



EUROPEAN CENTRAL BANK
BANKING SUPERVISION

Feedback statement

Responses to the public consultation
on the draft Guide to fit and proper
assessments and new Fit and proper
questionnaire

BANKENTOEZICHT

December 2021

BANKTILLSYN BANKU UZRAUDZĪBA

BANKŲ PRIEŽIŪRA NADZÓR BANKOWY

VIGILANZA BANCARIA

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SUPERVISION BANCAIRE BANČNI NADZOR

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BANKENAUF SICHT

ΤΡΑΠΕΖΙΚΗ ΕΠΟΠΤΕΙΑ

PANKKIVALVONTA

SUPRAVEGHERE BANCARĂ BANKOVÝ DOHLAD

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BANKENAUF SICHT

Contents

1	Introduction	2
1.1	Context	2
1.2	Structure of the feedback statement	2
1.3	Response statistics	2
1.4	Adoption of the draft Guide to fit and proper assessments and new Fit and proper questionnaire	5
2	Comments on and amendments to the draft Guide to fit and proper assessments	6
3	Comments on and amendments to the new Fit and proper questionnaire	34
3.1	Generic comments	34
3.2	Comments on the new Fit and proper questionnaire by section	34

1 Introduction

1.1 Context

On 15 June 2021 the European Central Bank (ECB) launched a public consultation on the draft of a revised Guide to fit and proper assessments and a new Fit and proper questionnaire. The public consultation ended on 2 August 2021.

In addition to requesting written comments, the ECB also gave industry participants and other relevant interested parties the opportunity to ask questions and provide feedback during a public hearing with the ECB, held through a virtual platform on 15 July 2021. Furthermore, the ECB answered questions on the public consultation at its regular dialogue with the banking associations held on 24 September 2021.

Most of the comments submitted during the public hearing were also reiterated in the written comments. The ECB has given due consideration to all of the comments received during the consultation period.

1.2 Structure of the feedback statement

This feedback statement presents an overall assessment of the comments received during the public consultation and aims to address the common issues raised. Comments relating to common issues or topics were grouped and addressed together. Accordingly, following this grouping exercise, the resulting feedback statement includes 121 comments on the draft Guide to fit and proper assessments and 73 comments on the new Fit and proper questionnaire. Amendments to the draft Guide to fit and proper assessments and new Fit and proper questionnaire have been made, where appropriate, following assessment of the comments received.

Chapters 2 and 3, respectively, summarise the key comments received and the ECB's answers to those comments along with any resulting amendments to the draft Guide and to the new Fit and proper questionnaire. The feedback statement only lists the most relevant and frequently made comments or proposed amendments. In addition, minor changes (mainly editorial) have been incorporated in the draft Guide to clarify certain aspects that were raised during the public hearing or which remained unclear following revision by the ECB.

1.3 Response statistics

In total, 718 responses were received, including 434 responses for the draft Guide to fit and proper assessments and 284 responses for the new Fit and proper questionnaire. Over 49% of responses for the draft Guide and 45% of responses for the new questionnaire were requests for clarification. Contributions were submitted by 16 respondents, including four credit institutions, 11 market and banking associations

and one consultancy, thus showing a broad participation of stakeholders. In particular, of the grouped responses received on the draft Guide and the new questionnaire, nine out of 121 (i.e. about 7%) and 28 out of 73 (i.e. about 38%), respectively, led to changes to the original draft.

Charts 1a and 1b provide a breakdown of the total number of responses by type of respondent; Charts 2a and 2b provide a breakdown of the number of grouped responses by section and Charts 3a and 3b provide a breakdown of the number of responses by type of request for the draft Guide and for the new questionnaire.

Chart 1

Number of responses by type of respondent

a) draft Guide to fit and proper assessments

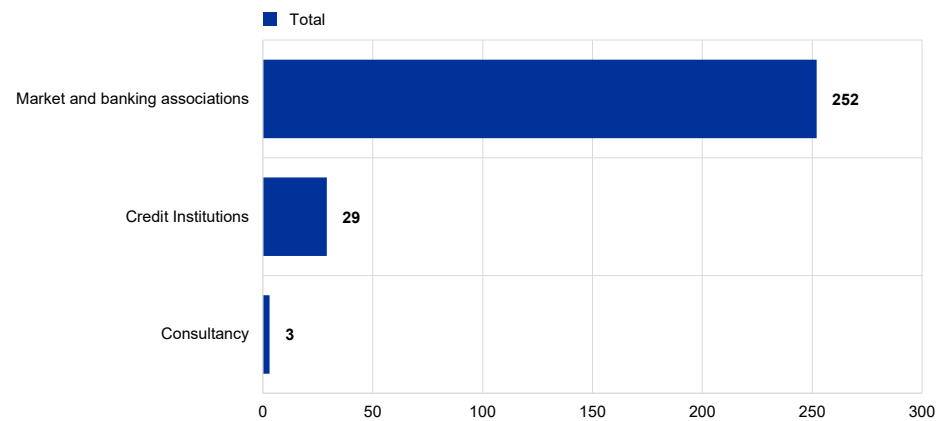
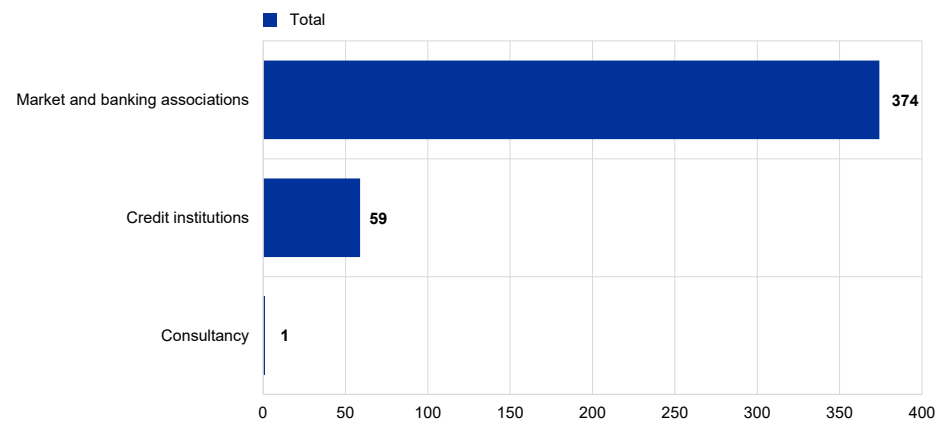


Chart 2

Number of grouped responses by section

a) draft Guide to fit and proper assessments

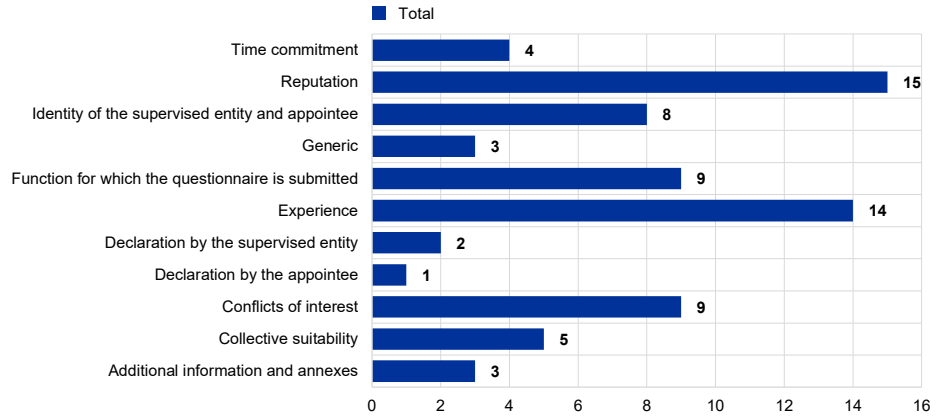
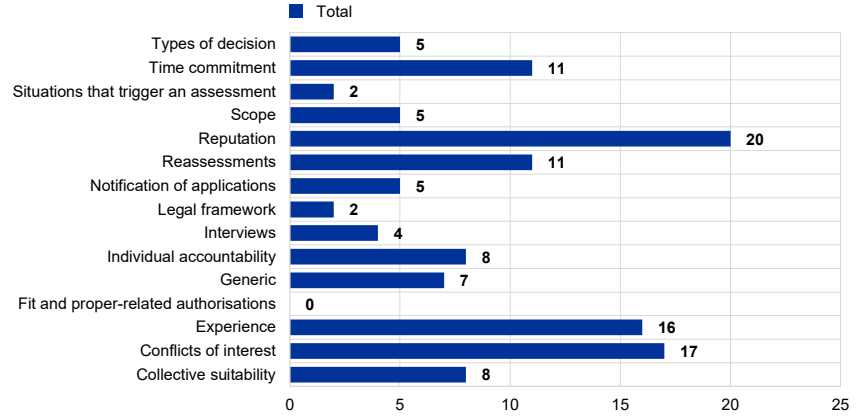
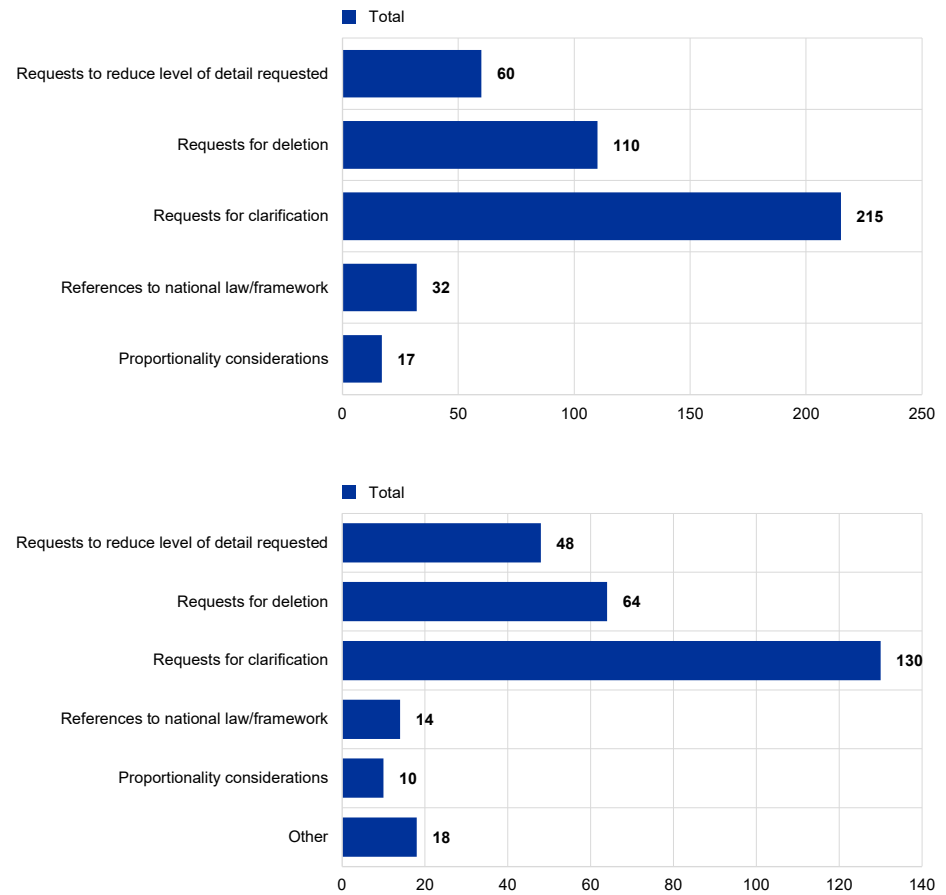


Chart 3

Number of responses by type of request

a) draft Guide to fit and proper assessments



1.4 Adoption of the draft Guide to fit and proper assessments and new Fit and proper questionnaire

The Guide to fit and proper assessments and the Fit and proper questionnaire, as adopted by the Governing Council on 6 December 2021, were published on the ECB's website on 8 December 2021, together with this feedback statement.

2 Comments on and amendments to the draft Guide to fit and proper assessments

Table 1
Comments on the Guide by section

Generic comments

#	Topic	Details	Response	Change
1	Foreword	According to the draft Guide, "ECB and NCAs strive to interpret national rules consistently with the policy stances". Some stakeholders stated that the interpretation of national law cannot depend on supervisory acts, but that the opposite applies: the ECB and NCAs have to comply with national law. Criteria applicable according to the relevant national law should be interpreted in line with the national laws.	The policy stances contained in the draft Guide are without prejudice to national law provisions. The statement on the interpretation of national law in the light of the approach envisaged in the draft Guide is without prejudice to national law provisions. In this respect, however, a key role is also played by the principle of harmonious interpretation of national law, which requires national law to be interpreted in the light of the wording and the purpose of EU law, as consistently held by the CJEU. Notwithstanding the legislative harmonisation through the Capital Requirements Directive (CRD)¹ and the convergence of supervisory practices pursued by the EBA Guidelines on suitability, numerous divergences in the supervisory approach in respect of the assessment of suitability of members of the management bodies (including different interpretations of the applicable assessment criteria) have been identified across the Member States. In order to support the overarching objective of European banking supervision, namely the consistent application of a harmonised approach within the Single Supervisory Mechanism (SSM), the ECB and national competent authorities (NCAs) should strive to achieve harmonisation, to the extent possible within the national legal framework, interpreted in accordance with the wording and the purpose of EU law.	No
2	Foreword	Respondent(s) asked for a transitional period of at least 12 months before the application of the draft Guide. They advocate that the transitional period is crucial in view of the relevant amount of time needed to allow, inter alia, the internal processes to be modified and completed and to find suitable candidates with the new skills requested.	The draft Guide to fit and proper assessments reflects the internal policy and processes already in use within the ECB and the SSM. The draft Guide to fit and proper assessments does not introduce additional suitability requirements beyond what is already required by the CRD but explains the methodology for the assessment of these criteria. Therefore, the ECB does not consider it necessary to have a transitional period.	No
3	Foreword	Respondent(s) suggested deleting or amending the sentence: " <i>The suitability assessment conducted by the competent authorities is prudential and preventive in nature</i> ", as they emphasised that the draft Guide should clearly recognise the existence of different approaches under national legislation for example laws requiring an ex post (post-appointment) assessment and which are therefore not preventive.	The relevant sentence does not refer to the timing of the fit and proper assessment, but rather to the purpose of the assessment conducted by competent authorities as opposed to criminal or administrative proceedings (which are referred to in the next sentence of the text). The latter have a sanctioning purpose, while the fit and proper assessment by competent authorities has a prudential objective, as it aims at ensuring that unsuitable individuals do not hold positions in the boards of institutions (thereby jeopardising	No

¹ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

#	Topic	Details	Response	Change
			their sound and prudent management), and is therefore preventive in nature. The ECB believes that strong boards insure against the risk of future prudential failures.	
4	Foreword	Respondent(s) advocated for explicitly extending the general commitment to proportionality to all aspects concerning the appointee and his/her future activity, e.g. according to the internal allocation of duties and responsibilities: <i>"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."</i>	The principle of proportionality is enshrined both in EU banking legislation (see e.g. Recital 46 of the Capital Requirements Regulation - CRR) ² and in the organisation and functioning of European banking supervision (see e.g. Recital 55 of the SSM Regulation ³ and Article 1(3) thereof). It is one of the general principles of EU law, dictating the content and form of Union action in its fields of competence (Article 5 of the TEU). The wording of the draft Guide to fit and proper assessments reflects the key role played by proportionality in the pursuance by the ECB of its supervisory tasks, in accordance with Union legislation. Regarding the suggested <i>"specifics of the appointee concerned and the nature of her or his future activity"</i> , the ECB notes that throughout the whole Guide it is emphasised that the assessment is done on a case-by-case basis, taking into account all relevant factors, including the position and role of the appointee and their particular responsibilities. It is also worth noting that, since an appointee has either a good or a bad reputation, the principle of proportionality does not apply to the reputation requirement or to its assessment, which should be conducted for all appointees and institutions in an equal manner.	No
5	Foreword	Respondent(s) are of the view that the draft Guide to fit and proper assessments is very prescriptive and raises concerns from the perspective of constitutional/ fundamental rights and Level 1 regulation (CRD V in particular) or national law (i.e. for the ex-ante assessment). Furthermore, while detailed guidance could be helpful particularly from the operational point of view and to some extent in the case of reassessments, the level of detail is too granular 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.	The efficient processing of fit and proper assessments is first and foremost dependent on the quality of the information provided, on time, by the supervised entities. It is the primary responsibility of the supervised entity to ensure that the members of their management bodies are suitable at all times and that the applications filed with the supervisor are complete. Incomplete files require complex interactions and follow-up, which delay the process. This is the underlying reason for the granularity of the Guide, improving the questionnaire and publishing the supervisory approach in more detail. The draft Guide to fit and proper assessments and the new Fit and proper questionnaire are expected to support the industry in better understanding supervisory expectations and the way fitness and propriety is assessed in the SSM while at the same time assisting the supervised entities to submit complete applications, which in turn should speed up the whole assessment process. Finally, the timely anticipation of upcoming managerial changes including the envisaged timeline of applications to the respective supervisors also supports efficient processing (which, moreover, is the main objective of the proposed ex-ante approach). Additionally, the purpose of the draft Guide is to provide further guidance regarding the implementation of the EBA Guidelines on suitability which in turn provides full transparency to industry. This transparency facilitates predictability and therefore enables due adherence to constitutional or fundamental rights.	No

² Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p.1).

³ Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p.63).

