



EUROPEAN CENTRAL BANK

BANKING SUPERVISION

## Guide to fit and proper assessments

BANKENTOEZICHT

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# Foreword

The management body of a credit institution must be suitable in order to carry out its responsibilities and be composed in such a way that contributes to the effective management of the credit institution and balanced decision-making. This will have an impact not only on the safety and soundness of the institution itself but also on the wider banking sector, as it will reinforce the trust of the public at large in those who manage the financial sector of the euro area.

Since 4 November 2014 the ECB has been 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. The Guide to banking supervision, published by the ECB in November 2014, touches briefly upon suitability assessments. The objective of this Guide to fit and proper assessments is to explain in greater detail the policies, practices and processes applied by the ECB when assessing the suitability of members of the management bodies of significant credit institutions.

The policies, practices and processes described in this Guide may have to be adapted over time. It is meant to be a practical tool that will be updated regularly to reflect new developments and experience that is gained in practice.

The Guide aims to harmonise the application of assessment criteria applicable to fit and proper assessments. Such harmonised application aims to achieve common supervisory practices. This Guide is not, however, a legally binding document and cannot in any way substitute the relevant legal requirements stemming either from applicable EU law or applicable national law.

To the extent possible, the Guide follows the terminology used in CRD IV and the EBA Guidelines on suitability and on Internal Governance<sup>1</sup>. For example, the term “management body” applies to the bodies in all governance structures that perform management or supervisory functions.

The Guide does not advocate any particular governance structure and is intended to embrace all existing structures.

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<sup>1</sup> EBA Guidelines on the assessment of the suitability of members of the management body and key function holders (EBA/GL/2012/06); the draft Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU, which were recently under consultation; and EBA Guidelines on Internal Governance (GL44).

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

This Guide covers fit and proper assessments of members of the management body, both in their management function (executives) and supervisory function (non-executives) of all institutions under the direct supervision of the ECB (significant institutions – SIs), whether credit institutions or (mixed) financial holding companies<sup>2</sup>, and in the case of licensing or qualifying holdings also of less significant institutions (LSIs). On the basis of Article 6(4) of the SSM Regulation, responsibility for regular appointments in LSIs (i.e. outside the context of licensing or qualifying holdings) lies with the national competent authorities (NCAs).

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<sup>2</sup> For holding companies, see Article 121 of the CRD IV.

## 2 Legal framework

### 2.1 SSM Regulation and SSM Framework Regulation

Fit and proper supervision is one of the fields of competence for which the ECB has exclusive responsibility. Article 4(1)(e) of the SSM Regulation<sup>3</sup> makes clear that fit and proper assessments should be part of the ECB's supervision of the overall governance of credit institutions.

The SSM Framework Regulation<sup>4</sup> elaborates on the fit and proper field of competence in Articles 93 and 94. The SSM Framework Regulation also imposes certain direct obligations on supervised entities in terms of notifying the NCAs of all relevant information. Article 93 refers to changes in the management bodies, while Article 94 covers new facts or any other issues which may impact upon the ongoing obligation to have suitable members in the management bodies of credit institutions.

The ECB takes decisions regarding the suitability of the members of the management bodies of significant credit institutions following fit and proper assessments. The ECB can use all powers available under the SSM Regulation to perform its role. Examples of the powers directly conferred on it by the SSM Regulation are the collection of information, including through interviews, and the imposition of conditions, obligations or recommendations in fit and proper decisions.

### 2.2 CRD IV and national law

The first sub-paragraph of Article 4(3) of the SSM Regulation provides that for the purposes of carrying out its supervisory tasks the ECB will apply all relevant Union law and, where this law is composed of Directives, the national law implementing those Directives. Suitability requirements are succinctly covered by Article 91 of the CRD IV<sup>5</sup>. The Directive covers the fit and proper standards in substance, without, however, providing any details on the different criteria, and remains silent on the type of supervisory procedure to be followed (e.g. the choice between ex ante supervisory approval of an appointment or ex post notification of an appointment to the supervisor).

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<sup>3</sup> 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).

<sup>4</sup> 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).

<sup>5</sup> 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 and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

Consequently, when taking fit and proper decisions within the SSM, the ECB will apply the substantive fit and proper requirements laid down in the binding national law which implements Article 91 of the CRD IV. Given that Article 91 of the CRD IV is clearly a minimum harmonisation provision, this transposition has been dealt with in different ways in the nineteen euro area countries. Some countries have also gone beyond Article 91 of the CRD IV.

