and global markets where applicable;* *•the legal and regulatory environment;* *•the management of international and national groups and risks related to groupstructures where applicable.* ***Climate-related and environmental risks and collective suitability of the management body*** *Climate-related and environmental risks are widely acknowledged as a source of significant financial risks. Several initiatives have been undertaken at the global, European and national level with the aim of contributing to the resilience of the financial system from a prudential supervisory perspective. The management body of a credit institution is best placed to ensure that climate-related and environmental risks are taken into account when developing the institution's overall business strategy, business objectives and risk-management framework and to exercise effective oversight of climate-related and environmental risks.51 In this specific field, collective knowledge, skills and experience of members of the management body is necessary for the achievement of a sound and*	

				effective management of the risks to which the institution is or may be exposed. An adequate understanding of climate-related and environmental risks by the management body in its supervisory function supports effective oversight.	
41	Chapter 3 **3.5 Collective suitability of the management body** **Subsection Diversity within the collective suitability of the management body**	Page 39	-		This issue is seen as part of an unavoidable development. We have no major concerns.
42	**3.5 Collective suitability of the management body** **3.5.1 Information**	Page 40	C		We would seek for clarification from the ECB regarding whether in cases where one or more members are appointed but there is not a renewal of the entire body, the same set of information needs to be provided for the entire body (including the members that had been previously appointed). In those cases, it is not clear whether the same assessment approach have to be followed. The Guide could better specify what set of information has to be notified in case of a partial renewal of the board, with regard to the other members, those that are not subject to a complete FAP assessment at that stage.
43	Chapter 3	Page 40	A	*In line with the joint ESMA and EBA Guidelines on suitability, when submitting a fit and proper application the following minimum set of*	With a supervisory board consisting of several members, this requirement is excessive. In general, the possibility to upload documents in the IMAS

	<u>3.5 Collective suitability of the management body</u> **3.5.1 Information**			*information from the credit institution concerning the collective suitability of the management body is needed to conduct the assessment:* *• a list of the names of the members of the management body, their respective roles, skills and main areas of expertise;*	portal should be established. Filling in the fields manually is impractical and also creates an unnecessary source of errors. One of our concerns here is that submissions to the IMAS portal can be done not only by filling in the data mask but also by uploading the ECB questionnaire as it was possible in the past. That would be a significant bureaucratic relief. Also in the interest of legal certainty for all parties involved (how can the appointee - who does not have access to the IMAS portal - confirm the accuracy if she/he does not know the entries?), the option of uploading the ECB questionnaire should be reintroduced. Otherwise massive additional effort and increased susceptibility to errors and a lack of legal uncertainty would inadvertently be created.
44	Chapter 3 **<u>3.5 Collective suitability of the management body</u>** Chapter 3. 5	Page 40/footnote 56	CAD	*"The ECB also makes reference in its FAP decisions to any relevant diversity findings in the governance assessments.*[56] *56 For example, from outcomes of thematic reviews or from information collected during the Supervisory Review and Evaluation Process (SREP)."*	There is a reference to SREP and to the fact that assessment of the gender balance is part of the ongoing supervision. Would that mean that an entity might be twice sanctioned for the same fact, once pursuant to the SREP and another pursuant to the Fit and proper Guide ?
45	Chapter 3 **<u>3.6 Assessment of individual accountability of board members</u>**	Page 41 to 47	D	We ask for a deletion of all suggestions according to which individual accountability can be sought.	The new section 3.6 for Assessment of individual accountability of board members concerns us as it has no legal ground and has to be consistent with current corporate laws. We do not understand how it works and how it relates to the "classic" assessment of fit and proper. What will this mean in concrete terms, in practice? If some of the elements of this