#	Topic	Details	Response	Change
6	Foreword	Respondent(s) challenged the legal basis for the ECB to collect such an extensive amount of information containing personal data in light of data protection rules.	In accordance with Article 5(1)(a) of Regulation (EU) 2018/1725⁴ ("EUDPR"), the ECB processes personal data for fit and proper purposes in order to perform a task carried out in the public interest or in the exercise of official authorities vested under Article 4 (1)(e) of the SSM Regulation in accordance with Article 16 (2)(m) of the SSM Regulation, Article 91 (1) of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 and Articles 93 and 94 of the SSM Framework regulation. In this regard, Article 10 of the SSM Regulation expressly sets forth that the ECB may require all information that is necessary in order to carry out the tasks conferred on it. Hence, in accordance with Article 91 of the CRD, the ECB has developed a Questionnaire to collect data within the framework of its mandate, and in order to properly conduct its assessment. This questionnaire contains only that information which is absolutely necessary for the ECB to conduct its fit and proper assessment and nothing further. Any developments in the processing of data is carried out in close contact with the ECB data protection officer to comply with the requirements of the EUDPR. For further information, please consult the "Privacy statement on the processing of personal data in the context of prudential supervision under the Single Supervisory Mechanism" (link). The ECB is cognisant of the risks associated with using technology when dealing with personal data, especially data considered to be "sensitive", and assesses and applies technical and organisational mitigating measures in order to address those risks whenever needed.	No
7	Foreword	Respondent(s) referred to the paragraph of the draft Guide that reads as follows: 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 scope of the applicable national law), across the participating Member States. In this respect, respondent(s) suggested that, should the final draft Guide maintain the term "management" or "key function holder", those terms be defined or, preferably, linked to already-existing definitions in the CRD (Article 3(1)(9)) and EBA/ESMA Guidelines (paragraph 15), respectively.	As the scope of assessment concerning key function holders and branch managers is based on national law, the relevant terms (key function holders and branch managers) are defined in the national implementation of the relevant CRD provisions. According to the EBA Guidelines on suitability (Subject matter, scope and definitions, paragraph 15), at least heads of internal control functions and the Chief Financial Officer (CFO), where they are not members of the management body, should be considered as key function holders. For branch managers, the EBA Guidelines on suitability (Background and rationale, paragraph 10) require the competent authorities to assess the individuals who effectively direct the branch. The draft Guide to fit and proper assessments has been amended to reflect this reply.	Yes

1. Scope of the ECB's fit and proper assessments

#	Topic	Details	Response	Change
8	Scope of the ECB's fit and proper assessments	Respondent(s) suggested deleting or amending the sentence "the guidance provided below can also be used to interpret the criteria applicable according to the relevant national provisions", as there is no interpretation method to interpret national law in light of ECB supervisory practice.	The policy stances contained in the draft Guide to fit and proper assessments are without prejudice to national law provisions. The statement on the interpretation of national law in light of the approach envisaged in the draft Guide to fit and proper assessments is without prejudice to national law provisions. Notwithstanding the harmonisation achieved through the CRD and the EBA Guidelines on suitability, numerous divergences in supervisory practices in respect of the assessment of suitability of members of the management bodies (including different	No

⁴ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

#	Topic	Details	Response	Change
			interpretations of the applicable assessment criteria) have been identified across the Member States. In order to support the overarching objective of European banking supervision, namely the consistent application of a harmonised approach within the SSM, the ECB and NCA should strive to achieve harmonisation, to the extent possible within the national legal framework. Therefore, this sentence should not be removed as it is important for all relevant stakeholders to understand that this interpretation (where it is permissible) is necessary in order to achieve the harmonisation objective.	
9	Scope of the ECB's fit and proper assessments	Respondent(s) raised doubts about the intention of the guide to influence national law. Respondent(s) advocated that national law, if necessary, has to be amended following the transposition of the EU Directives, but not in view of the supervisory practices.	The policy stances contained in the draft Guide to fit and proper assessments are without prejudice to national law provisions. This draft Guide to fit and proper assessments is not a legally binding document and cannot in any way substitute the relevant legal requirements stemming either from applicable EU law or applicable national law, nor does it introduce new rules or requirements. The aim of the Guide is not to influence national law, but to provide insight into policy stances, supervisory practices and processes applied by the competent authorities within the SSM.	No
10	Scope of the ECB's fit and proper assessments	Respondent(s) challenged the scope of the Guide to include key function holders (KFH) and branch managers. They challenged the legal basis, the applicable criteria and suggested deletion of any references in the Guide.	As part of the requirement to have robust governance arrangements, institutions are primarily responsible for ensuring that key function holders (KFHs) are fit and proper, where so provided by the national transposition of Articles 74, 76 and 88 of the CRD. In those participating Member States where a fit and proper assessment of the KFHs is envisaged by national law, the competence to carry out such assessment is attributed (for significant institutions) to the ECB as it falls within its tasks under Article 4(1)(e) of the SSM Regulation to ensure that credit institutions have in place robust governance arrangements and the supervised entities comply with the fit and proper requirements for the "persons responsible for the management of credit institutions" (see the ECB letter to banks dated 31 March 2017, "Additional clarification regarding the ECB's competence to exercise supervisory powers granted under national law" SSM/2017/0140, in particular Fiche V in Annex 2 thereof: link). Therefore, the assessment of KFHs by the ECB is limited only (i) to those participating Member States where there is a specific power for the NCAs to conduct such assessment and (ii) to those KFHs that operate within the banking activity for which the ECB has been granted supervisory powers under Article 4(1)(e) of the SSM Regulation. In those participating Member States where there is no specific power for the NCAs to conduct the assessment, there is no legal basis for the ECB to conduct an assessment of KFHs. The same applies for the assessment of third country branch managers. When the assessment criteria envisaged by national law for KFH and branch's managers are the same as the ones for members of the management bodies deriving from the transposition into national law of Article 91 of the CRD, their application will be made, insofar as possible within the limits of national law, according to the policy stances set out in the draft Guide, in order to ensure consistency.	No
11	Scope of the ECB's fit and proper assessments	Respondent(s) emphasised that 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). They note that the Guide seems not to sufficiently take this difference into account	As emphasised in the draft Guide to fit and proper assessments and in line with the relevant legal basis and the EBA Guidelines on suitability, the ECB does not advocate any particular governance structure and the policy stances contained in the draft Guide to fit and proper assessments re intended to cover all	No

#	Topic	Details	Response	Change
		and the different nature of these bodies should, therefore, be reflected across the draft Guide.	existing structures. The governance structure is, however, taken into account in the assessment where relevant. Each appointee is assessed on a case-by-case basis, taking into account all relevant circumstances, including the governance structure, as this may influence their roles and responsibilities, number of meetings, necessary time commitment or collective suitability.	
12	Scope of the ECB's fit and proper assessments	Respondent(s) noted that 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 centralisation within the group. The need for differentiation is particularly relevant in co-operative networks within the meaning of the CRR Article 10, where the member institutions have the legal obligation to comply with the instructions issued by the central body.	All relevant circumstances regarding the appointee, their position and institution are taken into account in the assessment, including the governance structure, which may impact the role and responsibilities of the appointee. Where a centralised body is concerned, this may entail different roles and responsibilities than, for example, an underlying co-operative bank that is obliged to follow the instructions of the central body. The nature, scale and size of the institution is by necessity taken into account when processing any individual fit and proper application.	No

2. Legal framework

#	Topic	Details	Response	Change
13	Legal framework	Respondent(s) pointed out that the majority of questions and information that supervisors use for the assessment is based on soft law (Guide to fit and proper assessments, EBA Guidelines). They therefore suggested the following: (1) to refrain from posing questions based on soft law; (2) to clarify in the Questionnaire on which specific binding Union law or binding national law the relevant questions are based; and to (3) only make questions based on binding law. In addition (4) if national guidance exists, the national guidance should not be applied and only the ECB Guidance should be followed.	The new Fit and proper questionnaire is a tool designed by the ECB to facilitate and harmonise the collection of all the information relevant for carrying out its tasks of assessing the suitability of members of the management bodies of significant institutions (and of KFHs of significant institutions' branches established in other EU Member States or in third countries, when required by, and within the limits of, national law). The questions contained in the new Fit and proper questionnaire relate to the fulfilment of the requirements set out in Article 91 CRD IV, whose notions are further specified in the EBA Guidelines on suitability, as mandated by Article 91(12) of CRD IV. The questions are therefore based on the assessment criteria directly stipulated by CRD, and also take into account the transposition of such criteria in the national law of the relevant SSM participating Member State.	No
14	Legal framework	Respondent(s) requested to make it clear that deviations from the draft Guide should only be possible to the extent explicitly required by national public law. The background is that they have experienced that the NCA applies their own supervisory guidance in the ex-ante assessments, which do not have a proper basis in national legislation to be applied by banks and to be taken into account by the ECB in accordance with their mandate based on the SSM Regulation.	This draft Guide to fit and proper assessments is not a legally binding document and cannot in any way substitute the relevant legal requirements stemming either from applicable EU law or applicable national law. NCAs should apply the stances introduced in the draft Guide to the extent possible (for institutions under the direct supervision of the ECB) without prejudice to national provisions.	No

3. Assessment criteria

3.1 Experience

#	Topic	Details	Response	Change
15	Experience	Respondent(s) suggested removing the last sentence in the paragraph entitled Step 1 (Section 3.1.3.2, page 11) as it refers to other relevant knowledge rather than basic knowledge. Therefore, they suggested moving it as it should only be considered within the complementary assessment with regard to collective suitability of the board.	The ECB acknowledges the comment but clarifies that this sentence explains that the thresholds for experience are not automatically exclusive, and they do not operate in isolation of other factors relevant to the assessment of experience. These factors are relevant not only in the context of the collective suitability of the board, as in any individual case there may be reasons for requiring specialised expertise, which are not taken into account by the indicated thresholds and which will be considered in the complementary assessment. This would apply for example to a board member who is hired in order to bring the	No

#	Topic	Details	Response	Change
			institution forward in terms of digitalisation and this profile would require IT experience. Similarly, for members of committees, specialised knowledge may be required.	
16	Experience	Respondent(s) suggested adding a clarification that the ECB will apply different thresholds only if provided by national law.	The ECB emphasises that the draft Guide is without prejudice to national law and this is stated throughout the draft Guide, including in Section 3.1.3.2, where assessment against thresholds is discussed (Step 1 – Assessment against thresholds): <i>"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'."</i>	No
17	Experience	Respondent(s) requested to be informed where the complementary assessment is conducted.	The fact that the appointee does not meet the thresholds means that the supervisor will investigate into further circumstances justifying their appointment and suitability for a particular role. It does not mean that the appointee is automatically considered unsuitable or that a negative decision will be taken. In the event the supervisor has doubts and needs more information on for example, training plans, the supervisor must obtain all information necessary for a comprehensive assessment. The ECB emphasises that this approach has been in place since the beginning of the SSM and was also included in the previous Guide to fit and proper assessments (2017) published on the ECB's website. The complementary assessment for experience is an integral part of the suitability assessment.	No
18	Experience	Respondent(s) suggested introducing a presumption that previous practical experience in an institution is not necessary where the management body as a whole has strong enough knowledge of such matters, for example in the case of local branch or regional banks.	In principle, it is expected that members of the management body have practical banking experience. In the case that the appointee does not meet the experience thresholds, a detailed assessment will be conducted where all relevant factors will be taken into account, such as the length of service, size of the entity, responsibilities held, number of subordinates, nature of activities, actual relevance of the recent experience gained, and other relevant factors, such as collective suitability and the added value the appointee brings to the board in terms of diversity. Therefore, as collective suitability is only one of the factors taken into account when assessing the appointee's experience in more detail, the presumption suggested by the respondents is not appropriate. In addition, where an appointee has no practical experience in banking and therefore will (presumably) also lack the requisite theoretical knowledge, even if the collective suitability is strong, the individual appointee will be required to be trained on the minimum areas of knowledge as set out in Section 3.1.3.1 of the draft Guide to fit and proper assessments and also in the EBA Guidelines on suitability in paragraph 63.	No
19	Experience	Respondent(s) suggested clarifying what is meant by "important" knowledge (page 10) or deleting it due to the fact that it refers to other relevant knowledge rather than the basic one to which the rest of the section refer.	The ECB agrees to delete the sentence: "The level and profile of the education relating to banking or financial services or other relevant areas, such as economics, law, accounting, auditing, administration, financial regulation, strategy, risk management, internal control, financial analysis, IT and quantitative methods is important." given the reasons stated by the respondents and since the relevant sentence is repeated in Section 3.1.3.	Yes
20	Experience	Respondent(s) emphasised that it is unrealistic to expect all members of the management body to possess basic theoretical banking knowledge in listed areas, and it also contradicts to the diversity requirements.	In line with the EBA Guidelines on suitability (Section 7, Collective suitability criteria, paragraph 68)), the members of the management body should collectively be able to take appropriate decisions considering the business model, risk appetite, strategy and markets in which the institution operates. The ECB expects each member of the board to be familiar with and have basic knowledge of the listed areas in order to be able to follow and	No

#	Topic	Details	Response	Change
			participate in the discussion and decide on the relevant topics. As indicated in the draft Guide to fit and proper assessments, this knowledge in the listed areas (as set out in Section 3.1.3.1 of the draft Guide to fit and proper assessments and also in the EBA Guidelines on suitability in paragraph 63) is presumed if the member has practical banking experience. A lack of theoretical banking knowledge may be mitigated by providing for adequate training in the areas where the appointee has no knowledge or should strengthen their knowledge.	
21	Experience	Respondent(s) requested clarification of "significant proportion of senior management experience" and of the institutions own "management levels" where the draft Guide states: "This should include a significant proportion at senior level managerial positions (one level below the management body in its management function".) In addition, respondent(s) requested the introduction of a proportionality principle for the definition of senior management experience (in more complex entities, two levels below the board).	The ECB emphasises that the assessment is done on a case-by-case basis and therefore the number of years of a "significant proportion" may vary depending on the type or size of institution, number of subordinates and the scope of roles and responsibilities. Therefore, a level of discretion is left to a certain extent, also to allow for a case-by-case assessment and a proportionate approach. If the institution or the appointee can justify that the level of senior management experience is sufficient to participate effectively on the board, then this will result in a positive assessment without the need to impose any ancillary provisions.	No
22	Experience	Respondent(s) claim that the experience thresholds are too inflexible and rigid, preventing banks from considering a more diverse pool of candidates. They claim that the presumption period should be reduced to respectively five and three years. Furthermore they argue that for a non-executive board member, the draft Guide should introduce a presumption of sufficient experience for high-level experts such as consultants, or experts in areas such as finance and accounting, risks, etc.	The ECB emphasises that the experience presumptions are not exclusive or inflexible and do not mean that the appointee who does not meet them is automatically considered unsuitable. If the thresholds are met, the appointee is ordinarily presumed to have sufficient experience, unless there is an indication to the contrary, and no further detailed assessment is necessary. In case the appointee does not meet the threshold In the case that the appointee does not meet the experience thresholds, their previous positions will be assessed and all relevant factors will be taken into account, such as the length of service, size of the entity, responsibilities held, number of subordinates, nature of activities, actual relevance of the recent experience gained and other relevant factors, such as collective suitability and the added value the appointee brings to the board in terms of diversity.	No
23	Experience	Respondent(s) pointed out that the draft Guide does not include thresholds for presumption of sufficient experience for key function holders. Clarification is needed on whether key function holders are subject to the same thresholds or how is their experience assessed.	The ECB points out that assessments of key function holders (KFH) are subject to criteria established in national law More generally, due to the specific responsibilities and duties of KFH, the knowledge, skills and experience necessary for the role and duties of the specific position are considered. Further guidance is provided in the EBA Guidelines on suitability.	No
24	Experience	Respondent(s) suggested clarifying what level of education is needed in order to consider an appointee suitable (e.g. bachelor's or master's degree).	In line with the EBA Guidelines on suitability, the ECB takes into account the level and profile of the appointee's education and whether or not it relates to banking and financial services or other relevant areas. The term "experience" covers practical and theoretical aspects and includes skills and knowledge. Both theoretical knowledge attained through education and training and practical experience gained in previous occupations is considered. The assessment is therefore conducted on a case-by-case basis taking all training, practice and education into account, with no required level or profile of education which would automatically affect the conclusion on the suitability of the appointee. This approach is in line with the ECB's case-by-case and flexible approach to the assessment of experience.	No
25	Experience	Respondent(s) asked for more details in order to determine the best way to ensure a collective knowledge of climate-related and environmental risks.	Knowledge related to climate and environmental risks is assessed by applying the same approach as for other areas of knowledge. In line with the EBA Guidelines on	No

#	Topic	Details	Response	Change
		Respondent(s) asked inter alia: - is training sufficient to fill in the gap (and not mandatory experience)? - how will interviews be used to check the knowledge/experience?	suitability, the term "experience" covers practical and theoretical aspects and includes skills and knowledge. Both theoretical knowledge attained through education and training and practical experience gained in previous occupations is considered. Theoretical knowledge can be acquired also through training after taking up the position, and training plans completed, ongoing or to be completed in the short term by the appointee are also taken into account. Interviews may be used in order to gain more insight on the appointee's awareness, knowledge and experience in respect of climate-related and environmental risks or to discuss the envisaged training plans. Furthermore, by holding interviews, in the same way that other key areas are explored, the appointee's experience and knowledge of climate-related and environmental questions can be appropriately checked through asking questions.	
26	Experience	Respondent(s) suggested deleting 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.") as this expectation is overarching and the reference to the three lines of defence inappropriately broadens the scope.	The footnote represents one of the expectations in the ECB Guide on climate-related and environmental risks. ⁵ (Chapter 5.3., Expectation 5.) As such, the assessment falls within the scope of ongoing governance supervision.	No
27	Experience	Respondent(s) pointed out that the presumption that experience can be considered met by having a training plan for the appointee in the case of small savings banks and cooperatives should be extended to other non-complex banks. As there are criteria for small and non-complex banks, this possibility should be granted to such institutions, regardless of their legal form, in line with Article 4 paragraph 1, No 145 CRR (definition of small and non-complex institutions).	This presumption is limited to small saving banks and cooperatives owing to their specific nature, business model and institutional features. The term "small" refers to both saving banks and cooperatives but is not defined as it is subject to proportionality. Among others, the nature, scale and complexity of the institution's activities, as well as the envisaged training plans, are always taken into account by supervisors when assessing the appointee's experience. Therefore, the fact that the institution may not be a small cooperative or saving bank, but is a non-complex institution will also be duly taken into account in the assessment and proportionality will be applied (for example in terms of the expected knowledge, experience and training plans).	No
28	Experience	Respondent(s) pointed out that it should be clarified in the event of a significant change of responsibilities within the board, no notification is required. It should be only the task of the institution to check whether the member of the board has sufficient experience and knowledge for the specific responsibilities (as all members have been subject to an FAP decision of the ECB in the past). In addition, it should be presumed that the person has sufficient experience due to the fact that the CRD and the supervisory authorities require a collective experience/knowledge as well.	Change of roles and responsibilities, as well as renewals, are subject to different notification requirements based on the respective national law. However, in the case where a change of role has an impact on the suitability of an appointee and is to be considered a new fact, the supervised entity should always notify the supervisor (Joint Supervisory Team (JST)).	No
29	Experience	Respondent(s) emphasised that the term "director" is not defined and, unless it is clearly defined, another term should be used instead. This is because in some Member States, the term "directors" only refers to board directors and not to any executive function.	The ECB emphasises that different terms are explained in the text, footnotes and the ECB's SSM glossary . In particular, the term directorship is explained in the glossary as follows: "The position of a member of the management body of a company". Furthermore, Section 1 of the draft Guide to fit and proper assessments clarifies that the Guide "covers fit and proper assessments of members of the management body, both in their management function (executive directors) and supervisory function (non-executive directors)". This corresponds with the meaning of "directorship" and implies	No

⁵ [Guide on climate-related and environmental risks: Supervisory expectations relating to risk management and disclosure](#), ECB Banking Supervision, November 2020.