## 2.3 EBA Guidelines

Besides national law, the ECB also complies with the EBA Guidelines on suitability and the EBA Guidelines on Internal Governance.<sup>6</sup> These Guidelines leave some room for the NCAs and the ECB to add further detail to requirements. The definitions and concepts contained in these Guidelines are taken into account in this Guide.

## 2.4 SSM policies, practices and processes

The regulatory requirements need to be applied in practice by the competent authorities when assessing the suitability of members of the management body. To ensure consistency in the application of the legal requirements, some clarification on the interpretation of those requirements is needed alongside the development of common supervisory practices and processes.

To that end, the ECB, together with the NCAs, has developed policies regarding fit and proper criteria, and supervisory practices and processes, which explain in further detail how the SSM applies, on a case-by-case basis, CRD IV and the EBA Guidelines. These policies are adopted without prejudice to national law and in compliance with the EBA Guidelines. In the absence of contradictory binding national law, they should be adhered to by the ECB and NCAs. The NCAs have agreed, to the extent possible, to interpret and develop national law in line with these policies. The Guide reflects the policies that had been agreed on by the Supervisory Board by the end of 2016. They will be reviewed in the light of the ongoing development of SSM practice for fit and proper supervision and international and European regulatory developments or new interpretations of the CRD IV, authoritatively presented by, for example, the Court of Justice of the European Union.

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<sup>6</sup> See footnote 1.

## 3 Principles

### Principle 1 – Primary responsibility of credit institutions

The supervised entities have the primary responsibility of selecting and nominating individuals for the management body who comply with the requirements for fitness and propriety (“suitability”). They must carry out their own due diligence and assessment of the members of the management body, not only prior to the appointment but also on an ongoing basis (e.g. in the case of a significant change to the responsibilities of a member of the management body). In doing so, the supervised entities must ensure that they have the fully transparent cooperation of the individuals concerned.

As part of its responsibility to ensure the (ongoing) suitability of the members of the management bodies, a supervised entity must provide the competent authorities with **all the information necessary** for the fit and proper assessment in all cases (new appointment, new facts, change of role etc.). This must be done in a timely and accurate manner. The ECB and NCA decide on what information must be provided and how (using national forms<sup>7</sup> if available). If necessary, they can ask the supervised entity or the appointee<sup>8</sup> to provide additional information in writing or orally (e.g. in an interview). If a supervised entity or appointee does not comply with this requirement, the information on the appointee is considered to be incomplete, which renders it impossible to take a positive decision.

### Principle 2 – Gatekeeper

Fit and proper supervision must prevent individuals who would pose a risk to the proper functioning of the management body from entering in the first place or from continuing in their role when an issue regarding their fitness and propriety has arisen. The responsibility of the ECB in this respect is to act as a gatekeeper. It has the task of ensuring that significant supervised entities comply with the requirements to have in place robust governance arrangements, including the fit and proper requirements for the persons responsible for the management of credit institutions.<sup>9</sup>

### Principle 3 – Harmonisation

The ECB’s fit and proper supervision seeks to ensure a higher level of harmonisation in the assessments of management body members across the euro area.<sup>10</sup> More

<sup>7</sup> The list of national forms and the Fit and Proper Questionnaire are published on the ECB’s website at <https://www.bankingsupervision.europa.eu/banking/tasks/authorisation/html/index.en.html>

<sup>8</sup> Please see “Abbreviations and terminology” at the end of the Guide for a definition of “appointee”.

<sup>9</sup> Article 4(1)(e) and Article 6(4) of the SSM Regulation.

<sup>10</sup> See “Principle 3 – Homogeneity within the SSM” of the Guide to banking supervision.



consistency and convergence is needed, as numerous divergences have been identified in supervisory policies, processes and practices (including different interpretations of the applicable assessment criteria) regarding the assessment of fitness and propriety.

## Principle 4 – Proportionality and case-by-case assessment

The principle of proportionality applies throughout the whole fit and proper process, meaning that the supervisory process of the ECB as well as the application of the suitability criteria should be commensurate with the size of the entity and the nature, scale and complexity of its activities, as well as the particular role to be filled.