					procedure were to become public, this could, in practice, lead to the civil proceedings, which does not seem suitable. Individual accountability cannot be sought under French law as the Board is a collective body, Board members cannot be seen from a legal standpoint as individually accountable, except in case of criminal offences. We do not understand the sense of sub-paragraph 3.6 and we are of the opinion that the assessment of good repute and competence have to be distinguished from individual civil responsibility.
46	**3.6 Assessment of individual accountability of board members** **Last paragraph**	Page 42	C	*The above approach is applied in conjunction with the fit and proper assessment criteria provided in Sections 3.1 – 3.3 of this Guide*.	While the connection between the assessment of individual accountability and Reputation criteria (3.2) is clear, the link with the Experience (3.1) and the Independence (3.3) criteria seems more blurred. Could the Guide provide some more details on this?
47	Chapter 3 **<u>3.6 Assessment of individual accountability of board members</u>** 3.6.2. Findings	Page 42,43	C	*It follows that a member of the management body who has or had a position in the institution at the time when facts underlying certain findings (e.g. ML, fraud or other findings arising from on-site inspections or legal proceedings) occurred may be responsible for those findings even if there is no connection between their individual roles and responsibilities in the management body and the given findings.* *Findings identified by a supervisor as recent, relevant and severe are taken into account when considering the individual accountability of an appointee. The findings may be supervisory,*	With regard to the provision of information, it must be stated whether a member of the management body has or had a position in a company in which certain findings were identified (e.g. GW, fraud or other findings from on-site audits or procedures) and the evaluation of whether the member of the management body was/is responsible for this, regardless of whether the violation occurred in the department for which the management body was responsible. Individual responsibility: if the member of the management body did not inform the overall management body about incidents in a timely manner and these incidents led to findings.

				regulatory or judicial in nature and refer to legal or regulatory breaches or deficiencies in the institution's activity. *The following non-exhaustive list of information with regard to the above-mentioned bodies and authorities may be considered:* *(a) supervisory measures (warning, instruction, penalty payments, sanctions etc.);*	Findings are relevant if they led to violations of laws or regulations and the violations were brought to the attention of the management body (breaches of law and regulations) and for the assessment of individual responsibility such findings are only relevant if they are severe (severe findings) and had a significant impact on the company, the market or the customers (see table 3, point 3.5.3). Letter a) of the draft refers to "supervisory measures" and lists "warning" or "instruction" as examples. The Guide should be amended to make clear that only serious supervisory measures (related to serious breaches of the law) can be seen as "supervisory measures". In any case, mere expectations or recommendations of the supervisory authorities without a binding character should not be seen as "supervisory measures". For example, with regard to the mandatory re-evaluation in the case of violations of anti-money laundering provisions, it should be clarified that a re-evaluation is only mandatory when administrative criminal proceedings are initiated due to violations of money laundering provisions, but not already when there is only a suspicion of a violation of the provisions. Hence, there is a strong need for clarification regarding the existence of a relevant "finding".
48	**Chapter 5** Situations that trigger a fit and	**pages 53 to 61**	-		The new detailed provisions on reassessments are more detailed. Generally speaking, more detailed

	proper assessment other than new initial appointments **Section 5.2 Reassessments**				provisions are indeed positive from an operational point of view.
49	**Chapter 5** Situations that trigger a fit and proper assessment other than new initial appointments **Section 5.2 Reassessments** Table 4 Non-exhaustive list of examples of new facts	Page 62	ADC	*"Table 4 Non-exhaustive list of examples of new facts"*	Non-exhaustive list of examples : some of our members believe that this list is too detailed.
50	**Chapter 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	Page 58, 62 (Table 4)	C	*New mandate or new function (internal or external) that has an impact on the ability of the individual concerned to commit sufficient time to the supervised entity*	Each new mandate has an impact on the individual time commitment. There should not be no need for new reassessment if there is a reason to believe that the new mandate has only a minor impact.
51	**Section 6.4 Procedural aspects** Interview	Page 66	A	*"Interviews must be conducted in an orderly and structured way and in a timely manner to guarantee the objectivity and quality of the assessment. The ECB agrees with the appointee on the language to be used in the interview, **which will be her or his native language in general**. If*	Regarding the language used in interviews with appointees, the Draft Guide links the language the institutions use in their communication with the ECB to the interview language. We believe that this general rule should be refined, as the link cannot be made in our opinion. The institution (especially the