#	Topic	Details	Response	Change
			that the term directors throughout the draft Guide refers to members of the management body.	
30	Experience	Respondent(s) pointed out that since there is a lot of emphasis on the individual responsibility of the appointee, this may suggest civil liability.	The draft Guide to fit and proper assessments serves as a set of guidelines to supervisors across European banking supervision by describing the policy stances, supervisory practices and processes applied by the competent authorities within the SSM for the purpose of the fit and proper assessment. The scope of responsibilities and duties of the appointees is taken into account for the assessment of experience within the fit and proper assessment and the reference to responsibility does not imply any civil liability, which is a matter of private law.	No

3.2 Reputation

#	Topic	Details	Response	Change
31	Reputation	Respondent(s) noted that as the ECB has neither fact-finding competences nor investigatory powers on AML/CFT (anti-money laundering and combating the financing of terrorism), the fact that the ECB intends to conduct its own assessment on breaches of ML/TF (money laundering/terrorist financing) offences does not appear as legitimate.	Although ECB Banking Supervision is not directly competent for the prevention of money laundering, in the exercise of its prudential supervisory tasks, the ECB acts upon any concerns about money laundering and terrorist financing that may have an impact on the safety and soundness of a credit institution and may form a prudential view in this regard. Concerns of this nature are inter alia, taken into account in the assessment of the suitability of the members of management bodies of credit institutions and key function holders. Within this remit, in these cases, information and input should be sought from AML/CFT authorities and feed into the assessment of the suitability of the appointee. Against this background, in some cases, enforcement actions taken by AML authorities or prosecutors have triggered fit and proper reassessments of relevant board members by the ECB, and this type of information (just as all information with a potential impact on suitability) is therefore important for the suitability assessment.	No
32	Reputation	Respondent(s) commented that the requirement to provide criminal records will create an additional institutional burden for the institutions and appointees as in some jurisdictions those are not collected according to the national legislation. Also, it was suggested that if this information is available to the national supervisors, the ECB should not request it and, therefore, simplify the process on this matter.	Written documentation is needed for the purpose of conducting the suitability assessment and to allow the ECB and NCAs to exercise their supervisory tasks. In cases where information about criminal records is accessible to the supervisor directly from national registries, this will enable appointees to omit this within the application referring to the fact that the supervisor already has this information. The provisions directly related to the supply of criminal records are not harmonised across European banking supervision and thus depend on the respective national regulations and instructions.	No
33	Reputation	According to respondent(s), a further and fundamental aspect that deserves careful consideration is the need to limit the relevance of the situations subject to assessment solely to the appointee and not also to the companies in which he/she holds or has held a position of management or control. Respondent(s) claim that in some jurisdictions the assessment of individual involvement or responsibility with regard to corporate proceedings would be unlawful under national law. Respondent(s) also state that the appointee may not have knowledge of investigations currently being conducted against an entity related to him or her. Therefore, information concerning investigations should only be required where it is to the best knowledge	The individual and collective suitability of management bodies in both their supervisory and management functions is essential in order to ensure sound and prudent management of credit institutions and investment firms (authorised as a credit institution), to protect the integrity of the market and the interests of consumers. Any pending or final proceedings related to the entities owned or directed by the member of the management body or in which the member had or has a significant share or influence are deemed relevant for the assessment of the individual's suitability as these may: (1) confirm or call into doubt the appointee's skills and their ability to contribute to a safe and prudent decision-making process and/or their reputation and (2) later evolve into individual	No

#	Topic	Details	Response	Change
		either of the entity or of the appointee.	proceedings against the appointee which therefore should be monitored. The supervisor expects that the appointee will disclose all relevant proceedings to the best of their knowledge and within the transparency and disclosure rules applying to the interaction of institutions and individuals with the ECB and other competent authorities involved.	
34	Reputation	Respondent(s) requested to make it clear that only cases when the appointee is directly involved should be assessed under the fit and proper procedure conducted by the ECB, as well as only final and concluded criminal or administrative proceedings should be taken into account.	The suitability assessment conducted by competent authorities is prudential and preventive in nature and highly dependent on the available information. It is distinct from criminal or administrative infringement procedures. Therefore, any pending and ongoing criminal or administrative proceedings may also be relevant while assessing the reputation of an appointee and their ability to ensure a prudent and sound management of the institution. Also, in some cases, ongoing proceedings may last many years until they are concluded, while the relevance and materiality of the known findings may impact negatively on the reputation of the institution much earlier and with the appointment of the respective individual.	Yes
35	Reputation	Respondent(s) commented that State-sponsored financial support may not always raise doubts as to good repute. In the financial crisis after 2008, for example State-aid was broadly granted to a majority of institutions. In the event of another impactful global macroeconomic crisis public financial support may be necessary. Therefore this provision should be deleted from the Guide.	The ECB takes note of this request and has amended this part of the draft Guide to clarify that only bail-out is meant and not State aid in general.	Yes
36	Reputation	Respondent(s) requested clarification regarding the cases when there is a wrongdoing in the institution or a proceeding against it, which is not directly related to the appointee, will this mean that the appointee is of bad repute?	In all cases of corporate proceedings, the degree of proximity or responsibility of an individual appointee should be examined. In some cases, there will be no direct or personal link, and this may conclude the assessment. However, even in those cases in which a person might not be personally involved in proceedings against institutions the role and responsibilities they had at the time of the facts and their reporting lines may need to be considered, especially in case where the facts are severe and had a negative impact on the given institution. This is clarified in Section 3.6.3 of the draft Guide (individual accountability). As explained in Section 3.6.3 of the draft Guide, individual accountability informs the process by which the ECB examines further the criteria of reputation, independence of mind and knowledge, experience and skills and therefore is limited to the criteria set out in Article 91 of the CRD. The approach to individual accountability aims at raising the bar to make sure that members of the management body are able to understand the overall management of the institution and are able to act effectively in the positions to which they have been appointed to ensure good governance of the institution. To this end, the ECB deems it proportionate to assess, in the light of findings that are severe, whether the appointee can be considered accountable for the sound and prudent governance of the bank. Individual accountability has no correlation with civil liability and is solely related to the criteria required in order to be deemed fit and proper. In particular, it is relevant where the board member is not personally or directly responsible for a failing but is responsible because of their position on the board.	No
37	Reputation	Respondent(s) commented that the proposed assessment of reputation in some suggested cases goes against the principle of the	The presumption of innocence is a fundamental right applying to any person subject to criminal prosecution. The suitability	No

#	Topic	Details	Response	Change
		presumption of innocence as such enshrined in the European Convention of Human Rights (i.e. Article 6 right to a fair trial). In respondents opinion the ECB should therefore respect the legitimacy of final decisions made by entitled authorities or jurisdictions. Therefore, it is suggested that administrative punishment is only taken into account in limited cases, not as a general rule and the ECB should not infringe the human right of presumption of innocence by taking pending criminal procedures into account.	assessment is conducted by the ECB and NCAs for prudential purposes, and not within a procedure having criminal nature, as has also been confirmed by the CJEU Case C-358/16, <i>UBS Europe</i>, (paragraphs 46 and 71). The fit and proper assessment aims at ensuring that unsuitable individuals do not hold positions in the boards of banks (thereby jeopardising their sound and prudent management) and is therefore preventive in nature. Although the stage of the proceedings is a relevant factor which the ECB takes into account when conducting its assessment, any pending and ongoing criminal or administrative proceedings may also be relevant while assessing the reputation of an appointee and their ability to ensure a prudent and sound management of the institution.	
38	Reputation	Respondent(s) requested to define a specific timeframe to assess the relevance of any proceedings and other facts. The following approach is provided by some respondents as an example: (a) unlimited timeframe: only for the proceedings initiated against the candidate and all the proceedings regarding AML topics initiated against both the candidate and the company; and (b) timeframe limited to five years prior to the application: proceedings initiated against the company (apart from AML topics as detailed above).	The ECB takes note of this suggestions and has amended the draft Guide to state that in general (where there is no custodial sentence) unless there are aggravating circumstances, administrative decisions or findings on fines or sanctions over five years old (whether personal or corporate, from the date of the decision or finding) shall generally not have an impact on an appointee's reputation. However, these should in any event be disclosed by the appointee. In any case, the information on administrative and civil proceedings must only include proceedings that are relevant to assess the five fit and proper criteria as set out in the national law implementing the CRD. This presumption applies to final decisions or findings only. Where the decision is not final, or is under appeal, or the proceedings are ongoing, the supervisor will assess the circumstances of the proceedings. In such cases the supervisor may consider that the proceedings already impact on the appointee's reputation or may consider imposing an obligation to monitor the outcome of the proceedings. The ECB does not intend to limit the period for which this disclosure is requested in the new Fit and proper questionnaire itself, as decisions or findings dating back over five years may still have relevance in certain cases.	Yes
39	Reputation	Respondent(s) commented that the information requested by the ECB as provided in the draft Guide is too vaguely defined, irrelevant for the assessment or overlapping with other requirements, unnecessarily burdening the FAP process. In their opinion, the institutions or the appointees should provide and disclose only administrative proceedings related to violation of applicable rules or other gross misconduct.	Adequate and sufficient information is needed to ensure a fair and consistent fit and proper approach across the SSM and provide an objective outcome for institutions. The ECB has been careful to ensure that only the information that is absolutely necessary is requested to conduct its suitability assessments in line with, inter alia, the EBA Guidelines on suitability and the EBA Guidelines on internal governance. Written documentation is needed for this purpose and to allow the competent authorities to exercise their mission of supervision.	No
40	Reputation	Respondent(s) commented that the information requested from the appointees in the context of the reputation assessment is too general and not appropriate. It was also suggested to simplify the list of documents.	Adequate and sufficient information is needed to ensure a fair and consistent fit and proper approach across the SSM and provide an objective outcome for institutions. The ECB has been careful to ensure that only the information that is absolutely necessary is requested to conduct its suitability assessments in line with inter alia the EBA Guidelines on suitability and EBA Guidelines on internal governance. Written documentation is needed for this purpose and to allow the competent authorities to exercise their mission of supervision.	No
41	Reputation	Respondent(s) suggested including the self-declaration requested under point 2, Section 3.2.1, chapter 3.2 into the new Fit and proper questionnaire rather than having it as a separate document as this will help to reduce	The ECB takes note of this suggestion and would like to highlight that this has already been incorporated in the new Fit and proper questionnaire as part of Question 4 (on	No

#	Topic	Details	Response	Change
		the workload when preparing the files.	reputation), Section A.	
42	Reputation	Respondent(s) highlighted that in many countries credit bureau records are only accessible strictly for the purposes of lending.	The ECB acknowledges that there may be constraints in retrieving certain information. However, appointees should be able to give support in providing this information, since it refers to meetings they will know of and are required to attend. In the event the required information cannot be provided, the corresponding explanations should be given.	No
43	Reputation	Respondent(s) requested clarification on whether 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" refers to a general case or only to a single deal.	The respective wording refers both to a general case or single events, which may be considered as a factor showing that the appointee did not uphold high standards of integrity and honesty. This is in line with the EBA Guidelines on suitability.	No
44	Reputation	Respondent(s) suggested clarifying whether the requirement related to self-reflection on the part of the appointee is this still required in cases where the appointee was not involved in any alleged wrongdoing.	Professional insight is an important factor in the assessment of reputation. Board members should be able to learn from their mistakes or the mistakes of others. The ECB clarifies that the requirement addressed to the appointee is to provide a self-reflection in terms of what they did or did not do to prevent or avoid any alleged wrongdoing given their role in the respective entity; specify if they could have done more to avoid the wrongdoing; and mention any lessons learned from the alleged wrongdoing. This refers only to the cases when the appointee was directly involved or could be considered individually accountable for the wrongdoing at the level of the institution.	No
45	Reputation	Respondent(s) noticed that the sentence "a person has either a good or a bad reputation" (draft Guide, Section 3.2) doesn't take into account instances in which a detailed assessment is required, which is the purpose of this Guide.	In this specific case the sentence "a person has either a good or a bad reputation" was used with the intention to highlight that the reputation criterion is in line with the one provided under the CRD and that the principle of proportionality does not apply. The assessment process is described further in Section 3.2.2	No
46	Reputation	Respondent(s) commented that where the draft Guide takes into account whether "the appointee was subject to any remuneration clawbacks as a consequence of the alleged wrongdoing", 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.	The ECB takes note of this suggestion and has amended the draft Guide to state that, in general, the clawback will be taken into account in assessing the appointee's reputation only when the clawback is a consequence of an alleged wrongdoing where the personal responsibility of the appointee is proved.	Yes
47	Reputation	Respondent(s) commented that administrative and civil proceedings as well as pending criminal proceedings that have not yet been concluded should not be taken into account. Only relevant proceedings (in the fields of banking, insurance activities, investment services, securities markets, payment instruments, money laundering, ...) should be taken into account.	The suitability assessment conducted by competent authorities is prudential and preventive in nature and highly dependent on the available information. It is distinct from criminal or administrative infringement procedures. Therefore, any pending and ongoing criminal or administrative proceedings may also be relevant while assessing the reputation of an appointee and their ability to ensure a prudent and sound management of the institution. Also, in some cases ongoing proceedings may last many years until they are concluded, while the relevance and materiality of the known findings may impact negatively on the reputation of the institution much earlier and with the appointment of the respective individual. Moreover, it is indeed more relevant if the proceedings refer to a relevant field, namely banking, insurance activities, investment services, securities markets, payment instruments, money laundering etc. However, other proceedings may also be relevant while others are clearly not and may be excluded. The supervisor determines the relevance of a specific proceeding and finding during the assessment process based on the information	No

#	Topic	Details	Response	Change
			provided by the institution and disclosed by the appointee.	
48	Reputation	Respondent(s) suggest deleting the points (b), (c) and (g) at Section 3.2.2. point 5 which list certain other factors relevant for the assessment of reputation.	These points are aligned with the similar requirements in the EBA Guidelines on suitability and are important in assessing whether an individual upholds high standards of integrity and honesty.	No
49	Reputation	Respondent(s) asked for clarification on "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;" What is meant by "the highest standards of conduct"? Does the ECB include information from social media in its assessment of a candidate's reputation, and how does it mitigate against the above concerns?	According to the EBA Guidelines on governance (Section 10, paragraph 99) the management body of each institution should "develop, adopt, adhere to and promote high ethical and professional standards, taking into account the specific needs and characteristics of the institution, and should ensure the implementation of such standards (through a code of conduct or similar instrument)". Any adverse information available from different sources, including social media, the public and news, is taken into account by the supervisors and assessed as to whether it is relevant and material enough to have any impact on the suitability of a newly appointed or already existing member of the management body and / or key function holder. In this regard the ECB may approach other authorities to check whether the facts are sufficiently established.	No
50	Reputation	Respondent(s) required more clarity on the scope of the information to be provided (territorial and temporal) in terms of criminal records.	The appointee must present criminal records and relevant information on criminal investigations and proceedings, relevant civil and administrative cases, and disciplinary actions (including disqualification as a company director, bankruptcy, insolvency and similar procedures) especially official certificates or any reliable source of information concerning the absence of criminal conviction, investigations and proceedings. The national regulations of the NCAs usually specify from which countries and in which cases the appointee has to present a criminal record.	No

3.3 Conflicts of interest and independence of mind

#	Topic	Details	Response	Change
51	Conflicts of interest and independence of mind	Respondent(s) emphasised that the threshold of EUR 200,000 is not appropriate as the significance of the relationships may differ according to the size of the bank and the company considered. In addition, respondent(s) suggested excluding all loans secured by any form of collateral (e.g. a pledge of shares) from the scope of the assessment, along with mortgage loans, as 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;	The threshold of EUR 200,000 is only a presumption and indicative in nature. It does not imply automatically that any higher loan would have a material impact on the appointee's suitability. Higher loans will be assessed on a case-by-case basis, taking into account proportionality (e.g. the size of the loan, the supervised entity and the financial soundness of the borrower), how it is secured and if it is performing. If loans are secured by any form of collateral, this will also be taken into account in the assessment. While mortgages are generally secured on a property, other types of security may vary and therefore the relevant information on loans falling outside of the presumption threshold should be disclosed. In addition, the envisaged threshold of EUR 200,000 is in line with the EBA Guidelines on internal governance (Section 12, paragraph 131), which requires disclosure of relevant information on loans to a member of the management body or their related parties above an amount of EUR 200,000.	No
52	Conflicts of interest and independence of mind	Respondent(s) requested a revision of information necessary to assess the financial conflict of interest. They emphasised that the current wording entails the need to acquire and circulate sensitive and not entirely relevant information, such as information on the "total	The ECB acknowledges the comment and has amended the draft Guide to make it clear that whether a financial obligation or financial interest is material will depend on the eligible capital ⁶ of the supervised entity and other mitigating circumstances. The status of the	Yes

⁶ As defined in the CRR.