The application of the proportionality principle to the suitability criteria cannot lead to a lowering of the suitability standards, but can result in a differentiated approach to the assessment procedure or the application of suitability criteria (e.g. in terms of the level or areas of knowledge, skills and experience, or in terms of the time commitment required of members of the management body in its management function and members of the management body in its supervisory function). Therefore, in all cases the assessment will come down to an individual analysis and supervisory judgement.

## Principle 5 – Principles of due process and fairness

Fit and proper supervision is strongly procedurally driven. The supervised entity is in most cases the applicant in the supervisory procedure and the supervisory relationship is between the ECB, the NCA and the supervised entity. However, the rights of both the supervised entity and the appointee could be affected by a fit and proper decision. In those cases both will enjoy all the procedural guarantees included in the SSM Regulation and the SSM Framework Regulation, such as the right to be heard.<sup>11</sup> The ECB has a duty to decide on the basis of information that can be considered as material and relevant to the fit and proper assessment, in a balanced way, weighing up the factors that speak in favour of and against the appointee. Fit and proper assessments, as any supervisory procedure, are strictly confidential. In addition to the SSM Regulation and SSM Framework Regulation, the ECB will also rely on the general principles of EU administrative law and EU data protection law.

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<sup>11</sup> Articles 31 and 32 of Regulation (EU) No 468/2014 of the European Central Bank.

## Principle 6 – Interaction with ongoing supervision

The fit and proper assessment feeds into the ongoing supervision of the governance of an institution, especially with regard to the composition and functioning of the management body. A fit and proper assessment may lead to a decision which needs to be followed up in ongoing supervision, while ongoing supervision in turn may provide input for a fit and proper assessment (especially with regard to the collective suitability or independence of mind criteria) or lead to the reassessment of members of the management body.

## 4 Assessment criteria

The fitness and propriety of members of the management body is assessed against five criteria: (i) experience; (ii) reputation; (iii) conflicts of interest and independence of mind; (iv) time commitment; and (v) collective suitability. These criteria are described in the following paragraphs.

### 4.1 Experience

#### Practical and theoretical experience

Members of the management body must have sufficient knowledge, skills and experience to fulfil their functions<sup>12</sup>. The term “experience”, used hereafter in a broad sense, covers both practical, professional experience gained in previous occupations and theoretical experience (knowledge and skills) gained through education and training.

#### Function-specific and minimum requirements

The principle of proportionality is inherently applicable, as the level of experience required depends on the main characteristics of the specific function and of the institution. The more complex these characteristics are, the more experience will be required.

All members of the management body are expected to possess, as a minimum, basic theoretical banking experience that allows them to understand the institution’s activities and main risks. The level and nature of the experience required of a member of the management body in its management function may differ from that required of a member of the management body in its supervisory function, in particular if these functions are performed by separate bodies.

Basic theoretical experience covering the following areas is expected (although for some positions it can be obtained through specific training):

- financial markets;
- regulatory framework and legal requirements;
- strategic planning, and an understanding of a credit institution’s business strategy or business plan and implementation thereof;

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<sup>12</sup> Article 91(1) of the CRD IV.

- risk management (identifying, assessing, monitoring, controlling and mitigating the main types of risk of a credit institution) including experience directly related to the responsibilities of the member;
- accounting and auditing;
- assessing the effectiveness of a credit institution's arrangements, ensuring effective governance, oversight and controls;
- interpreting a credit institution's financial information, identifying key issues based on this information and appropriate controls and measures.

Additional experience might be deemed necessary based on relevant factors, e.g. the function applied for, the nature, size and complexity of the entity, or other factors that need to be taken into account in the specific case. For example, for a director who is also the CRO, CFO, Compliance officer, Chair of the Audit Committee or Chair of the Risk Committee, specialised experience in the relevant area needs to be identified.

## Assessment approach

For the purposes of assessing a member's **theoretical banking experience**, the level and profile of the member's education, which should relate to banking and financial services or other relevant areas (mainly banking and finance, economics, law, administration, financial regulation, information and technology, financial analysis and quantitative methods), are taken into particular account.

**Practical experience** is assessed based on previous positions held, taking into account the length of service, the size of the entity, responsibilities held, number of subordinates, the nature of the activities carried out, the actual relevance of experience gained, etc.