				~~the credit institution already communicates with the ECB in English, interviews are usually conducted in English. However, flexibility will be used whenever the situation warrants the use of a language other than English.~~ *~~In the case of credit institutions that have not opted to communicate with the ECB in English~~* ***However****, the appointee may agree to the interview being conducted in English. Otherwise, the ECB will agree with the appointee on the language to be used in the interview.”*	SPOC), in case of cooperative networks a central body, might have no problems with communication in English while it cannot be expected e.g. that members of the management body of regional institutions have sufficient English skills to conduct a sophisticated F&P interview. In light of the diversity of European banks and proportionality we believe appointees should, as a general rule, use their native language in interviews if no other language is explicitly concluded. We would like to stress again that particularly for interviews in cooperative/regional banks proportionality should be introduced and applied regarding the language and also material requirements.
52	**Section 7 “Notifications, decisions and ancillary provisions”:** **Section 7.1 Notification of intended appointments** Subsection Supervisory practice	pages 68 to 69	D	*~~“The ECB invites all credit institutions in participating Member States that are not required under national law to notify the competent authorities before the intended appointment of a member to:~~* *~~• submit a fit and proper questionnaire and CV for the newly proposed member of the management body as soon as there is a clear intention[90] to appoint them;~~* *~~• indicate the date of their appointment and the date on which the duties will be effectively taken up;~~* *~~• provide any other documents required under national law as soon as they are available~~*	We would like to recall that the introduction of an ex-ante assessment of all members of the management body, including members of the management body, has no legal ground and, as stated in the draft revised guide, is not provided by all national laws. We thus ask for deletion. In the alternative, should this section be maintained, we would like to draw your attention on the fact that it would lead to a significant increase of files submitted to competent authorities, especially regarding cooperative banks. Moreover, this recommendation if become binding could lead to important practical consequences. In particular :

				~~*This is already the practice among most of the large [credit] institutions in the participating Member States and allows the ECB to frontload its assessment and, where possible, notify its decision before or soon after the appointees effectively take up their duties. Notably, this supervisory practice is not intended to depart from applicable national law, rather it sets out a practical arrangement involving the institutions, the ECB and the NCAs.*~~ ~~*Proportionality and scope*~~ ~~*In the interests of proportionality, the above invitation is limited to the following:*~~ ~~*• proposed new appointments of the CEO and/or other executive members of the management body; and*~~ ~~*• the largest [credit] institutions in the participating Member States, namely:*~~ ~~*• a supervised entity at the highest level of consolidation of a significant supervised group; or*~~ ~~*• a credit institution with the largest total value of assets in a significant supervised group, if this entity is different from that referred to in point (i) above; or*~~ ~~*• a significant supervised entity that is not part of a significant supervised group."*~~	• What about the democratic process of an election during the general assembly? • What in case of an emergency? • What about cooperative banks? • What about national labor law? • What if the authority does not agree to the nomination of the candidate, and there is no enough time to identify a new one ?
53	**Chapter 7**	Page 69/70	A	*"Time frame*	The maximum period of 4 months seems too long to us particularly from the operational point of view. We

	Section 7.2 Types of decision **Subsection Time frame** Second (2nd) paragraph			*A formal ECB decision is taken after every fit and proper assessment by the deadline provided for in national law, if applicable.* *Without prejudice to any deadline set out in national law, the joint ESMA and EBA Guidelines on suitability provide that the time taken to adopt a decision should not exceed ~~four~~* ***one*** *months from the date on which the application or notification is provided by the credit institution."*	would suggest replacing four months with one (1) month period. An emergency procedure should at least be foreseen.