#	Topic	Details	Response	Change
		assets" of the appointees and their family members, which in turn raises privacy and data protection issues while not being crucial for the materiality of the conflict.	loan as performing or non-performing, as well as the conditions under which the exposure was granted may also have an impact on the qualification of the loan as material in a specific case.	
53	Conflicts of interest and independence of mind	Respondent(s) suggested that the draft Guide must specify that the extensive lists of situations and relationships listed in this Chapter can only be qualified as conflicts of interest when they can actually influence the decisions of the appointee. In addition, they point out that any references leading to an assumption that all of the facts detailed on page 23 of the draft Guide constitute conflicts of interest should be deleted (clarifying that they exist only when the appointee's interest effectively conflicts with that of the institution).	As emphasised in the draft Guide (Section 3.3.2), the listed situations and thresholds only indicate whether there is a presumption that a potential conflict of interest exists. Therefore, such situations should be disclosed to the supervisor and assessed by the supervised entity. The supervised entity should assess whether the potential conflict of interest is material, justifying why if not, and indicating how the potential conflict of interest is proposed to be mitigated or managed, including a reference to the relevant parts of the conflict of interest policy or any bespoke (i.e. specific or tailored) conflict management or mitigation arrangements. In principle, only those conflicts of interest that are not able to be mitigated or managed will cast a material doubt on the appointee's suitability. Notwithstanding the above, the ECB acknowledges the comments and the draft Guide has been amended in order to clarify that the listed situations give rise to a potential conflict of interest.	Yes
54	Conflicts of interest and independence of mind	Respondent(s) emphasised that it is not clear if situations that are not deemed material will no longer have to be reported.	Private mortgages of any value do not need to be disclosed (if they are performing, negotiated at arm's length and not contrary to any internal credit approval rules) if they are not of a commercial/ investment nature. Moreover, all personal loans (e.g. credit cards, overdraft facilities and car loans) granted to the appointee by the supervised entity (if performing, negotiated at arm's length and not contrary to any internal credit rules) do not need to be disclosed as long as they are cumulatively under the threshold of EUR 200,000. Please note that such mortgages or loans should be disclosed if they are, or are likely to become, non-performing for any reason.	No
55	Conflicts of interest and independence of mind	Respondent(s) emphasised that the extensive list of situations that may trigger a conflict of interest adds new events that may constitute a conflict which have not been considered by corporate laws or the relevant courts. In addition, respondents stated that ancillary provisions can only be imposed when envisaged in the corresponding national regulations.	The ECB emphasises that the draft Guide cannot in any way substitute the relevant legal requirements stemming either from applicable EU law or applicable national law, nor does it introduce new rules or requirements. Therefore, no ancillary provisions can be imposed in the fit and proper decision if not in line with the national law.	No
56	Conflicts of interest and independence of mind	Respondent(s) requested clarification/ deletion of the following terms: a) "financial interests" b) "public employee" c) "personal relationships" also with entities other than natural persons.	The ECB can clarify the terms as follows: a) The examples of material financial interest are listed under Section 3.3.2.3 as follows - a material financial interest (such as ownership or investment rights) in the supervised entity, the parent undertaking or their subsidiaries; or in clients, suppliers or competitors of the supervised entity, the parent undertaking or the supervised entity's subsidiaries. b) The term "public employee" should be read taking into account that political influence is being looked at. Therefore, in the case of a public employee, the position should be considered to be relevant only if it allows for a political influence (e.g. a governmental job), which would generally imply a certain level of seniority. c) The term "personal relationship" only entails a relationship with natural persons and not legal persons.	No
57	Conflicts of interest and independence of mind	Respondent(s) requested to add the word "dependant" child in the definition of close relatives.	The ECB is of the opinion that adding a word "dependant" would unduly narrow the list of close relatives.	No

#	Topic	Details	Response	Change
58	Conflicts of interest and independence of mind	Respondent(s) recall that there is no definition of the concepts of conflicts of interest and independence of mind in the CRD or CRR. Therefore, they question whether the ECB is entitled to define these concepts and query what the legal basis for this is. Respondent(s) challenged the ECB's right to define the term "close relatives".	The ECB is responsible for taking decisions on the appointment of all members of the management bodies of the significant credit institutions that fall under its direct supervision, and it is therefore mandated to determine whether appointees are able to act with independence of mind, as required by Article 91 of the CRD. The ECB has developed policy stances, supervisory practices and processes which are in line with the EBA Guidelines on suitability and internal governance respectively. The draft Guide provides guidance to the supervised entities and supervisors regarding situations that could create a potential conflict of interest and which should therefore be disclosed and assessed. The term "close relatives" is therefore used only to indicate the circle of people close to the appointee in respect of which a potential conflict of interest could emerge. The definition of close relatives in the draft Guide is in line with the examples used in the EBA Guidelines on suitability.	No
59	Conflicts of interest and independence of mind	Respondent(s) pointed out that the EBA Guidelines refer solely to actual or potential conflicts, and not to the perceived one, which might not even be known to the appointee - therefore deletion of the word "perceived" is suggested.	The ECB acknowledges the comment but clarifies that "perceived conflict of interest" is described in Section 3.3 and refers to a perceived conflict in the mind of public where there is no actual conflict but it seems there could be one (e.g. holding a position in two banks, which appear to be competitors but are not). The ECB considers it important to recognise and examine these perceived conflicts in its assessment.	No
60	Conflicts of interest and independence of mind	Respondent(s) believe that the draft Guide excessively extends the list of persons considered to be related to the appointee, including, in addition to the close family members of the board members, companies in which the board members have or have in the past held an office or a qualifying holding. In addition, it is suggested not to take into account positions previously held by the appointee, as it is not clear how can they influence the independence of mind at this particular moment and it is operationally burdensome to collect information in that regard. Therefore, some respondents asked to add a clear definition of relevant time as a timing limit for some parts of the information requested.	The listed situations and thresholds only indicate whether there is a presumption that a potential conflict of interest exists. In principle, only those conflicts of interest that are not able to be mitigated or managed will cast a material doubt on the appointee's suitability. The term "relevant time" in the text refers to the period of time looked at by supervisors for specific types of potential conflict of interest (e.g. any relationships over the past two years for business, professional or commercial conflicts of interest) and is also determined in the Fit and proper questionnaire for each type of potential conflict of interest. For example, involvement in legal proceedings refers only to ongoing and not past proceedings. On the other hand, having a recent substantial business relationship with the institution may give rise to a potential conflict of interest and therefore the period of time looked at by supervisors includes the past two years.	No
61	Conflicts of interest and independence of mind	Respondent(s) pointed out that the draft Guide requires the appointees to declare in advance a very extensive series of relationships, irrespective of their actual relevance, regarding relations with very broad categories of persons and counterparties, without any materiality criteria. This obligation of ex-ante disclosure without an express qualification of materiality is excessively burdensome and wholly unjustified and gives rise, moreover, to a risk of omission of information, in view of the large number of parties mentioned. In addition, some respondents declared that the timing and means to collect some relevant information might be disciplined under national law.	The amount of information requested regarding the different relationships of the appointee and their close relatives is in line with EBA Guidelines on suitability. The requested information is necessary for the supervisor to determine whether there are any relationships that could give rise to a potential conflict of interest and to adequately assess all relevant aggravating or mitigating circumstances. Having a potential conflict of interest in itself does not mean that an appointee cannot be considered suitable. This will only be the case if the conflict of interest poses a material risk and adequate mitigation, management or prevention of the conflict of interest is not possible following inter alia the written policies of the supervised entity, the applicable national law, or any other specific agreement reached by the supervised entity and the appointee in the particular case. In addition, the ECB emphasises that all information requested need only be provided insofar as it is to the best of knowledge of the appointee and the supervised entity.	No

#	Topic	Details	Response	Change
62	Conflicts of interest and independence of mind	Respondent(s) asked how the ECB reliably assesses behavioural skills, such as whether a candidate is able to resist group think. Subjective views on the matter should be avoided.	The ability to resist groupthink and challenge with independence of mind is a behavioural skill. Footnote 32 in Section 3.3, reads as follows: "...acting with independence of mind is a pattern of behaviour, shown in particular during discussions and decision-making within the management body. The requirement also applies when there is no conflict of interest, as this does not necessarily mean that the appointee will act with independence of mind. To act with "independence of mind" in a new position will especially become visible and assessable once the appointee has assumed their new role." Therefore, and also in line with the EBA Guidelines on suitability (Section 9.2, paragraph 83), "when assessing the required behavioural skills of a member, his or her past and ongoing behaviour, in particular within the institution, should be taken into account".	No
63	Conflicts of interest and independence of mind	Respondent(s) suggested that the draft Guide should recognise as non-material all financial relationships of non-executive directors in small, cooperative, non-complex institutions, provided that they were negotiated at arm's length.	In line with the principle of proportionality, the ECB takes into account the size, complexity and business model of institutions. Specifically, in the case of cooperatives, the ECB understands the special nature of the entities and takes into account all mitigating factors (non-executive position, secured, non-preferential loans, conflict of interest policy, etc.) in the assessment of independence of mind. The ECB concludes on a case-by-case basis whether the business/financial relationship is material to the extent that the appointee cannot act with independence of mind.	No
64	Conflicts of interest and independence of mind	Respondent(s) requested to align the layout with the previous Guide. The presentation of the potential material conflicts of interests that was presented under a table in the previous ECB Guide was much more comprehensive and operational. The new presentation proposed under text is less practicable.	The ECB takes note of the comment and has inserted the relevant table in the draft Guide. The guide is formatted in line with standard ECB formatting.	Yes
65	Conflicts of interest and independence of mind	Respondent(s) challenged the legality and need to require creation of specific committees within the management body to remediate potential conflicts of interest. This has no legal ground and is likely to complicate governance systems.	The ECB acknowledges this comment and has amended the draft Guide accordingly.	Yes
66	Conflicts of interest and independence of mind	Respondent(s) pointed out that the fact that an appointee was appointed on the proposal of a "significant" shareholder of the bank should not in itself be relevant for the purposes of assessing his/her independence of mind and therefore suggested removing the reference.	The draft Guide requests information as part of the fit and proper application. The ECB wishes to collect all relevant information. The fact that the appointee represents the shareholder does not automatically give rise to a potential conflict of interest, unless there are other relevant circumstances that should be taken into account on a case-by-case basis. In addition, this is in line with the EBA Guidelines on suitability which require the disclosure of this information.	No
67	Conflicts of interest and independence of mind	Respondent(s) requested clarification on what type of influence the appointee of a supervised entity could exercise on a different subsidiary of its parent company. Such requirement unnecessarily and excessively broadens the scope of the information to be collected and assessed and should therefore be deleted.	The ECB wishes to collect all relevant information. Across European banking supervision, banking groups are subject to different group structures and governance arrangements, and there may be relevant circumstances that should be taken into account on a case-by-case basis.	No

3.4 Time Commitment

#	Topic	Details	Response	Change
68	Time commitment	Respondent(s) questioned whether the time commitment requirement was an open-ended, upon demand, first-priority claim on the appointee's time and if so whether it should apply to independent non-executive directors only (INEDs).	According to the EU legal framework, institutions should assess whether or not a member of the management body is able to commit sufficient time to perform their functions and responsibilities including understanding the business of the institution, its main risks and the implications of the business and the	No

#	Topic	Details	Response	Change
			risk strategy. This includes the assessment of actual days to be committed to the appointee's roles, as well as counting the number of mandates and applying limitations, if needed. This policy is applied to all members of the management body: executive, non-executive, as well as independent non-executive members.	
69	Time commitment	Respondent(s) commented that the set of required information is disproportionately extensive for cooperative institutions and in particular when considering 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.	As emphasised in the draft Guide and in line with the relevant legal basis and EBA Guidelines on suitability, the ECB does not advocate any particular governance structure and the policy stances contained in the Guide are intended to cover all existing structures. The governance structure is, however, taken into account in the assessment where relevant. Each appointee is assessed on a case-by-case basis, taking into account all relevant circumstances, including the governance structure, as this may influence their roles and responsibilities, number of meetings, necessary time commitment or collective suitability. Adequate and sufficient information is needed to ensure a fair and consistent fit and proper approach across the SSM and provide an objective outcome for institutions. The ECB has been careful to ensure that only the information that is absolutely necessary is requested to conduct its suitability assessments in line with, inter alia, the EBA Guidelines on suitability and EBA Guidelines on internal governance. Written documentation is needed for this purpose and to allow the competent authorities to exercise their mission of supervision.	No
70	Time commitment	Respondent(s) highlighted that it is important to ensure that the information requested by the supervisor is publicly available in the national companies' registry.	According to Article 10 of the SSM Regulation, the ECB may require the provision of all information that is necessary in order to carry out the tasks conferred on it, from the supervised entity or from the appointee when conducting fit and proper assessments. The sources of this information can be the appointee or the supervised entity and may also include public registries but should not be limited only to publicly available information.	No
71	Time commitment	Respondent(s) requested to remove the indication of the number of weekly meetings for assignments in other companies where the appointee holds a position, given that this indication could turn out to be burdensome in its practical application.	Adequate and sufficient information is needed to ensure a fair and consistent fit and proper approach across the SSM and provide an objective outcome for institutions. The ECB has been careful to ensure that only the information that is absolutely necessary is requested to conduct its suitability assessments in line with inter alia the EBA Guidelines on suitability. The ECB acknowledges that there may be constraints in retrieving certain information. However, appointees should be able to give support in providing this information, since it refers to meetings they will know of and are required to attend. In the event that the required information cannot be provided, the reason should be given.	No
72	Time commitment	Respondent(s) suggested making clear that a number of days per year is sufficient and therefore remove the reference to number of hours per week.	The ECB acknowledges this comment and has amended the draft Guide to make it clear that it is sufficient to provide the information related to the time commitment in days to the appointee's mandates.	Yes
73	Time commitment	Respondent(s) suggested deleting the last two points in Section 3.4.2 which require certain documentation to be provided to support the ECB assessment relating to (1) the objectives and non-commercial or commercial activities of the organisation where the appointee holds mandates or positions (if this is not publicly available) and (2) the statutes or other documentation of the organisation regarding its objectives and activities - as being very	Adequate and sufficient information is needed to ensure a fair and consistent fit and proper approach across the SSM and provide an objective outcome for institutions. The ECB has been careful to ensure that only the information that is absolutely necessary is requested to conduct its suitability assessments in line with inter alia the EBA Guidelines on suitability. The ECB acknowledges that there may be constraints in retrieving certain information.	No

#	Topic	Details	Response	Change
		cumbersome to achieve in practice.	However, appointees should be able to give support in providing this information, since it refers to meetings they will know of and are required to attend. In the event that the required information cannot be provided, the reason should be given.	
74	Time commitment	Respondent(s) noted that the draft Guide 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 a structure it is contended that 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 fit and proper requirements.	The draft Guide is applicable to all possible governance structures. It is not the intention to require institutions to change their governance structure, or the assignment of responsibilities as set out in national law. The appointees and institutions may explain the reasoning of a lower time commitment or a specific situation of a board member within the application documents, which will be taken into account during the fit and proper assessment conducted by the ECB.	No
75	Time commitment	According to respondent(s) the draft Guide contains now extensive provisions on the qualitative assessment process of time commitment. With regard to the mandates, the information that has to be provided was too expanded.	The procedure and policy applicable to time commitment set out in the draft Guide reflects the current SSM practice and the practice that has been applied since the last Guide to fit and proper assessments (2017). In addition, this is aligned with the EBA Guidelines on suitability and reflects the information needed for the supervisors to conclude whether the appointee is able to commit sufficient time to the role in the institution. Adequate and sufficient information is needed to ensure a fair and consistent fit and proper approach across the SSM and provide an objective outcome for institutions. The ECB has been careful to ensure that only the information that is absolutely necessary is requested to conduct its suitability assessments in line with inter alia the EBA Guidelines on suitability and EBA Guidelines on internal governance. Written documentation is needed for this purpose and to allow the competent authorities to exercise their mission of supervision.	No
76	Time commitment	Respondent(s) considered that it is not justified to request a higher time commitment from larger banks. They contend that the mere size of an institution is not really relevant for the time commitment if the complexity is low. In this vein, a big but very simple business model (lower complexity) will require less time, therefore the wording should be changed to "institution with a small balance sheet size or a simple business model". Also, respondent(s) considered that the ECB should delete any "peer comparison" provided in Section 3.4.3.2 as it does not generate any additional value and interferes in private life. Respondent(s) commented that as the time commitment assessment is performed individually by the appointee and is therefore very subjective and often cannot be justified or proved with documents, the time needed for the chair may be less than for ordinary non-executive members.	In the draft Guide Section 3.4 on time commitment reflects the current SSM practice for the last five years. In addition, this is aligned to the EBA Guidelines on suitability and reflects the information and assessment process used by supervisors when assessing whether an appointee is able to dedicate sufficient time to the role in the institution. Fit and proper assessments are carried out on a case-by-case basis and the draft Guide should serve as a practical tool only. Therefore, in each case, the assessment will require an analysis of the individual situation and supervisory judgement. Finally, "peer comparison" allows the ECB to be consistent and fair within the assessment process and decision-making as well as to create a level-playing field within European banking supervision. However, the "peer comparison" is not decisive when deciding on an individual and specific case, which is duly justified by the appointee and institution.	No
78	Time commitment	According to respondent(s) 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 organisations might qualify as not pursuing predominantly commercial objectives.	The ECB agrees with the comment provided and has amended the draft Guide in Section 3.4.3.1 (inserting the wording "include among others").	Yes
79	Time commitment	Respondent(s) supported the definition of "group" in the draft Guide, but do not agree with the more restrictive interpretation (cited in	The meaning of "group" applied in the draft Guide in the context of counting the numbers of mandates is not limited to the prudential scope	No

#	Topic	Details	Response	Change
		footnote 41), which limits the privileged counting of directorships solely to companies within the scope of prudential consolidated supervision. Respondent(s) considered it would be helpful to clarify that the privileged counting of multiple directorships within the same group also applies in cases where those directorships are held in a company outside the bank and its group.	of the consolidation, but rather to the accounting one and means a parent undertaking and all of its subsidiary undertakings, as defined in Article 2, points (9) and (10) of Directive 2013/34/EU.⁷ However, this is the definition of "group" according to the CRD and the EBA Guidelines on suitability, but national legislation implementing these legal texts sometimes has a more restrictive approach, defining a group in a CRD context as being limited to the entities subject to prudential consolidated supervision. In such a case, the ECB must apply the national provisions related to the limitation of the number of mandates.	