Without prejudice to national forms, the supervised entity must submit, as a minimum, a detailed CV for the appointee. Training plans already followed or to be followed by the appointee are also taken into account.

As explained in Chapter 3, fit and proper assessments are always handled on a case-by-case basis. However, in order to enhance efficiency and reduce the length of assessment periods, a two-stage approach is followed. In Stage 1, the appointee's experience is assessed against the thresholds at which sufficient experience is presumed. Even if these thresholds are not met, the appointee can still be considered suitable, but in such cases a complementary assessment needs to be conducted (Stage 2).

## Stage 1 – Assessment against thresholds

Experience is assessed against guiding presumptions of sufficient experience based on thresholds. If the thresholds are met, the appointee is ordinarily presumed to have sufficient experience, unless there is an indication to the contrary. These thresholds are without prejudice to national law and do not automatically lead to the conclusion that appointees who do not meet the thresholds are not fit and proper.

### Presumption of adequate experience for the management body in its management function

| CEO  | Director   |
|--|--|
| <b>Executive:</b> ten years of recent <sup>1</sup> practical experience in areas related to banking or financial services. This should include a significant proportion of senior level managerial positions. <sup>2</sup> | <b>Executive:</b> five years of recent <sup>1</sup> practical experience in areas related to banking or financial services in senior level managerial positions <sup>2</sup> . |

1) Not dating back more than 12 years.

2) This is understood as at least one level below the management body in its management function.

### Presumption of adequate experience for the management body in its supervisory function

| Chair  | Director   |
|--|--|
| <b>Non-executive Chair:</b> ten years of recent relevant <sup>1</sup> practical experience. This should include a significant proportion of senior level managerial positions and significant theoretical experience in banking or a similar relevant field. | <b>Non-executive:</b> three years of recent relevant practical experience at high level managerial positions <sup>2</sup> (including theoretical experience in banking). Practical experience gained in the public or academic sector could also be relevant depending on the position held. |

1) In assessing relevance, the degree of similarity in the size and complexity of the institutions where previous experience was obtained should be considered.

2) One or two levels below the management body in its management function.

“Relevant experience” can be broader for the Chair or a non-executive director than for an executive director. In any case, not all members of the management body in its supervisory function are required to have practical experience in areas related to banking or financial services.

## Stage 2 – Complementary assessment

If the thresholds at which sufficient experience is presumed are not met, the appointee can still be considered suitable if the supervised entity can adequately justify this. This will be analysed by conducting a complementary assessment of the appointee’s experience, taking into account the need to have sufficient diversity and a broad range of experiences in the management body and, where relevant, national requirements to have staff representatives in the management body.

Examples of justifications may include a training plan in case of a partial lack of experience in a specific field, the overall collective suitability of the members of the management body already present, appointment for a specific role limited in time (such as in an institution in wind-down) or where the appointee has specific theoretical or practical experience which the institution needs.

For example, a member of the management body in its supervisory function who does not meet the above-mentioned thresholds for the position may still be

considered suitable, if (i) the member has IT experience which addresses the institution's specific needs; (ii) the member and the institution commit to the necessary training being undertaken to overcome the lack of basic banking knowledge (see Chapter 7.2); and (iii) the member fulfils all other fit and proper requirements.

## 4.2 Reputation

### Absence of proportionality

Members of the management body shall at all times be of sufficiently good repute<sup>13</sup> to ensure the sound and prudent management of the supervised entity. Since a person can either have a good or a bad reputation, the principle of proportionality cannot apply to the reputation requirement or to the assessment of the reputation requirement, which should be conducted for all institutions in an equal manner.

An appointee will be considered to be of good repute if there is no evidence to suggest otherwise and no reason to have reasonable doubt about his or her good repute. If the personal or business conduct of an appointee gives rise to any doubt about his or her ability to ensure the sound and prudent management of the credit institution, the supervised entity and/or the appointee should inform the competent authority, who will assess the materiality of the circumstances.

### (Pending) legal proceedings

Pending – as well as concluded – criminal or administrative proceedings may have an impact on the reputation of the appointee and the supervised entity, even if the appointee is (being) appointed in a state other than the one in which the relevant events occurred.<sup>14</sup> Notwithstanding the fact that criminal or administrative proceedings are the responsibility of the relevant judicial authority, the very fact that an individual is – or has been – subject to proceedings is relevant to propriety. Concluded proceedings will have an impact if the decision goes against the appointee. Although the competent authority will accept the decision of the judicial authority in concluded proceedings, the underlying circumstances of the proceedings may still be relevant for the assessment of any impact on reputation, even if the judicial authority rules in favour of the appointee. For example, in cases where the court's decision is based on procedural reasons rather than facts or issues that may be relevant to the assessment of an appointee's reputation.