ID	Section / Question	Page	Amendment Deletion Clarification	Detailed comment	Explanation
1			General comment		The current template in the form of a paper Word document is not usable. A key objective should be ensuring that a digital template can be used, which allows unlimited space for the required information and the possibility to copy the information for other FAP assessments (notably those for investment firms and insurance companies. The questionnaire is disproportionately excessive for small institutions, in particularly the local member banks of co-operative networks. These banks have the legal obligation to comply with the instructions issued by the central body and the role of the member institutions is limited mainly to acting as a customer interface (selection and maintenance of client relationships, granting of individual loans and receiving deposits), while the central body is responsible, among other things, for strategy, brand, product development, treasury functions, risk management and ICT. This need for a simplified regime is highlighted by the fact that in co-operative networks up to 3000 forms need to be filled up as these institutions have a dual structure. In order to avoid a disproportionate administrative burden and to ensure a better focused set of requirements for these banks we propose that the template is not used for the management bodies of institutions affiliated to a central body within the meaning of CRR Article 10 provided that the instructions issued by the central body pursuant to the said Article require the appointees to provide the necessary information on their identity, experience, reputation, time commitment and conflicts of interest on a template provided by the central body. At minimum, this

					should be possible for the appointees to the Supervisory Boards. Additionally, the form in which the questionnaire is to be presented is not clear, given that both the statements made by the appointee and the merit evaluations carried out by the competent company body are envisaged. It is therefore necessary to clearly separate the information requested from the appointee from the information/assessments within the responsibility of the Bank (these are not clearly specified for the following sections: pg. 11, lett. D; pg. 14, lett. G; pg. 16, the second last paragraph "Describe any other mitigating or aggravating factors using the Guide to fit and proper assessments as a basis"; pg. 21 lett. E; pg. 24, lett. B). We also have a general concern about the regulatory data protection, as a lot of personal information should be submitted, the relevance of which is questionable, and the underlying principles of the regulatory data protection regime require that only necessary information can be stored.
2	Section 1	Page 5		**1. IDENTITY OF THE SUPERVISED ENTITY AND APPOINTEE**	**1. IDENTITY OF THE SUPERVISED ENTITY AND APPOINTEE** The detailed information of previous identity, previous places of residence and all previous fap assessments is excessive. It should be adequate to submit the latest name, place of residence and fap assessment. The need for Section E on money laundering is unclear as it is not likely that the appointees would be aware of the institution being involved in criminal activities and yet volunteering for membership of the management body.

3	1. Identity of the supervised entity and appointee Current residence	Page 6	D	***~~Start date of residence at this address~~***	The proposed questionnaire requires an excessive level of detail.
4	Section 2	Page 8		**2. FUNCTION FOR WHICH THE QUESTIONNAIRE IS SUBMITTED**	**2. FUNCTION FOR WHICH THE QUESTIONNAIRE IS SUBMITTED** We find the distinction executive / non-executive unnecessary as, it overlaps with the notions of management body in its management function and management body in its supervisory function, as defined in the draft Guide. Nor does it accurately reflect the role of the members of the administrative bodies in most institutions, as the Board of Directors usually has both executive and at least some supervisory tasks. We, therefore, propose the more informative distinction management body in its management function / management body in its supervisory function / management body performing both the management and supervisory functions, as this distinction should have impact on the fap assessment. In addition, the distinction between full-time and part-time members could be considered instead of the distinction executive / non-executive.
5	2. Function for which the questionnaire is submitted Functions	Page 8	A		In the list of the different possible roles and functions, a box entitled **“General Manager”** should be added. The list should include "**Substitute member of the Board of Statutory Auditors"**.