3.5 Collective suitability

#	Topic	Details	Response	Change
80	Collective suitability	Respondent(s) asked to amend the requirement at page 37 of the draft Guide where it states that "There should be a sufficient number of members with knowledge in each area" in a way which will allow them to have knowledge at the collective level and not individually in each area of banking. In their opinion it is 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.	In accordance with the EBA Guidelines on suitability (Section 12, paragraph 104) institutions should "implement a policy promoting diversity on the management body." A diverse background within the board helps to ensure a collectively suitable board that is able to adequately steer and manage all risks and challenges facing the institution. Institutions should take into account their size and internal organisation and the nature, scale, and complexity of their activities when developing and implementing policies and processes set out in the draft Guide relating to diversity. Although not all members of the management body will have knowledge in each and every listed area, it may also happen that only one member possessing such skills or knowledge is not sufficient taking into account the size, complexity and internal organisation of the institution or the importance of the topic for a specific institution at a specific moment in time.	No
81	Collective suitability	Respondent(s) noted that public law institutions have no or hardly any influence on the composition of the management body in its supervisory function. They cannot ensure a level of diversity on experience or gender aspects that is different from what is predetermined by electoral outcomes or appointments.	The draft Guide does not interfere with the general allocation of competences in accordance with national company law and does not seek to impose a specific business model or legal form. The draft Guide and the policy stances it contains are without prejudice to national law provisions. The draft Guide is not a legally binding document and cannot in any way substitute the relevant legal requirements stemming either from applicable EU law or applicable national law, nor does it introduce new rules or requirements. The aim of the Guide is not to influence national law, but to provide insight into policy stances, supervisory practices and processes applied by the competent authorities within the SSM.	No
82	Collective suitability	Respondent(s) believe that the request to provide the list of the names of the members of the management body, their respective roles, skills and main areas of expertise is too excessive.	Adequate and sufficient information is needed to ensure a fair and consistent fit and proper approach across the SSM and provide an objective outcome for institutions. The ECB has been careful to ensure that only the information that is absolutely necessary is requested to conduct its suitability assessments in line with, inter alia, the EBA Guidelines on suitability and internal governance respectively. [Written documentation is needed for this purpose and to allow the competent authorities to exercise their supervisory tasks.] The information requested from institutions on suitability is not new and is fully aligned with the EBA Guidelines on suitability of the members of	No

⁷ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p.19).

#	Topic	Details	Response	Change
			the management body and key functions holders.	
83	Collective suitability	Respondent(s) mentioned that 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.	The ECB accepts that this is a new area of knowledge required at individual and collective level for members of the management body and was not included in the previous Guide to fit and proper assessments (2017). Nevertheless, the ECB has been stressing its importance and relevance for some years and this is not new or unknown for the industry. It is also in line with the publication, in May 2020, of the ECB Guide on climate-related and environmental risks. Later, in May 2021, the EBA published results of an EU-wide pilot exercise on climate risk. The ECB does not envisage any transitional period in implementing its guidelines as these are fully in line with the current EU regulatory framework in place.	No
84	Collective suitability	Respondent(s) noted that the assessment of collective suitability is already provided in the questionnaire, therefore the ECB should not ask for a copy of the conclusion documents as this would be inefficient.	It is mentioned under the third bullet point of Section 3.5.2 that the information needed for the assessment of collective suitability is collected in the underlying documentation, such as the new Fit and proper questionnaire, and a dedicated section for this criterion is also included in the Questionnaire (Section 7). However, the institution may in addition provide the respective information under a different format and attach it to the fit and proper application.	No
85	Collective suitability	Respondent(s) asked that the ECB clarify 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). They suggested that the draft Guide should specify which set of information has to be notified in the 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.	A full set of information is required for the assessment of suitability of any member of the management body once this is required by the national law. The ECB assesses how newly appointed members fit into the overall collective composition of the management board and how their appointment ensures that collective suitability requirements are met. Even if the supervised entity has already recently submitted this information within the fit and proper application of a previous appointee, it is still required to do it again. Each separate fit and proper application should include the information itself. This facilitates a faster and more efficient assessment by the ECB, while confirming that the information submitted each time is the most updated.	No
86	Collective suitability	Respondent(s) highlighted that there is a reference to SREP and to the fact that assessment of the gender balance is part of the ongoing supervision. Therefore, they would like to know whether the entity might be twice sanctioned for the same fact: once pursuant to the SREP and another pursuant to the Fit and proper Guide?	The institution cannot be sanctioned twice for the same deficiency or wrongdoing, and neither should the Supervisory Review and Evaluation Process (SREP) letter or fit and proper decision be seen as a sanction. The supervisor may use a fit and proper decision to as a reminder of or to strengthen the expectations communicated earlier under other supervisory instruments, such as the SREP. This reminder does not constitute a sanction. The fit and proper assessment of gender diversity is interlinked with ongoing supervision: any identified gaps in complying with relevant gender diversity provisions (either legal or pertaining to internal policies) should be shared by and dealt with both within ongoing supervision and fit and proper assessments and these two supervisory roles inform each other of relevant information in this respect.	No
87	Collective suitability	Respondent(s) acknowledged that introduction of the new requirements on climate related and environmental risks is seen as part of an unavoidable development. They also view positively such assessment under collective suitability and not at individual level. However, they may have concerns as regards new / future policies to be developed if they are too prescriptive.	The ECB has already published its supervisory expectations with regard to climate related and environmental risks (Guide on climate-related and environmental risks, May 2020) and will continue to promote new policies on this and other topics in a transparent and open way, also by consulting the industry if needed. As part of that dialogue, the ECB benefited from the positive feedback and constructive comments shared by the industry with	No

#	Topic	Details	Response	Change
			supervisors during the public consultation process for this draft Guide. An open dialogue between the institutions and supervisors is crucial to achieving the goal of a prudent and efficient banking market. The ECB cannot however comment on any possible future changes.	

3.6 Assessment of individual accountability of board members

#	Topic	Details	Response	Change
88	Assessment of individual accountability of board members	Respondent(s) called for the deletion of paragraph 3.6 as it would create confusion with other requirements already present in corporate and civil law as well as liability regimes that do not relate to the assessment of the suitability. Respondent(s) called for the complete deletion of paragraph 3.6 on individual accountability on the grounds that it holds no legal basis within Article 91 CRD and in the EBA Guidelines. Furthermore, many respondents claimed that the approach would create only confusion as it would overlap with other obligations provided by corporate, banking, in civil law. By enforcing this sort of approach, the result might be disproportionate with regards to national law and potentially unlawful. Respondents encouraged the ECB to eliminate Section 3.6. the maintenance of which would gravely impact institutions and is extremely hard to reconcile with already existing liability regimes for directors. Respondent(s) claimed that the approach, by taking in consideration the criteria of reputation, experience and independence of mind, may overlap with the processes already described in the respective sections. Therefore respondent(s) asked for a simplification by deletion of the whole paragraph relating to individual accountability.	The approach to individual accountability aims at raising the bar to make sure that members of the management body are able to understand the overall management of the institution and are able to act effectively in the positions to which they have been appointed to ensure good governance of the institution. As explained in Section 3.6.3 of the draft Guide to fit and proper assessments, individual accountability informs the process by which the ECB examines further the criteria of reputation, independence of mind and knowledge, experience and skills and is therefore limited to the criteria set out in Article 91 of the CRD. Individual accountability has no connection with civil liability and is solely related to the criteria required in order to be deemed fit and proper. In particular, it is relevant where the board member is not personally or directly responsible for a failing but can nevertheless be held accountable, together with the remaining board members, for failure to contribute to good management and/or challenging the relevant facts, within their position and functions. To achieve this goal of awareness and responsibility, the ECB deems it proportionate to assess, in light of findings that are severe, the ability of the appointee to be individually contribute to the sound and prudent governance of the bank.	No
89	Assessment of individual accountability of board members	Respondent(s) expressed concerns regarding the possibility of the approach in paragraph 3.6 on individual accountability to jeopardise national law frameworks on the accountability and collegiality of the board. In some specific jurisdictions (France) the board is considered a collective body therefore individual accountability would not be feasible and would be unlawful.	The approach to individual accountability aims at assessing the contribution of the individual member within the collective management body in the light of severe findings. The ECB deems it important to assess whether the lack of action in areas not under the direct responsibility of the appointee may have an impact on their suitability. In this sense, the approach does not seek to override the principle of collegiality of the board or the legal status of the board as a corporate organ, as it focuses on the activity of the single board member within a specific situation (which may reflect on the member's experience, skills, ability to think independently or ultimately their reputation). In any case, fit and proper assessments will always be performed in accordance with national law. As stated, the draft Guide to fit and proper assessments does not purport to override national law provisions.	No
90	Assessment of individual accountability of board members	Respondent(s) asked to remove and amend the scope of positions eligible for the scope of individual accountability at page 43 of the draft Guide. This respondent suggested deleting point 2 (b) relating to the institution with the largest value of assets in a significant supervised group, if this entity is different from a supervised entity at the highest level of consolidation of a significant supervised group; as this would not be achievable and restrictive for executive and potential CEO.	The ECB, in drafting the approach on individual accountability, considered it important to include in the scope of the assessment in particular the executive functions of the management body, such as the CEO, in institutions with the largest value of assets in a significant supervised group, since these functions have the most impact. The appointees talking up these positions must be suitable and have the ability to perform, ensuring the sound and prudent management of the institution. This may be assessed by taking into consideration findings relating to previous roles that the appointee may have held. Therefore, the ECB takes note of the comment received but considers it important to	

#	Topic	Details	Response	Change
			retain this requirement.	
91	Assessment of individual accountability of board members	Respondent(s) expressed doubts regarding the flow of information, relevant and recent findings when the entity in which the events took place is not the same as the one in which the appointee is taking up duties. Respondent(s) asked for clarification on how the information is to be shared while complying with data secrecy requirements, which would impinge this flow of information.	In the context of a fit and proper assessment the ECB will never request an appointee or a supervised entity to breach professional secrecy requirements beyond the powers given to the ECB. Where the information is deemed necessary for the assessment, Article 10(2) SSMR states: "The persons referred to in paragraph 1 shall supply the information requested. Professional secrecy provisions do not exempt those persons from the duty to supply that information. Supplying that information shall not be deemed to be in breach of professional secrecy." The ECB may obtain whatever information is available to it, namely within its supervisory activity or requested to the appointee or other competent authorities. The ECB will, as indicated in paragraph 3.6 may in addition to the responses received from the Questionnaire, ask for the information directly from the appointee by means of a fit and proper interview, which is the preferred way of information gathering in relation to findings under the scope of individual accountability.	No
92	Assessment of individual accountability of board members	Respondent(s) stressed the importance of clarifying that with regard to the definition of findings, the ECB should consider following on-site inspections and SREP letters, by using the same rating of categorisation of findings provided in the ECB Guide to on-site inspections and internal model investigations. Furthermore, the respondent(s) asked that ECB only consider very high impact findings (F4).	In drafting the approach on individual accountability, the ECB took note of the categorisation provided in the ECB Guide to on-site inspections and internal model investigations. ⁸ At the same time, the ECB explains the findings and their impact under "Severe findings" in Section 3.6.2 of the draft Guide to fit and proper assessments. Findings are deemed to be severe where they have had a "significant impact on the entity, the market or on consumers". To this end, if the findings satisfy the above requirement, they may be considered for the assessment. Therefore, the ECB deems it necessary to maintain the explanation of severe findings, which helps to clarify which type of information may be taken into account for the assessment. However, at the same time, the ECB accepts that an F4 rating of a finding is a relevant indicator of severity.	No
93	Assessment of individual accountability of board members	Respondent(s) asked for clarification on what is meant by findings that are considered to be recent.	The ECB will consider the facts on a case-by-case basis. The timeframe of the findings will be considered along with their prudential impact. Notwithstanding the specificities of the individual case, the older the findings, the less impact they are likely to have.	No
94	Assessment of individual accountability of board members	Respondent(s) asked for a clarification on the definition of certain findings provided at page 42 of the draft Guide. The respondent(s) stressed the need for more detail to avoid too vague and all-encompassing concepts about which findings are relevant.	The draft Guide to fit and proper assessments goes into more detail and provides a clear explanation of which findings may be relevant to the assessment in Section 3.6.2 (Findings). In this section, the draft Guide highlights: the meaning of findings; the information to be gathered for the purposes of the assessment; and the characteristics of the findings to be considered as sufficiently recent, relevant and severe.	No
95	Assessment of individual accountability of board members	Respondent(s) ask for deletion of on-site inspection reports and SREP letters among the information to be considered for the assessment of individual accountability. This is incongruous with the previous listed items, such as supervisory measures and final court decisions.	The ECB notes that, as stated in Section 3.6.2 of the draft Guide to fit and proper assessments, findings are understood as "sufficiently established facts identified by a body or authority competent to supervise and ensure compliance with rules and regulations and/or to impose measures in the event of breaches or deficiencies". Furthermore, as highlighted in point (a) of Section 3.6.2 of the draft Guide to fit and proper assessments,	No

⁸ ECB Banking Supervision (2018), [Guide to on-site inspections and internal model investigations](#), September.

#	Topic	Details	Response	Change
			findings may be relevant if issued by a competent authority or a competent judicial or prosecution authority; and as specified in the corresponding footnote competent authorities include the ECB or other NCAs within the SSM. To this end, the findings of on-site inspections, if accepted, can be considered as sufficiently established facts and therefore are relevant to the assessment of individual accountability. If the findings are being challenged, then the ECB will take this into account.	

4 Fit and proper-related authorisations

4.1 Additional non-executive directorship

No comments received

4.2 Combining the functions of Chair and CEO

No comments received

4.3 Process to apply for authorisation to hold an additional non-executive directorship or to combine Chair and CEO functions

No comments received

5. Situations that trigger a fit and proper assessment other than new initial appointments

5.1 Changes of role, renewals and departures from office

#	Topic	Details	Response	Change
96	Changes of role, renewals and departures from office	Respondent(s) asked for clarification on whether in the event of significant responsibilities within the management body in its executive function no notification is required to the competent authorities.	Change of roles and responsibilities as well as renewals are subject to different notification requirements based on the respective national law. However, in the case where a change of role has an impact on the suitability of an appointee and is to be considered a new fact, the supervised entity should always notify the new fact to the supervisor (Joint Supervisory Teams).	No
97	Changes of role, renewals and departures from office	Respondent(s) asked for clarification on whether institutions can notify the competent authorities through informal letters in the case of renewals.	In the case of renewals, national law provides for different regimes across European banking supervision. Therefore, should renewals be subject to a full assessment, then a full fit and proper application or notification must be triggered. Conversely, if the national law does not prescribe a formal assessment upon renewal, then the supervised entity may liaise with the Joint Supervisory Teams to share this information	No

5.2 Reassessments

#	Topic	Details	Response	Change
98	Reassessments	Respondent(s) welcomed the additional detail provided in the new Guide, as it will be beneficial from an operational point of view.	The ECB is committed to being transparent about its supervisory practices. Therefore, the ECB acknowledges and welcomes comments from respondents that the publication by the ECB of these more detailed provisions is beneficial and positive.	No
99	Reassessments	Respondent(s) expressed the view that periodic reviews of criminal records are not permitted in several countries or are only permitted in very specific circumstances (e.g. where there is a material change of role) and therefore this guidance might not be applicable at any time in certain jurisdictions.	As part of the initial assessment, a check on the criminal record of the appointee is carried out. However, after the initial assessment is carried out, there is no need to update the criminal records provided on any regular basis, as long as there has been no change (in which case this would of course require notification as a new fact).	No
100	Reassessments	Clarification was sought as to whether a periodical reassessment can be conducted in addition to reassessments driven by fact.	Pursuant to Article 88 of the CRD, a periodical reassessment is carried out by the supervised entity (usually by the nomination committee). The ECB does not carry out periodical reassessments. Reassessments are a supervisory tool used by the ECB in most severe cases based on new facts which may emerge after the appointee has been approved.	No

5.3 Assessment approach

#	Topic	Details	Response	Change
101	5 Situations that trigger a fit and proper assessment other than new initial appointments	Respondent(s) believed that Table 4 outlining new facts was too detailed. Certain contributors felt that it was over burdensome and that not all the situations outlined in Table 4 were relevant.	The examples contained in Table 4 of the draft Guide to fit and proper assessments are designed to assist the appointee, the supervised entity and the supervisor in knowing what kinds of new facts may require a notification. These are examples only and are not exhaustive. Members of the management body must remain suitable at all times and the institution provides the first line of defence. Where the situations listed in Table 4 arise, it will be mandatory to report this to the competent authority.	No
102	5 Situations that trigger a fit and proper assessment other than new initial appointments	Clarification was sought on what type of crisis situation (as listed in Table 4 of the Guide) would require a new assessment.	In certain times of crisis, action may have to be taken to ensure the crisis situation can be handled. What constitutes a crisis can vary, and it is up to the supervisor to exercise supervisory judgement on a case-by-case basis in deciding whether new facts that come to their attention warrant a reassessment. It is also worth noting that the list provided in Table 4 is non-exhaustive, and not every scenario will be applicable in every case.	No
103	5 Situations that trigger a fit and proper assessment other than new initial appointments	A request was made to provide an exhaustive list of new facts which may trigger a reassessment, in order to avoid legal uncertainty.	It is not possible to provide an exhaustive list of what types of new fact will trigger a reassessment. Table 4 in the draft Guide to fit and proper assessments is indicative only and is there to help identify what types of new fact may have to be notified. It is not possible to provide a complete and exhaustive list of which facts will have an impact on suitability of an individual and which will not, and this is initially for the appointee and the supervised entity to decide. When in doubt the new fact should be notified to the supervisor (Joint Supervisory Team) in order to ensure compliance with Article 94 of the SSMFR. ⁹ Every case is specific and requires an individual and specific assessment of all facts, as well as the assessment of their relevance, materiality and significance. Therefore, the ECB will assess whether the new facts are relevant and may potentially impact on the suitability of a member of the management body or key function holder and whether there are sufficient grounds and evidence to initiate the reassessment process.	No
104	5.3 Assessment approach	Respondent(s) requested an amendment to ensure the entity has a right to respond prior to the issuing of a new decision.	If, on the basis of the outcome of the reassessment process, the ECB intends to adopt a new decision, the supervised entity and the appointee will be given the opportunity to comment on the facts, objections and legal grounds relevant to the intended ECB decision, as part of the Right to be Heard process.	No
105	5.3.3 Part 2: General guidance on whether or not a new fact may trigger a reassessment	Respondent(s) believed that not every change of role should automatically lead to a new assessment, particularly where the change of role only had a minor impact.	Change of roles and responsibilities as well as renewals are subject to different notification requirements based on the respective national law. However, in the case where a change of role has an impact on the suitability of an appointee and is to be considered a new fact, the supervised entity should always notify the new fact to the supervisor (Joint Supervisory Teams).	No
106	5.3.3 Part 2: General guidance on whether or not a new fact may trigger a reassessment	Respondent(s) were of the opinion that assessment of individual involvement with regard to non-personal or corporate proceedings may be unlawful, and therefore individual accountability should be removed from the decision wheel.	The approach to individual accountability aims at assessing the contribution of the individual member within the collective management body in the light of severe findings. The ECB deems it important to assess whether the lack of action in areas not under the direct responsibility of the appointee, may have an impact on their suitability. In this sense, the	No

⁹ Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (ECB/2014/17) (OJ L 141, 14.5.2014, p. 1).