Competent authorities must always be informed of legal proceedings (pending or concluded) at the time of application or notification, or at the start of such

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<sup>13</sup> Article 91(1) of the CRD IV.

<sup>14</sup> Pending proceedings may also have an impact on the ability of the member to commit sufficient time to his or her functions and also need to be assessed on this basis.

proceedings.<sup>15</sup> This includes proceedings involving entities where the appointee, at the time of the (alleged) offence, was a member of the management body or in another position associated with the case, and/or proceedings where the appointee was involved in the subject of the proceedings at the time in question.

Based on all the relevant information available, the supervisor will assess the materiality of the facts and their impact on the reputation of the appointee and the supervised entity, including the impact of the cumulative effects of minor incidents on the appointee's reputation.

A minimum set of information will be required from the appointee, the supervised entity and/or prosecution authority:

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- the nature of the charge or accusation (including whether the charge is criminal, administrative in nature or involves a breach of trust); the phase of proceedings reached (i.e. investigation, prosecution, sentence, appeal); and the likely penalty if a conviction ensues;<sup>16</sup>
  - the time that has passed and the appointee's conduct since the alleged wrongdoing;
  - the personal involvement of the appointee particularly with regard to corporate offences;
  - any understanding of and/or insight into his or her conduct gained by the appointee over time;
  - other mitigating or aggravating factors (e.g. other current or past investigations, administrative sanctions imposed, dismissal from employment or any position of trust, etc.);
  - assessment of the facts by the appointee and by the supervised entity. The management body should be explicitly asked to examine the pending proceedings and to confirm its confidence in the appointee. This is also important from the perspective of reputation risk for the supervised entity.
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<sup>15</sup> This can be part of the information submitted with the initial application/notification or brought to the supervisor's attention as a new fact if the member of the management body is already in his/her position.

<sup>16</sup> The supervised entity and/or the appointee should primarily provide all the relevant information. Where such information is deemed to be insufficient or incomplete by the ECB, it may request this information from the relevant prosecution authority.

## 4.3 Conflicts of interest and independence of mind

### Disclosure, mitigation, management and prevention of conflicts of interest

Members of management bodies should be able to make sound, objective and independent decisions (i.e. act with independence of mind<sup>17</sup>). Independence of mind can be affected by conflicts of interest.

The supervised entity should have governance policies in place for identifying, disclosing, mitigating, managing and preventing conflicts of interest<sup>18</sup>, whether actual, potential (i.e. reasonably foreseeable) or perceived (i.e. by the public). There is a conflict of interest if the attainment of the interests of a member may adversely affect the interests of the supervised entity.

Having a conflict of interest does not necessarily mean that an appointee cannot be considered suitable. This will only be the case if the conflict of interest poses a material risk and if it is not possible to prevent, adequately mitigate or manage the conflict of interest under the written policies of the supervised entity.

### Assessment of conflicts of interest

The supervised entity and the appointee should notify the competent authority of all actual, potential or perceived conflicts of interest. The supervised entity shall assess the materiality of the risk posed by the conflict of interest. If a conflict of interest is considered to be material, the supervised entity must adopt adequate measures, namely it must:

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

The supervised entity will be required to explain to the competent authority in a “Conflict of interest statement” how the conflict of interest is being prevented, mitigated or managed.

The competent authority will assess the materiality of the conflict of interest and the adequacy of the measures adopted by the supervised entity. If there are still concerns that could be overcome by the supervised entity taking adequate action, a condition could be imposed in respect of the individual application. Possible conditions include:

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<sup>17</sup> Article 91(8) of the CRD IV.

<sup>18</sup> Article 88(1) of the CRD IV.



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

If the measures taken by the supervised entity or the imposition of a condition are not sufficient to adequately manage the risks posed by the conflict of interest, the appointee cannot be considered suitable.