					The amendments are proposed with the aim to collect more accurate information.
6	2. Function for which the questionnaire is submitted Functions	8	C	*Is the application for the renewal of an appointment?*	We would see the need to clarify whether question "*Is the application for the renewal of an appointment?*" is intended to address the renewal of **the appointee** or the renewal **of the appointment**. This aspect needs to be clarified, especially with regard to the cases of confirmation at the shareholders' meeting of members who have already been co-opted by the management board or who have taken over the role of effective member during their mandate.
7	2. Function for which the questionnaire is submitted Functions	8	C	*Is the appointee replacing another person?*	We would see the need to clarify whether question *"Is the appointee replacing another person?"* should be addressed only in the case of replacement during the term of the mandate.
8	2. Function for which the questionnaire is submitted Planned end date of the term of office	9	A		We suggest that the answer field should be changed to a free/blank field, taking into account the fact that some appointments do not have a deadline that can even be planned (e.g. DGs, key functions holders).
9	Section 3	Page 10		**3. EXPERIENCE**	**3. EXPERIENCE** We draw attention to the fact the legislation referred to in Section E is different from the Guide itself. Section F is impractical, if the training courses must be specified in the template instead of an attachment.

10	3. Experience Number of subordinates	10, 11	C		With reference to the information request "number of subordinates", please clarify what is meant by "in hundreds". If this is meant to be considered "1" as well as "100", we point out that the thresholds are excessive for cooperative banks.
11	3. Experience Training	14	D		the training details table to be deleted. Excessive level of detail, also in view of the fact that this assessment must take into account the training activities for appointees approved each year by the competent company bodies, also in the context of group policies.
12	Section 4	Page 15		**4. REPUTATION**	**4. REPUTATION** We refer our comments to the draft Guide, where the required information is, in our opinion, excessive. The template should be amended accordingly.
13	4. Reputation A	16		*~~Could you have done more to avoid the alleged wrongdoing and did you learn anything from it?~~*	To delete the question "Could you have done more to avoid the alleged wrongdoing and did you learn anything from it?" repeated with reference both to matters directly affecting the appointee and to matters affecting related companies. The elimination is considered necessary especially with regard to ongoing proceedings for which the responsibility of the appointee or his/her related companies has not been proven.
14	Section 5	Page 19		**5. CONFLICTS OF INTEREST**	**5. CONFLICTS OF INTEREST**

					We refer our comments to the draft Guide. The template should be amended accordingly.
15	5. Conflicts of interest G	22	**A**	*Do you in any way represent a shareholder of the supervised entity, the parent undertaking or their subsidiaries?* ***(not applicable to cooperative banks)***	It should be specified that this question does not apply to cooperative credit banks, even adding "n.a." as a possible answer. According to the typical statute of cooperative banks, directors must necessarily be chosen among the members of the bank (shareholders).
16	**6. Time commitment** **C**	Page 24	A	*Has an additional non-executive directorship been authorised by a competent authority (Article 91(6) CRD)?* Introduce as a possible answer to this question also the option "**n.a**."	This option is necessary to deal with those cases where the limit on the number of offices does not apply, according to the national legislation that transposed the CRD requirement according to the principle of proportionality.
17	**6. Time commitment** **D**	Page 25	D	~~*Number of meetings per year*~~	This detail is considered superfluous, as the number of days devoted to the task/activity is already indicated.
18	**6. Time commitment** **G**	Page 26	D	~~*If privileged counting is applied, please provide details of any synergies that exist between the entities concerned, such that there is a legitimate overlap in terms of the time commitment with respect to those entities.*~~	It is considered that this detail does not need to be provided. A s such privileged cumulation is already allowed by the CRD and national law, without the requirement to provide reasons for this.
19	Section 7	Page 27		**7. COLLECTIVE SUITABILITY**	**7. COLLECTIVE SUITABILITY** Section E should be deleted as it is superfluous to other required information and it is unclear whether it should cover all appointees or only the person in question.
20	**7. Collective suitability** **D**	27	D	~~*Describe the extent to which the appointee contributes to the collective suitability of the management body, including its understanding of climate-related and environmental risks. In*~~	It is considered that the contribution of the individual is not relevant to the assessment of collective suitability, which by definition requires an overall assessment that is

				~~*addition, explain in general terms the weaknesses that have been identified in the management body's collective composition and the extent to which the appointee contributes to solving some or all of these weaknesses*~~.	already adequately explored in the successive sections of the questionnaire.

Contact:

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