#	Topic	Details	Response	Change
			approach does not seek to override the principle of collegiality of the board or the legal status of the board as a corporate organ, as it focuses on the activity of the single board member within a specific situation (which may reflect on the member's experience, skills, ability to think independently or ultimately their reputation). In any case, fit and proper assessments will always be performed in accordance with national law. As stated, the draft Guide to fit and proper assessments does not purport to override national law provisions.	
107	5.3.3 Part 2: General guidance on whether or not a new fact may trigger a reassessment	Respondent(s) commented on the inclusion of poor performance as a trigger for individual reassessment. Some sought further clarification as to how poor performance would be measured. Others believed that the assessment of poor performance is subjective and could not impact on the knowledge, skills and experience criteria. Therefore, certain respondents suggested that poor performance be deleted as a trigger for individual reassessment.	When reassessing the suitability of appointees, poor performance is just one materiality indicator which is considered and it should always be assessed in connection with one specific fit and proper criterion (e.g. experience, independence of mind, reputation). As for the experience criteria, a non-exhaustive list of skills is contained in the EBA Guidelines on suitability and their assessment, could lead to questions on significant or persistent poor performance. Furthermore, poor performance can raise doubts over the independence of mind of the appointee and their ability to effectively assess and challenge decisions of the management body. The ECB does not monitor or engage in regular performance management.	No
108	5.3.3 Part 2: General guidance on whether or not a new fact may trigger a reassessment	With regard to breach of internal governance rules, a request was made to amend the text to make clear that only material infringements of internal policy could be considered new facts, as minor breaches may not be relevant.	The ECB acknowledges this comment and has amended the draft Guide to fit and proper assessments.	Yes

6. Interview

#	Topic	Details	Response	Change
109	6.4 Procedural aspects	Respondent(s) commented that the language used by the ECB in FAP interviews should not be linked to the language regime chosen by the institution. Members in smaller banks and regional institutions may have difficulties in speaking English during the interviews.	Section 6.4 of the draft Guide to fit and proper assessments provides that the ECB agrees with the appointee on the language to be used in the interview. If the credit institution already communicates with the ECB in English, interviews are usually conducted in English. Although English is the preferred communication language with the ECB, flexibility will be used whenever the situation warrants the use of a language other than English.	No
110	6.2 ECB approach to interviews	Respondent(s) believe that where a second specific interview is held, the rationale behind holding the second specific interview should be shared with the appointee and supervised entity in advance.	In certain circumstances the ECB may be required to hold a second specific interview. However, this is not required in standard assessments and holding a second specific interview is only required where there are specific concerns regarding the fitness and propriety of the appointee or concerns remain following an initial interview, as outlined in Section 6.2 of the draft Guide to fit and proper assessments. For this reason, the ECB will always share the grounds for holding a second specific interview with the candidate and the supervised entity.	No
111	6.4 Procedural Aspects	Clarification was sought by some respondents on what is considered "adequate notice" for an interview.	When an interview takes place, several stakeholders are involved and the notice period will depend on the circumstances of any given case. Panel members, observers and the appointee must all be available at a certain time on a certain date in order for the interview take place. Furthermore, legal deadlines differ from country to country and there may be less time to process the interview in certain countries. In all cases, the ECB will strive to ensure adequate notice and also to accommodate the appointee's availability.	No

#	Topic	Details	Response	Change
112	6.2 ECB approach to interviews	Respondent(s) suggested that it would be appropriate to introduce proportionality for interviews in cooperative/regional banks.	The principle of proportionality is always exercised in relation to interviews. This is reflected in the fact that only a limited scope of appointees will be subject to a mandatory interview. As stated in Section 6.2 of the draft Guide to fit and proper assessments, interviews are mandatory for new appointments to the positions of CEO and Chair of the management body, ¹⁰ at stand-alone banks, ¹¹ and top banks of groups. ¹² If the top entity in a group is a holding company, mandatory interviews are required for such new appointments to the largest bank in the group. In the case of cooperatives, they are required for such new appointments in the central body or central body association. Most appointees in co-operative banks will not be subject to a mandatory interview, unless it is for the position of Chair or CEO in the central body or central body association or if there are specific concerns that require clarification through an interview.	No

7. Notifications, decisions and ancillary provisions

7.1 Notification of intended appointments

#	Topic	Details	Response	Change
113	Notification of intended appointments	Respondent(s) call for deletion of the approach for ex-ante submission in countries which have an ex-post regime. The claim is grounded because of the lack of a legal basis, as national law should have precedence. In many of the countries affected by the approach, the board is elected by its shareholders and it is thus impossible to have an appointment by the nomination committee. The respondents are furthermore concerned that such a recommendation would have organisational impacts and generate extra workload for both ECB and institutions (especially cooperative/regional banks).	The ex-ante approach for countries in which there is an ex-post regime does not aim at overriding national law. The ECB is aware and fully respects the provisions in national corporate, labour and banking law. The approach is not envisaged as a requirement but is a preferred approach from which both the ECB and supervised entities would benefit. It should be noted that the scope of the approach is focused on specific supervised entities and roles within those entities. In particular the approach would only apply to the top entities in the group, therefore excluding regional and cooperative banks. The draft Guide to fit and proper assessments focuses on the on the proposed new appointments of members of the management body who are either executive members or the CEO of: • entities at the highest level of consolidation of a significant supervised group; • a credit institution with the largest total value of assets in a significant supervised group, if this entity is different from that referred to above; • a significant supervised entity that is not part of a significant supervised group. The benefit for these supervised entities is that, for the roles that qualify, the process would expedite the assessment and the decision by the ECB. It is stated again that the ex-ante approach is voluntary	No
114	Notification of intended appointments	Respondent(s) proposed that in case of an ex-ante submission of the Fit and proper questionnaire following the appointment proposal by the Nomination Committee, the ECB should be granted a timeframe of maximum five working days to express serious concerns about the appointee (if any). In case that there are no such concerns from the ECB,	While the ECB strives for a rapid and timely interaction with the supervised entities fulfilling the criteria for ex-ante submission, it cannot commit to or implement a timeline as proposed by the respondent(s). Furthermore, it goes without saying that the ECB strives to always adopt its decision in line with the national timelines or, where there are none, the	No

¹⁰ There is a variety of governance structures in Member States. In its Guidelines on internal governance the EBA recognises this and explains how to apply the Guidelines to different structures (see Title 4 which describes the role of the Chair of the management body). Therefore, the term "Chair of the management body" should be interpreted in such a way that the objective of the Guide is best achieved and that is the best fit with the specific governance structure of the institution.

¹¹ A significant supervised entity that is not part of a significant supervised group.

¹² A supervised entity at the highest level of consolidation in the participating Member State of a significant group.

#	Topic	Details	Response	Change
		the internal appointment process should continue with the appointment by the Supervisory Board. In cases where there are no serious concerns about the appointee the formal ECB Fit and Proper Decision can be issued after the appointment by the Supervisory Board within the deadlines provided for in national law or by the EBA Guidelines on suitability (four months from the date when the notification was provided).	four-month time period provided for in the EBA Guidelines on suitability. It should be noted that in some jurisdictions the date of appointment does not correspond to the date of taking up duties within the institution. The approach aims at having an ECB decision issued before or shortly after the appointees take up their position(s).	
115	Notification of intended appointments	Respondent(s) asked for clarifications on how to deal with the fragmentation of multiple authorities to guarantee a timely response.	The ECB would like to clarify that the fragmentation mentioned in Section 7.1 refers to the legal frameworks, i.e. the fragmentation of national laws with respect to the notification and time of the assessment and approval by the competent authorities – some of course being ex-post and others ex-ante. To this end, the ECB has amended the draft Guide to fit and proper assessments to clarify that the wording refers to the ex-post and ex-ante national law regimes respectively.	Yes
116	Notification of intended appointments	Respondent(s) suggested amending the wording of the draft Guide in order to stress that all institutions can decide to only submit the CV of the appointee instead of also including the fit and proper questionnaire.	The ECB acknowledges the need to emphasise the voluntary nature of the approach on early notifications, however, should the supervised entities apply the approach, they should provide both the CV and the completed fit and proper questionnaire. The latter is crucial for the supervisor to assess whether there are material concerns regarding the appointee's suitability.	No
117	Notification of intended appointments	Respondent(s) requested that the ex-ante notifications at the initiative of the institutions should be possible for all institutions (not only largest institutions) and all members of the management bodies (not only executives).	The ECB always welcomes early engagement with the supervised entities. In the spirit of supervisory dialogue, it is always possible to consult the respective Joint Supervisory Teams. At this point in time, however, the ECB is inviting the institutions fulfilling the criteria for ex-ante submission, and in the case of proposed new appointments of executive members, to focus on the most impactful roles in the most significant institutions.	No

7.2 Types of decision

#	Topic	Details	Response	Change
118	Types of decision	Respondent(s) asked for the legal basis for the provision in the draft Guide, which allows the ECB to impose an obligation or giving a recommendation in the context of a fit and proper decision.	The possibility for the ECB to attach ancillary provisions to a positive fit and proper decision, in a situation where the non-fulfilment of one of the assessment criteria could lead to an outright negative decision, is an expression of the principle of proportionality, applicable to those cases where the identified shortcoming is considered easily remediable. In such instances, the ECB could adopt a positive decision subject to conditions or obligations, rather than resorting to the more intrusive option of issuing a rejection.	No
119	Types of decision	Respondent(s) requested that the ECB provide more clarification on how does the statement in paragraph 7.4 that "Unlike a condition, non-compliance with an obligation will not automatically affect the fitness and propriety of the appointee." relate to the statement in 7.2 that "If any concerns cannot be adequately addressed through these ancillary measures, a negative decision needs to be taken."	The ECB acknowledges this comment and has amended the draft Guide as suggested to make it clear that: i) a concern should be addressed if possible, by introducing suitable ancillary provisions such as conditions, obligations and non-binding recommendations; ii) a negative decision can be taken when no ancillary provision can remediate the assessed gaps; iii) unlike a condition, non-compliance with an obligation will not automatically affect the ECB decision. Chapter 7.4 of the draft Guide refers to the later point in time when the obligation is not complied with. By its very nature, the obligation cannot automatically affect the decision already taken, as it does not have an impact on the effects of the decision.	Yes
120	Types of	Respondent(s) considered that the use of	While conducting fit and proper assessments,	No

#	Topic	Details	Response	Change
	decision	non-binding instruments (such as recommendations or expectations) encouraging best practice in the supervised entities and pointing to desirable improvements is too broad. The ECB should not use a fit and proper assessment of an appointee to push other topics on its agenda.	and in this context issuing decisions with ancillary provisions or setting expectations, the ECB is only entitled to exercise the powers conferred on it by the SSM Regulation. Therefore, a fit and proper assessment should be limited by the fit and proper assessment criteria set out in the CRD and should not be used for any purpose other than assessing the suitability of a board member. Furthermore, FAP supervision is part of the broader topic of banks' governance, and therefore the use of recommendations or expectations to encourage best practices is no deviation from the final objective of ensuring the good governance of the institution (which is also the addressee of the positive fit and proper decision).	
121	Types of decision	Respondent(s) asked for provision of a certain maximum timeframe for the adoption of the decision, with full harmonisation within the jurisdictions in scope, by aligning the national laws in this respect, which would support the proper planning of managerial changes.	The ECB welcomes the comments from industry and agrees that a harmonised and uniform assessment process is needed across all SSM participating countries and even at EU level. This topic has been raised by the ECB in the discussions with the EU lawmakers. The ECB also supports the timing suggested by the EBA Guidelines on suitability as this reflects the process and time needed on average to conclude a fit and proper procedure. On the other hand, it is important also to mention that the ECB strives to comply with the national legal deadlines when adopting fit and proper decisions. Where there are no legal deadlines, the ECB strives to complete the process within four months in accordance with the recommendations given in the EBA Guidelines on suitability. Nevertheless, in the majority of cases the delay in the process is driven by uncomplete fit and proper files and delay by institutions in addressing additional information requests.	No
122	Types of decision	Respondent(s) suggested clarifying whether hearings are applicable in the case of reassessments and noted that the process will be transparent.	If the ECB intends to adopt a decision with an adverse effect, i.e. to object to the requested authorisation, or a positive decision subject to certain ancillary provisions which are not previously agreed with the institution, a right to be heard is granted to the interested parties (the supervised entity and, where relevant, the appointee). In such cases, both the supervised entity and, where relevant, the appointee, are given a time limit of at least two weeks to make written submissions (or request an oral hearing) pursuant to Article 31(3) of the SSMFR. This is applicable to all types of fit and proper decisions, including ones related to reassessments.	No

3 Comments on and amendments to the new Fit and proper questionnaire

3.1 Generic comments

Table 2
Generic comments

#	Topic	Details	Response	Change
1	General	One respondent requested clarification on how the updated ECB questionnaire relates to the discussions held on the occasion of the introduction of the IMAS Portal.	The ECB clarifies that upon implementation of the new Fit and proper questionnaire at national level by the relevant NCAs, the document will also be implemented in the IMAS Portal and replace the one that is currently in place.	No
2	General	Respondent(s) are of the view that the updated questionnaire requires an excessive amount of information from smaller institutions and so creates a disproportionate administrative burden on entities that are largely dependent on the central body, such as cooperative banks. Respondents also use the opportunity of the public consultation to propose a simplified fit and proper assessment process for cooperative banks.	The ECB clarifies that the aim of the new FAP questionnaire is to harmonise the information that is collected from all the supervised entities and only requests information that is absolutely necessary to carry out fit and proper assessments in respect of their appointees. Nevertheless, as also clarified in the draft Guide to fit and proper assessments, the ECB adopts a proportionate approach to its assessment of the fit and proper criteria, including its methodology for interviews, based on the function involved and the nature, scale and size of the entity.	No
3	General	Respondent(s) requested a clear allocation of the information to be provided between the supervised entity and the appointee.	The ECB clarifies that, for the time being, it is the supervised entity that formally submits the questionnaire as part of the fit and proper process. Further, the supervised entity has the access rights for the IMAS Portal. Nevertheless, in order to gather the information required to fill in the form, the supervised entity needs input from the appointee as necessary and both are required to sign the declaration confirming that the contents are true and accurate.	No

3.2 Comments on the new Fit and proper questionnaire by section

Table 3
Comments on the new Fit and proper questionnaire by section

Declaration by the appointee

#	Topic	Details	Response	Change
4	Declaration by the appointee	Respondent(s) requested to amend the declaration by the supervised entity to include that the undersigned "confirms that the supervised entity believes, on the basis of due and diligent enquiry and information provided by the candidate".	The new Fit and proper questionnaire aims to harmonise the information requested from supervised entities across European Banking supervision. In every case, it is vital to the process that both the appointee and the supervised entity can declare that the information is true and accurate. Therefore, the ECB promotes a system of harmonised submission of self-declarations by the appointee consistently in all participating countries, based on the national forms.	No

Declaration by the supervised entity

#	Topic	Details	Response	Change
5	Declaration by the supervised entity	Respondent(s) requested to amend the declaration by the supervised entity to include that the undersigned "confirms that the supervised entity believes, on the basis of due and diligent enquiry and information provided by the candidate".	The ECB agrees that the declaration by the supervised entity is based upon the information provided by the appointee, further to due and diligent enquiry and therefore has amended the new Fit and proper questionnaire accordingly.	Yes
6	Declaration by the supervised entity	Respondent(s) requested not to be required to declare that the supervised entity has made the appointee aware of the legal and regulatory responsibilities associated with the function.	The ECB relies on the role of the supervised entities in the prudential framework and therefore deems it important that appointees are made aware by the supervised entity of the responsibility associated with their functions.	No

1. Identity of the supervised entity and appointee

#	Topic	Details	Response	Change
7	Identity of the supervised entity and appointee	Respondent(s) requested to clarify the concept of significant institutions under the CRD.	The concept of CRD-significant institutions in the context of the new Fit and proper questionnaire is aligned with the draft Guide to fit and proper assessments (Section 3.4.1): "A credit institution defined as CRD significant according to the national law, based on a combination of qualitative and quantitative criteria (e.g. amount of assets, calculated either on a solo or consolidated basis)". The ECB clarified this aspect by introducing an explanatory footnote in the new Fit and proper questionnaire, Section 1 (information on the supervised entity) referring to Section 3.4.1 of the draft Guide to fit and proper assessments.	Yes
8	Identity of the supervised entity and appointee	Some respondents proposed to include the issuing country and expiry date of the valid identity document or passport among the requested information.	The ECB agrees to including the proposed additional information in the new Fit and proper questionnaire and therefore the issuing country and expiry date of the valid identity document or passport has been added under Question C (Other information on the appointee), Section 1.	Yes
9	Identity of the supervised entity and appointee	Some respondents requested to include a definition of the relevant governance models.	The ECB aims to harmonise fit and proper assessments within the SSM, which entails a harmonised understanding of the concepts used in the context of the questionnaire. Therefore, a footnote clarifying the governance models has been included in the new questionnaire in Section 1 (Information on the supervised entity).	Yes
10	Identity of the supervised entity and appointee	Respondents stated that for institution that are subject to French law it would be difficult to associate their actual governance model to one of the options offered, as the most common governance model could rather be considered as a hybrid system.	The ECB clarifies that institutions can select the option "one-tier structure" in the case of supervised entities where a single board of directors performs management and supervisory tasks. The institution can select the option "two-tier structure" in cases where the various functions are performed by separate bodies (e.g. a management body in its management function, in charge of the executive (management) function, and a supervisory body in charge of the supervisory function). Furthermore, the supervised entities may choose the option "other structure" if they have adopted a hybrid (or customised) governance structure.	No
11	Identity of the supervised entity and appointee	Respondent(s) requested to clarify what is regarded as supervisory assessment.	The ECB clarifies that supervised entities are expected to disclose any supervisory assessments that the appointee has been subject to in the financial sector in the last five years, carried out by any supervisory authority in the financial sector.	No
12	Identity of the supervised entity and appointee	A number of respondents requested to limit the supervisory assessments subject to disclosure to the last one carried out by the competent authority. Other respondents, in particular requested to exclude from the scope of supervisory assessments subject to disclosure those concerning the following:	The ECB expects the supervised entities to disclose any supervisory assessments that the appointee has been subject to in the financial sector in the last five years, carried out by any competent supervisory authority in the financial sector, including by the ECB and the NCAs. The appointee is expected to be aware of such information.	No