Without prejudice to national law, the table below includes situations where a material conflict of interest is presumed to exist. These situations will be assessed in detail on a case-by-case basis and the information provided by the supervised entity regarding the material or non-material nature of the conflict will be considered. The table is, however, non-exhaustive and it does not mean that the ECB cannot find material conflicts of interest in cases that are not covered by these situations and thresholds.

**Table 1**  
Potential material conflicts of interest

| Category of conflict | Period                             | Degree and type of connection and, where applicable, threshold   |
|----------------------|------------------------------------|--|
| <b>Personal</b>      | Current                            | The appointee:<br>has a <b>close personal relationship</b> <sup>1</sup> with a member of a management body, key function holder or qualifying shareholder in the supervised entity or in the parent undertaking/its subsidiaries;<br>is a party in <b>legal proceedings</b> against the supervised entity or against the parent undertaking/its subsidiaries;<br>conducts significant <b>business</b> , in private or through a company, with the supervised entity or with the parent undertaking/its subsidiaries.   |
| <b>Professional</b>  | Current or over the past two years | The appointee or a close personal relation holds at the same time a management or senior <b>staff position</b> in the supervised entity or any of its competitors, or in the parent undertaking/its subsidiaries;<br>has a significant <b>commercial relationship</b> with the supervised entity or any of its competitors, or with the parent undertaking/its subsidiaries.<br>The significance of the commercial interest will depend on what (financial) value it represents to the business of the appointee or his close personal relation.   |
| <b>Financial</b>     | Current                            | The appointee or a close personal relation has a <b>substantial financial interest in or financial obligation to</b> :<br>the supervised entity;<br>the parent undertaking or its subsidiaries;<br>any of the supervised entity's clients;<br>any of the supervised entity's competitors.<br>Examples of financial interests/obligations are shareholdings, other investments and loans.<br>The substantiality depends on what (financial) value the interest or obligation represents to the financial resources of the appointee. The following would in principle be considered non-material:<br>all non-preferential (i.e. under standard market conditions of the relevant bank) secured, personal loans (such as private mortgages) that are performing;<br>all other non-preferential performing loans under €200,000, secured or otherwise;<br>current shareholdings ≤1% or other investments of equivalent value. |
| <b>Political</b>     | Current or over the past two years | The appointee or a close personal relation holds a position of <b>high political influence</b> .<br>"High influence" is possible at every level: local politician (e.g. mayor); regional or national politician (e.g. cabinet); public employee (e.g. governmental job); or state representative.<br>The materiality of the conflict of interest depends on whether there are specific powers or obligations inherent in the political role which would hinder the appointee from acting in the interest of the supervised entity.   |

1) A close personal relationship includes spouse, registered partner, cohabitee, child, parent or other relation with whom the person shares living accommodation.

The above does not prevent representatives of shareholders from being members of the management body. However, if material conflicts of interest do arise, they should be adequately addressed by the supervised entity.

If national substantive law, in addition, includes specific formal independence criteria for certain members of the management body ("independent directors"), these criteria also need to be observed.

## 4.4 Time commitment

### Quantitative and qualitative requirements

All members of the management body must be able to commit sufficient time to performing their functions in the institution<sup>19</sup>. The time a director can dedicate to his or her functions can be affected by several factors, such as the number of directorships held; the size and the situation of the entities where the directorships are held and the nature, scale and complexity of the activities; the place or country where the entities are based; and other professional or personal commitments and circumstances (e.g. a court case in which the appointee is involved). In addition to an assessment of the number of “directorships” (quantitative assessment), an assessment of qualitative aspects will need to be conducted.

### Quantitative assessment of time commitment

As the holding of multiple directorships is an important factor that may affect time commitment, the CRD IV sets a limit on the number of “directorships” which may be held by a member of the management body in an institution that is “significant” in terms of its size, internal organisation and the nature, scope and complexity of its activities.<sup>20</sup> The number of directorships which may be held by a member of the management body of an SI under the CRD IV is limited to one executive directorship with two non-executive directorships, or four non-executive directorships. However, there are two exceptions to this rule.

1. Directorships in organisations which do not pursue predominantly commercial objectives do not count. Nevertheless, presence on the management body of such organisations may have an impact on overall time commitment and need to be declared as part of the fit and proper notification.
2. Certain multiple directorships count as a single directorship (“privileged counting”):
  - (a) directorships held within the same group;
  - (b) directorships held within institutions which are members of the same institutional protection scheme<sup>21</sup>;
  - (c) directorships held within entities in which the institution holds a qualifying holding.<sup>22</sup>

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<sup>19</sup> Article 91(2) of the CRD IV.