#	Topic	Details	Response	Change
		a) terminated directorships; b) directorships within the EU of which the competent supervisors are already aware; c) directorships held outside of the requesting banking group, or any other case where the information is not available at appointee level or at entity level; d) carried out by the ECB or the NCAs so as to streamline the administrative burden at institution and appointee level.		
13	Identity of the supervised entity and appointee	Respondent(s) requested to delete the question on whether the appointee is aware, or has been informed by the supervised entity, that money laundering or terrorist financing is being or has been committed or attempted, based on the focus of fit and proper assessments and considering that the appointees may in practice only have limited insight on this matter before being approved by the supervisors.	The ECB is aware that, given the sensitivity of the matter, the appointees may not have access to sufficient information to answer this specific question when filling in the new questionnaire, which has therefore been deleted to ensure consistency across the countries participating in European banking supervision.	Yes
14	Identity of the supervised entity and appointee	Some respondents are of the view that the information regarding the start date of residence at the permanent residence address requires an excessive level of detail.	The ECB amended the new questionnaire, which requests information on the current residence and any other previous country of residence where the appointee has lived during the past five years.	Yes

2. Function for which the questionnaire is submitted

#	Topic	Details	Response	Change
15	Function for which the questionnaire is submitted	One respondent requested to delete the description of duties, responsibilities and reporting lines pertaining to the function for which the questionnaire is submitted, finding this level of detail excessive.	This information is necessary to support an adequate assessment of fit and proper criteria (e.g. experience and time commitment). It is also essential in potential reassessment cases to adequately put the material facts into context and enable an analysis of potential or actual involvement of board members.	No
16	Function for which the questionnaire is submitted	Respondent(s) requested clarification on the distinction between executive and non-executive functions.	The ECB has clarified in a footnote to the new questionnaire (Section 2, "Function for which the questionnaire is submitted") that for the purposes of the proposed distinction between executive and non-executive functions, reference is made to the definitions provided in the EBA Guidelines on suitability, which, in Section 2, paragraph 15, read as follows: "Non-executive directorship means a directorship in which a person is responsible for overseeing and monitoring management decision making without executive duties within an entity. Executive directorship means a directorship in which a person is responsible for effectively directing the business of an entity". For the latter definition, the ECB clarifies that this means the day-to-day business of an entity.	Yes
17	Function for which the questionnaire is submitted	Some respondents requested to delete "key function holder" and "branch manager" from the list of functions for which the questionnaire is submitted, since not in all the SSM jurisdictions a fit and proper assessment is conducted for these roles.	The main objective of the new Fit and proper questionnaire is to harmonise the set of information collected for the purposes of fit and proper assessments and is therefore intended to be one single tool to be implemented in all the countries participating in European banking supervision. Therefore, given that in some countries key function holders and branch managers are subject to fit and proper assessments, the ECB deems it important that the questionnaire also covers these options.	No
18	Function for which the questionnaire is submitted	Several respondents requested to include "general manager" and "statutory auditor" in the list of specific functions held by the appointee.	The ECB agrees with this comment and has amended the new questionnaire accordingly.	Yes
19	Function for which the questionnaire is submitted	Respondent(s) requested that the list of functions be national-specific.	The ECB clarifies that the functions listed in Section 2 of the new questionnaire (Function for which the questionnaire is submitted) aim to facilitate the ECB's understanding of the nature of the appointee's function. Accordingly, the first question in this section is a free text box to	No

#	Topic	Details	Response	Change
			be filled in with the actual name of the specific function for which the questionnaire is submitted. Furthermore, the questionnaires that will be implemented at the national level by the NCAs may be complemented by national specificities.	
20	Function for which the questionnaire is submitted	Some respondents requested clarifications regarding the classification of a "second effective officer" that may not be considered as a corporate officer of the management body, vis-à-vis the list of functions for which the questionnaire is submitted.	The ECB clarifies that when the appointee is second effective officer (or deputy officer), and insofar as this role is subject to a fit and proper assessment under national law, the selection made in the list of functions should be accompanied by relevant explanations in the free-text box following the list: "Provide a detailed description of the duties, responsibilities and reporting lines of the function ...".	No
21	Function for which the questionnaire is submitted	Respondent(s) requested clarifications on the need to distinguish between certain of the functions listed in this Section of the ECB Questionnaire (Function for which the questionnaire is submitted), notably the Chief Risk Officer and Head of risk, which may be redundant. Other respondents requested to include "employee representative" among the functions for which the questionnaire is submitted. Finally, some respondents requested to include the option "other in the list of functions for which the questionnaire is submitted, to allow for the manual insertion of further roles.	The ECB clarifies that the list referred to by the respondents includes both the functions of CRO and Head of risk so as to reflect possible country-specific variations in the individual participating countries - to be implemented at the national level upon adoption of the new Fit and proper questionnaire (e.g. in many countries these are two separate functions: the CRO is a board member while the Head of risk is a key function holder). More generally, the ECB clarifies that the functions listed in Section 2 of the new questionnaire (Function for which the questionnaire is submitted) aim to facilitate the ECB in understanding the nature of the appointee's function. Accordingly, the first question in this section is a free-text box to be filled in with the actual name of the specific function for which the questionnaire is submitted. Furthermore, the questionnaires that will be implemented at the national level by the NCAs may be complemented by national specificities.	No
22	Function for which the questionnaire is submitted	In the context of Section 2 of the new FAP questionnaire (Function for which the questionnaire is submitted), respondent(s) requested the possibility of indicating the (planned) end date of the term of office by reference to a specific event (e.g. the approval of financial statements), in case the date of term of office cannot or has not been calendarised yet.	The ECB encourages supervised entities to fill in the new questionnaire using the proposed format (e.g. planned end date of the term of office, expressed as YYYY/MM/DD). However, the cell, as it is technically configured, allows also for the indication of specific, not yet calendarised events, such as "approval of financial statements for YYYY" to be added in the free text box.	Yes
23	Function for which the questionnaire is submitted	Respondent(s) state that the list of functions might not adequately reflect some specific instances, such as a non-executive director in a one-tier governance model or an independent director.	The ECB clarifies that the functions listed in Section 2 of the Questionnaire (Function for which the questionnaire is submitted) aim to facilitate the ECB's understanding of the nature of the appointee's function. Accordingly, the first question in this Section is a free-text box to be filled in with the actual name of the specific function for which the questionnaire is submitted. Furthermore, the questionnaires that will be implemented at the national level by the NCAs may be complemented by national specificities. With specific regard to the instances referred to in this comment, the ECB points out that a non-executive director in a one-tier structure may be classified as a "non-executive" and "member of the board of directors", based on the options provided in the said list of functions, as complemented by the preceding question regarding the nature of the role. In the same vein, in the case of an independent director, it is possible to classify the position as a "non-executive", "independent member of the board of directors". The ECB has also clarified in a footnote that for the purposes of the proposed distinction between executive and non-executive functions, reference is made to the definitions provided in the EBA Guidelines on suitability, which, in Section 2, paragraph 15, read as follows: "Non-executive directorship means a	No

#	Topic	Details	Response	Change
			directorship in which a person is responsible for overseeing and monitoring management decision making without executive duties within an entity. Executive directorship means a directorship in which a person is responsible for effectively directing the business of an entity". For the latter definition, the ECB clarifies that this means the day-to-day business of an entity.	

3. Experience

#	Topic	Details	Response	Change
24	Experience	Respondent(s) requested to include more options, to reflect the various levels of education that might have been achieved by the appointee.	The ECB acknowledges possible variations across countries participating in European banking supervision and amended the format of this question, nevertheless the use of pre-defined classifications is proposed to support the features of existing IT tools. The supervised entities may still indicate the institution awarding the relevant qualification in the free-text box (official degree or certificate) and select, among the available categories, the one that matches it most closely.	Yes
25	Experience	Respondent(s) requested to adapt the format of the new FAP questionnaire to allow the user to add as many rows as needed to fill in relevant tables, notably for the purposes of Questions B and G, Section 3 on Experience.	The ECB takes note of this request and refers it to the respective NCAs, which will implement the new Fit and proper questionnaire at the local level and make it ready to use.	No
26	Experience	Some respondents requested to clarify, in question B (Practical experience related to banking and/or the financial sector gained in the last ten years, under Experience), the scale used to measure the number of subordinates to the appointee ("in hundreds"), while other respondents specifically requested to reconsider the indicated scale.	The ECB has changed the format of the respective table, which can be filled in as a free-text box.	Yes
27	Experience	Respondent(s) requested to clarify the scope of the notion of "subordinates", referred to in question B (Practical experience related to banking and/or the financial sector gained in the last ten years, under Experience).	The ECB has amended this question and clarifies that the information sought relates to the approximate number of subordinates in the appointee's area of responsibility.	Yes
28	Experience	Respondent(s) requested to change the scale proposed for classifying the size of the relevant entities, as referred to in question B (Practical experience related to banking and/or the financial sector gained in the last ten years, under Experience).	The ECB has restructured this question, which now can be answered in a free text box and clarifies that for the purposes of stating the size of the relevant entities, reference is made to approximate total assets.	Yes
29	Experience	Respondent(s) requested additional guidance on the different degrees of seniority relating to the appointee's position (senior level and high level) in question B, under the Education section. In particular, some respondents requested clarification on whether the level of seniority associated with the position should be based on a self-assessment by the appointee as opposed to a possible external benchmark.	The ECB has clarified in a footnote that the degrees of seniority are defined in accordance with Tables 1 and 2, Section 3.1.3.2. of the draft Guide to fit and proper assessments.	Yes
30	Experience	Respondent(s) requested not to provide details on the reasons for leaving the position, in the context of Question B, Section 3 on Experience, as this level of detail is deemed excessive.	The new questionnaire has been amended accordingly.	Yes
31	Experience	Respondent(s) argued that the proposed thresholds for presuming sufficient experience, which are defined by reference to Tables 1 and 2 of the draft Guide to fit and proper assessments, may be regarded as too demanding.	The ECB clarifies that the proposed thresholds should be regarded as presumptions and indicative only. If not met, on a case-by-case basis, the appointee may still be considered suitable as long as they have relevant background and experience and this is adequately supported in the fit and proper application.	No
32	Experience	Respondent(s) requested to consider the prevention of money laundering and terrorist financing as a stand-alone area of expertise in the context of the assessment of the level of	The ECB agreed with this suggestion and has amended Question E accordingly.	Yes

#	Topic	Details	Response	Change
		banking experience (Question E).		
33	Experience	Respondent(s) requested to ensure that the areas of expertise are consistent with the draft Guide to fit and proper assessments.	The draft Guide to fit and proper assessments lists subjects for which basic knowledge is required, in line with the EBA Guidelines on suitability. The list in the new Fit and proper questionnaire includes both the subjects for which basic knowledge is required and other areas of expertise, so as to allow the ECB to conduct a comprehensive and holistic assessment.	No
34	Experience	Respondent(s) asked whether there is a qualitative or a quantitative benchmark to assess the level of banking experience as high, medium or low. Some, in particular, also requested more guidance for the purposes of filling in the free text box "justification of your answer", while others proposed to delete it, arguing that it would require a subjective answer.	The ECB clarifies that Question E on the level of banking experience in Section 3 is designed to be subjective in the context of the new Fit and proper questionnaire. Therefore, the appointee is expected to carry out such assessment based on self-reflection with regard to their own experience.	No
35	Experience	Some respondent(s) considered Section F of the new FAP questionnaire, to be filled in with the relevant trainings attended by the appointee in the last five years, unpractical in comparison to an attachment.	The new FAP questionnaire aims to harmonise and simplify information gathering for the purpose of fit and proper assessments, including providing the ECB with a single document containing all the necessary information. Training courses that are not relevant do not need to be included.	No
36	Experience	Respondent(s) requested to modify or even delete Table G on the training plan for the appointee. In particular, some argued that the level of detail required would be excessive, and so it was suggested deleting the column regarding the "term", "start date" and "end date". Others argued that the proposed approach and the information requested would be too standardised to cater adequately for the planning of training activities, also considering the appointee's specific needs.	Details of the training that is planned to be taken by the appointee prior to, or within the first year of, the commencement of their function are a key element in supporting the ECB's assessment. This may also include the evaluation of possible mitigating factors where there is a lack of practical or theoretical knowledge. Therefore, the ECB deems it important to offer a standardised approach in order to collect this information in a harmonised manner. Accordingly, while the ECB could not accommodate requests for deletion, Question G, Section 3 (Experience) has been amended in the new Fit and proper questionnaire. Among other things, the new questionnaire requests respondents to state the start and end date, in case the training will take place later than the first six months after the authorisation is granted.	Yes
37	Experience	Respondent(s) requested clarification on the concept of "relevance" as referred to trainings attended by the appointee in the last five years (Question F, Section 3).	The ECB clarifies that this question intends to collect information on any training that may be deemed relevant for the appointee's functions, including, in particular, the areas of expertise listed in Question E, Section 3 of the new Fit and proper questionnaire.	No

4. Reputation

#	Topic	Details	Response	Change
38	Reputation	Some respondents asked for clarification of the terminology used in the context of the reputation section of the new FAP questionnaire, regarding, in particular, the following: "senior manager", "associate", "alleged wrongdoing". The same respondents requested to clarify that the information to be submitted should be limited to matters relevant to a business area or matters connected to the appointee, rather than to the firm more generally.	The ECB clarifies that the terminology used is aligned with the operational definitions and cross-references in Section 3 (Experience) of the new Fit and proper questionnaire (and Section 3.1.3.2 of the draft Guide to fit and proper assessments). The ECB further clarifies that the appointee is expected to also provide information concerning, more generally, firms which the appointee could be associated with, as in Question A in Section 4 of the questionnaire.	No
39	Reputation	Respondent(s) argued that the reputation section might overlap with the contents of a possible interview.	The ECB clarifies that even though some duplication cannot be excluded a priori, interviews (where conducted) are intended to allow the ECB to gain a deeper understanding on any particular issue, starting from issues that are first reported in this section of the new Fit and proper questionnaire and that may require more attention.	No
40	Reputation	A number of respondents proposed that the	The individual and collective suitability of	No

#	Topic	Details	Response	Change
		scope of the assessment of reputation should be limited to facts that are connected to the appointee personally, arguing that otherwise the administrative and operational burden on the supervised entity's side would hamper a timely delivery of the filled-in questionnaire to the ECB.	management bodies in both their supervisory and management functions is essential in order to ensure sound and prudent management of credit institutions and investment firms (authorised as a credit institution), and to protect the integrity of the market and the interest of consumers. Any pending or final proceedings related to the entities owned or directed by the member of the management body or in which the member had or has a significant share or influence are deemed relevant for the assessment of the individual's suitability as these may: (1) confirm or call into doubt the appointee's skills and their ability to contribute to a safe and prudent decision-making process and/or their reputation and (2) later evolve into individual proceedings against the appointee which therefore should be monitored. The supervisor expects that the appointee will disclose all relevant proceedings to the best of their knowledge and within the transparency and disclosure rules applying to the interaction of institutions and individuals with the ECB and other competent authorities involved.	
41	Reputation	Respondent(s) requested to delete from Question A in Section 4 the point concerning whether the appointee could have done more to avoid the alleged wrongdoing.	Professional insight is an important factor in the assessment of reputation. Board members should be able to learn from their mistakes or the mistakes of others. The ECB clarifies that the requirement addressed to the appointee is to provide a self-reflection in terms of what they did or did not do to prevent or avoid any alleged wrongdoing given their role in the respective entity; specify if they could have done more to avoid the wrongdoing; and mention any lessons learned from the alleged wrongdoing. This refers only to the cases when the appointee was directly involved or could be considered individually accountable for the wrongdoing at the level of the institution.	No
42	Reputation	In the context of Question A, Section 4 of the new FAP questionnaire, respondent(s) requested not to provide information on criminal or relevant administrative or civil proceedings, investigations, sanctioning etc. concerning corporate offices held in listed companies, arguing that this information may be accessed in the Universal Registration Document of the respective entities and could in some case be already known to the competent supervisors.	The new Fit and proper questionnaire is designed to introduce a harmonised approach to information gathering and promote a consistent compilation and assessment of fit and proper files, also in cases when the facts are not already known to the supervisors. Therefore, the ECB requires this information as part of the fit and proper application.	No
43	Reputation	Respondent(s) suggested defining a limited timeframe (notably, five years) for disclosure of relevant proceedings, investigations etc., as referred to in Question A, Section 4 of the new FAP questionnaire, including with regard to legal entities which the appointee may be associated with. Other respondents requested to limit disclosure to "material" proceedings.	The ECB points out that disclosure of any criminal or relevant administrative or civil proceedings is necessary for the assessment of reputation. The draft Guide to fit and proper assessments (Section 3.2.2, Figure 1) states that "In general, if five years have passed since the decision (for all proceedings) or finding (if no decision) which did not impose a custodial sentence, and there are no other facts capable of casting a material doubt on the appointee's good repute, it will in principle be considered that there are no material doubts regarding the appointee's good repute, subject to any provision of national law, unless in the opinion of the supervisor there are aggravating circumstances that make the decision or finding still relevant (the rehabilitation period)". In any case, the information on administrative and civil proceedings must only include proceedings that are relevant to assess the five fit and proper criteria as set out in national law implementing the CRD. Therefore, the ECB clarifies that the appointee is expected to also provide information concerning, more generally, firms which the appointee could be associated with. The ECB does not intend to limit the period for which this disclosure is requested in the new Fit and proper	Yes

#	Topic	Details	Response	Change
			questionnaire itself, as decisions or findings dating back over five years may still have relevance in certain cases (e.g. to assess a possible cumulative effect of decisions impacting on an appointee overtime).	
44	Reputation	A number of respondents requested that, under Question A, Section 4, the new FAP questionnaire introduces more specific questions on the nature of the appointee's functions in the case of alleged wrongdoing, proceedings, investigations or sanctions involving entities in which he or she holds or has held functions, arguing that key function holders and senior managers are not jointly responsible for those.	The ECB deems it important to be provided with a comprehensive overview of relevant proceedings, investigations, sanctions, etc. also concerning entities with which the appointee may be or has been associated. This question aims to gather all the information that may be relevant for assessing the reputation criterion. The free text helps the ECB to obtain complete information and an understanding of the facts. The appointee is invited to describe their role at the time of the facts. In any case, the ECB clarifies further in a footnote what is meant by "relevant civil or administrative proceedings".	No
45	Reputation	Respondents observed that the appointee and the supervised entity are often not aware of the summary of the reasoning of the decision, ruling or finding, requested in Question A, Section 4 of the new FAP questionnaire.	The ECB highly values the role of the supervised entity in the prudential framework. Before the supervised entity nominates an appointee, it must first carry out its own due diligence, which would include examining the underlying decisions. The ECB therefore expects the supervised entity to be able to provide or request if necessary from the appointee, the reasoning of the decision, ruling or finding, and to provide a summary for the purposes of this question. The ECB expects that the appointee will disclose all relevant proceedings to the best of their knowledge and within the transparency and disclosure rules applying to the interaction of institutions and individuals with the ECB and the other competent authorities involved.	No
46	Reputation	Respondent(s) requested clarification as to what should be regarded as disciplinary measures or actions for the purposes of Question B, Section 4 of the new FAP questionnaire.	Question B has been amended to clarify that, as for disciplinary measures, disciplinary decisions in the context of professional activity or employment will need to be disclosed.	Yes
47	Reputation	Respondent(s) proposed that the scope of Question D, Section 4 is limited to cases where the appointee holds or has held a position as a board member in an entity that received State aid (bailout) during or directly after their tenure. Alternatively, respondent(s) proposed to clarify what is considered as "any managerial function, influence of management or material interests".	The ECB clarifies that this question aims to better understand the background of the appointee, and it is intentionally drafted in a general manner in order to gather relevant information. Details on the relevant facts of the bailout, including whether and how they may be related or not to the appointee's tenure, can be provided in the free text box.	No
48	Reputation	Respondent(s) requested clarification on the concepts of "material influence" and "material interest" when referring to institutions that have received State aid, in the context of Question D, Section 4 on reputation.	Question D is intentionally designed to collect information relating to the case of managerial functions, but also to other instances where the management of institutions could have been influenced materially, following a subjective assessment by the supervised entity. The ECB has amended Question D and deleted the reference to "material interest", which, in this context, is adsorbed by the concept of "material influence".	Yes
49	Reputation	Respondent(s) requested clarification as to what is regarded by State aid in the context of Question D, Section 4.	The ECB has amended the new Fit and proper questionnaire and clarified that in the context of Question D, Section 4, State aid refers to bailout.	Yes
50	Reputation	Respondent(s) pointed out that the wording of Question G, Section 4, on the appointee's direct or indirect involvement in a situation that led to concerns or suspicions of money laundering or terrorist financing, is too vague.	The ECB clarifies that the wording of Question G, Section 4 is intentionally open-ended in order to prompt, where appropriate, and to the best of the appointee's knowledge, also some self-reflection and additional information on the appointee's background and approach to the matter. Relevant details may be provided, as applicable, in the respective free text box.	No
51	Reputation	Respondent(s) suggested deleting Question I, Section 4, requesting the supervised entity to provide an assessment on the appointee's reputation taking the relevant facts into	One of the aims of the new Fit and proper questionnaire is to collect all the relevant information that is necessary for the purpose of a fit and proper assessment and simplify	No

#	Topic	Details	Response	Change
		consideration and expressly stating the reasons why such facts are not deemed as affecting his/her reputation, arguing that the assessment conducted by the supervised entity is already documented in the minutes of the respective meeting of the nomination committee.	access to the relevant information by the ECB, in a concise manner. Where information is documented in the minutes of the nomination committee, it can be repeated, cross-referenced or added in the questionnaire.	
52	Reputation	Respondent(s) requested deletion of Question H, Section 4, on whether the appointee has ever not been transparent with the supervisor.	The ECB clarified this question, allowing for a more factual answer, which now reads as follows: "Have you personally ever failed to appropriately disclose any information of which the supervisor would reasonably have expected notice?"	Yes

5. Conflicts of interest

#	Topic	Details	Response	Change
53	Conflicts of interest	Some respondents requested that the scope of the questions pertaining to the assessment of conflicts of interest, as outlined in the introduction to Section 5 of the new FAP questionnaire, be limited to the appointee personally.	The ECB clarifies that it is important to keep the scope of the questions under Section 5 broad so as to allow for a comprehensive and well substantiated supervisory assessment. By way of example, there might be instances where the supervised entity has granted a loan to a company in which the appointee is a board member. In such cases, even though the appointee does not have direct financial relations with the supervised entity, the information is necessary for the purposes of the assessment given that the indirect financial relationship may nonetheless create a potential conflict of interest for the appointee. Moreover, the range of connections that may potentially give rise to a conflict of interest have been set out in Annex III to the EBA Guidelines on suitability and are applied by the ECB in the context of its assessment of fitness and propriety.	No
54	Conflicts of interest	A number of respondents pointed out that the information regarding clients, suppliers or competitors of the supervised entity, as in Question A, Section 5 on conflicts of interest, might not be available at appointee level. Some of them, therefore requested to specify in the questionnaire that this information is provided "to the best knowledge of the appointee" for personal, professional and financial conflicts of interest.	The ECB clarifies that both the declaration by the appointee and of the supervised entity include confirmation that the information provided in the questionnaire and in the annexes attached is accurate and complete to the best of their knowledge. Therefore, not only in the conflict of interest section but throughout the whole questionnaire, all information provided is considered to be to the best of knowledge of the appointee and the person authorised to sign from the supervised entity. However, more generally, the ECB only requests confirmation of the existence of potential conflicts of interest and not a detailed list of clients/suppliers, etc.	No
55	Conflicts of interest	Respondent(s) requested that the new FAP questionnaire specify that the definition of conflict of interest aligns with that under the respective national laws. Moreover, respondent(s) requested to limit the scope of the disclosure throughout Section 5, based on the description outlined in the introduction, to those personal, business and commercial relationships that are material.	The introduction of the new Fit and proper questionnaire already clarifies that, when implemented at national level, the resulting national questionnaires will include national specificities. Furthermore, in line with the objectives of the new questionnaire, Section 5 on conflicts of interest is designed to ensure consistency and gather the elements necessary for a comprehensive supervisory assessment. Therefore, the ECB encourages a full disclosure of relevant facts and will determine whether these are material or not.	No
56	Conflicts of interest	Respondent(s) suggested structuring question E on financial conflicts of interest as an open question, as opposed to the proposed table to be filled in.	The ECB considers it important that the information underlying the assessment of potential financial conflicts of interest is comprehensive and expressed in a user-friendly format. As the new Fit and proper questionnaire aims to reduce the volume of separate requests for information to the supervised entities, this specific question is designed to ensure that all the elements needed for the assessment are provided at an early stage.	No
57	Conflicts of interest	Respondent(s) suggested that, further to private mortgages, private insured real estate	The ECB clarifies that private mortgages are included in the exception, owing to their	No

#	Topic	Details	Response	Change
		loans are also exempted from the information requested in question E, Section 5, concerning financial conflicts of interest.	specific features. However, the ECB also clarifies in a footnote that all personal loans (e.g. credit cards, overdraft facilities and car loans) granted to the to the appointee by the supervised entity from the same entity (if performing, negotiated at arm's length and not contrary to any internal credit rules) do not need to be disclosed as long as they are cumulatively under the threshold of EUR 200,000.	
58	Conflicts of interest	Respondent(s) suggested deleting the following from the information requested to assess financial conflicts of interest, in Question E, Section 5: i) Conditions of the obligation(s), ii) Duration of the obligation(s), iii) Value of the obligation expressed as a percentage of the total assets of the debtor, iv) Value of the obligation expressed as a percentage of the total loans to the debtor, v) Value of the obligation expressed as a percentage of the total eligible capital of the supervised entity.	As the new Fit and proper questionnaire aims to reduce the volume of separate requests for information to the supervised entities, this specific question is designed to ensure that all the elements needed for the assessment are provided at an early stage. The ECB deems this set of information key to assessing potential financial conflicts of interest. Nevertheless, the column that previously related to the "duration of the obligation(s)" was amended and now relates to the "start date of the obligation(s)", to introduce a point-in-time reference. Moreover, the column related to the "value of the obligation expressed as a percentage of the total assets of the debtor" has been deleted.	Yes
59	Conflicts of interest	In relation to Question E, in Section 5 on financial conflicts of interests, some respondents observed that information on loans to persons or entities over which the appointee has no personal control might not be accessible at appointee level due to banking secrecy rules.	Based on current practices, the ECB points out that this type of information, where not available at appointee level, may be available at supervised entity level within the permissible rules for access to information in the cases envisaged by the new questionnaire.	No
60	Conflicts of interest	Respondent(s) suggested including the option "not applicable" in question G, on the possible conflicts of interest stemming from the appointee being a shareholder of the supervised entity, the parent entity or any subsidiaries. Given that the typical statute of cooperative banks provides that directors are nominated among the shareholders, this question is not applicable to the specific case of cooperative banks.	Question G, Section 5 of the new Fit and proper questionnaire has been amended so as to include "not applicable" among the possible answers.	Yes
61	Conflicts of interest	Respondent(s) suggested deleting Question J, in Section 5 on conflicts of interest, requesting the supervised entity to provide an assessment on the appointee's potential conflicts of interest, arguing that the assessment conducted by the supervised entity is already documented in the minutes of the respective meeting of the nomination committee.	One of the aims of the new Fit and proper questionnaire is to collect all the relevant information that is necessary for the purposes of a fit and proper assessment and simplify access to the relevant information by the ECB, in a concise manner. Where information is documented in the minutes of the nomination committee, it can be repeated, cross-referenced or added in the questionnaire.	No

6. Time commitment

#	Topic	Details	Response	Change
62	Time commitment	Respondent(s) requested that the time to be committed to the appointee's functions is assessed by the supervised entity and not by the appointee, as in Question B, in Section 6 on time commitment.	The supervisory assessment on time commitment relies on both the self-assessment made by the supervised entity (as in question A), and the self-assessment made by the appointee (as in question B). In this respect, the ECB expects the appointee to assess their time commitment for the functions according to the information provided by the supervised entity. Moreover, it is the appointee who undertakes to commit a certain amount of days per year to the institution in question.	No
63	Time commitment	Regarding Question C, Section 6 on time commitment, respondent(s) suggested including "not applicable" among the possible answers, so as to reflect cases where the limit on the number of directorships does not apply in accordance with the national legislation transposing the CRD and the principle of proportionality.	The new Fit and proper questionnaire has been amended and now includes "not applicable" among the possible answers to Question C, Section 6.	Yes

#	Topic	Details	Response	Change
64	Time commitment	Respondent(s) proposed to delete the amount of meetings per year, as requested in question D, Section 6 on time commitment, which, in their view introduces an excessive level of detail.	Adequate and sufficient documentation is needed to ensure a fair and consistent fit and proper approach across the SSM and provide an objective outcome for institutions. The ECB has been careful to ensure that only the information that is absolutely necessary is requested to conduct its suitability assessments in line with, inter alia, the EBA Guidelines on suitability. Written documentation is needed for this purpose and to allow the competent authorities to exercise their supervisory tasks. The ECB clarifies that the number of meetings per year is very important for a comprehensive assessment of time commitment, also in the context of peer comparisons. The number of meetings per year, while not conclusive in itself, gives a very good idea of what the minimum time required is in order to prepare, travel to and attend these meetings. The ECB acknowledges that there may be constraints in retrieving certain information. However, appointees should be able to give support in providing this information, since it refers to meetings they will know of and are required to attend. In the event the required information cannot be provided, the reason should be given.	No
65	Time commitment	With regard to Question G, Section 6 on time commitment, respondent(s) requested not to provide information on the existing synergies that may exist between the entities concerned, in the cases where privileged counting is applied, arguing that the existence of synergies is not required for the purposes of the application of privileged counting.	The ECB clarifies that even though the appointee complies with the limitations on the number of directorships as detailed in the national legislation transposing the CRD, a high number of mandates can give rise to concerns as to whether the appointee can commit sufficient time to their functions. Accordingly, this aspect is examined by the ECB in the context of the qualitative assessment of time commitment, also taking into consideration, among other things, the level of familiarity of the appointee with their functions, which might enable them to perform their tasks with greater efficiency. Therefore, it is important that the supervised entities provide information on the existing synergies between the mandates. In many cases, this will be enough to show that the time can indeed be managed appropriately and the synergies are therefore of benefit to the appointee and the supervised entity.	No

7. Collective suitability

#	Topic	Details	Response	Change
66	Collective suitability	Respondent(s) proposed to delete Question D, in Section 7, on the contribution of the appointee to the collective suitability of the management body, arguing that this answer may be redundant, considering the information provided in the context of the individual assessment.	The ECB clarifies that as collective suitability is one of the five fit and proper criteria, this information is a necessary component for the assessment of the suitability of the appointee. Moreover, one of the aims of the new Fit and proper questionnaire is to rationalise and simplify access to the relevant information by the ECB, in a concise manner. Although the experience section may detail some of the individual attributes of the appointee, this section requires a self-reflection on the overall composition of the board which, in any case, is a governance requirement of the CRD. Institutions are reminded that according to the EBA Guidelines on suitability (Annex III) institutions are obliged to provide (a) a "list of the names of the members of the management body and their respective roles and functions in brief" and (b) a "statement regarding its overall assessment of the collective suitability of the management body as a whole, including a statement on how the individual is to be situated in the overall suitability of the management body (i.e. following an assessment using the suitability matrix in	No

#	Topic	Details	Response	Change
			Annex I or another method chosen by the institution or required by the relevant competent authority). This should include the identification of any gaps or weaknesses and the measures imposed to address these".	
67	Collective suitability	Respondent(s) suggested deleting the reference to climate-related and environmental risks from Question D, Section 7 on the appointee's contribution to the collective suitability of the management body, arguing that this specific information will have to be provided in the context of Question E, in Section 3, on the appointee's level of banking experience. Some of the respondents also pointed out that it is not clear why knowledge of climate-related risks should be separately provided in the context of Question D, Section 7, as opposed to the other areas of banking knowledge.	The ECB acknowledges that detailed information on the appointee's knowledge in the various areas of banking is covered in Section 3 (Experience) including that related to climate risks. The new Fit and proper questionnaire has therefore been amended and the reference to climate-related risks in the context of Question D, Section 7 removed.	Yes
68	Collective suitability	Some respondents considered the information requested under Question E, in Section 7, concerning the list of members of the management body, superfluous, having particular regard to cases where the information has been already made available to the supervisor in the context of a previous procedure or is otherwise accessible and could therefore be referred to.	The ECB clarifies that as collective suitability is one of the five fit and proper criteria, this information is a necessary component for the assessment of the suitability of the appointee. Moreover, one of the aims of the new Fit and proper questionnaire is to rationalise and simplify access to the relevant information by the ECB in a concise manner. Accordingly, the new questionnaire includes requests for information which allows the assessment of the collective suitability of the board. Institutions are reminded that according to the EBA Guidelines on suitability (Annex III) institutions are obliged to provide (a) a "list of the names of the members of the management body and their respective roles and functions in brief" and (b) a "statement regarding its overall assessment of the collective suitability of the management body as a whole, including a statement on how the individual is to be situated in the overall suitability of the management body (i.e. following an assessment using the suitability matrix in Annex I or another method chosen by the institution or required by the relevant competent authority). This should include the identification of any gaps or weaknesses and the measures imposed to address these."	No
69	Collective suitability	Respondent(s) inquired whether the list of members of the management body, as in question E, Section 7 on collective suitability, should be filled in with information just on the appointee only or on the entire board of directors.	The ECB clarifies that this question aims to collect information on all the members of the management body and not only the appointee.	No
70	Collective suitability	Respondent(s) requested to change the format of Question E, Section 7, on the skills and main areas of expertise of the members of the management body. As an alternative to the original ECB's proposal, it is proposed that the question allows for a free-text answer where it is possible to provide a brief description of the main areas of expertise for each board member.	Question E has been amended and now allows for free text answers.	Yes

8. Additional information and annexes

#	Topic	Details	Response	Change
71	Additional information and annexes	Respondent(s) requested to delete the word "draft" preceding the reference to the "Board minutes or minutes of the Nomination Committee", among the documents listed in Section 8 of the new FAP questionnaire (Additional information and annexes).	The ECB clarifies that the original intent was to allow also for the submission of documentation that was still at draft stage, pending (separate) submission of the final version. However, for the sake of clarity and to encourage the submission of final relevant documentation in time, the new Fit and proper questionnaire has been amended to clarify that the agreed minutes should, where available, be sent, but that the application should not be delayed just because the minutes are in draft. The ECB has been careful to ensure that only the information	Yes

#	Topic	Details	Response	Change
			that is absolutely necessary is requested to conduct its suitability assessments in line with, inter alia, the EBA Guidelines on suitability.	
72	Additional information and annexes	Respondent(s) requested clarification as to what is regarded as a suitability report, for the purposes of Question B, Section 8 (Additional information and annexes).	The ECB clarifies that a suitability report is the outcome of an assessment that is generally performed by the supervised entity nomination committee, where the suitability of the appointee is assessed against the applicable fit and proper criteria. The ECB reminds the institutions that they are the first line of defence in the assessment of suitability. The EBA Guidelines on suitability state that institutions are "primarily responsible for ensuring that members of the management body fulfil the suitability criteria as defined in the Guidelines on an ongoing basis and need to establish appropriate policies and procedures for this purpose. The nomination committee required for significant institutions has a key role in assessing the suitability ... Where no nomination committee is established, the management body in its supervisory function as part of the institution's governance arrangements is responsible for fulfilling the tasks that are normally performed by the nomination committee, to ensure the effective and prudent management of the institution".	No
73	Additional information and annexes	With regard to Question B, in Section 8 (Additional information and annexes), respondent(s) observed that the provision of criminal records by the supervised entity in the context of a fit and proper assessment is not required in all jurisdictions, considering, in particular, the possibility of self-statements or direct access to the information by the competent authorities.	The ECB clarifies that Question B in Section 8 is intended to list the accompanying documents, if applicable. Therefore, the new Fit and proper questionnaire already covers the situations indicated by the respondent(s).	No

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