<sup>20</sup> Article 91(3) of the CRD IV.

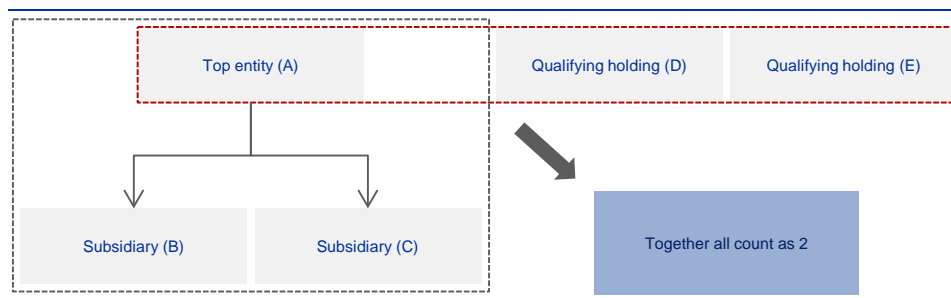
<sup>21</sup> An institutional protection scheme is defined in the Capital Requirements Regulation (CRR) as a contractual or statutory liability arrangement of a group of banks which protects the member institutions and in particular ensures their liquidity and solvency.

<sup>22</sup> Articles 91(4) and (5) of the CRD IV.

**Organisations which are presumed not to be pursuing predominantly commercial objectives** for the purposes of Article 91(5) of the CRD IV are (i) non-profit sports or cultural associations; (ii) charities; (iii) churches; (iv) chambers of commerce/trade unions/professional associations; (v) organisations for the sole purpose of managing the private economic interests of members of the management body and that do not require any day-to-day management by the member of the management body; and (vi) organisations which are presumed to pursue predominantly non-commercial activities based on national regulatory provisions. Other organisations could still be considered not to be pursuing predominantly commercial objectives after assessment by the competent authority of the nature of the organisation and the predominance of the non-commercial activities.

**Counting of multiple directorships:** the ECB takes a conservative approach to counting. Directorships held by a single appointee in each of the entities A to E in the example below will count as two directorships (the directorships held by the appointee in entities A, B and C will count as one directorship and the directorships held by the appointee in entities A, D and E will also count as one directorship, because entity A has a qualifying holding in entities D and E).

**Figure 1**  
Counting of multiple directorships



Sources: ECB

If the appointee does not hold a directorship in entity A, the aforementioned privileged counting regarding qualifying holdings does not apply. For example, directorships held by an appointee in entities B, D and E will be counted as three, as none of institutions B, D or E holds a qualifying holding in any entity where the appointee holds a directorship.

If an appointee holds a mixture of executive and non-executive mandates in a group, the executive mandate should be counted over the non-executive mandate, with the result that the appointee is deemed to hold an executive mandate.

All directorships in all companies should be counted whether they are remunerated or not.

CRD IV also includes the possibility for the competent authorities to authorise members of the management body to hold one additional non-executive directorship.<sup>23</sup>

## Qualitative assessment of time commitment

In addition to the quantitative limits on the number of directorships, there are qualitative factors that determine the amount of time a director can dedicate to his/her function, such as (i) the size and the circumstances of the entities where the directorships are held and the nature, scale and complexity of their activities; (ii) the place or country where the entities are based; and (iii) other professional or personal commitments and circumstances (e.g. a court case in which the appointee is involved). While assessing whether the appointee will be able to commit sufficient time to performing his/her functions, the supervised entity should also take into account the need for ongoing learning and development, as well as the need for a buffer for unexpected circumstances.<sup>24</sup>

## Information to be provided by the supervised entity

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

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

In principle, no additional information will be required in cases where (i) the appointee holds one executive directorship with two non-executive directorships, or four non-executive directorships, without “privileged counting”; and (ii) the appointee has no specific responsibilities (e.g. chairing a committee) and no doubts arise from the self-declaration of sufficient time.

Where this is not the case, the supervised entity has to deliver a more detailed assessment of time commitment.

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<sup>23</sup> Article 91(6) of the CRD IV.

<sup>24</sup> Unexpected circumstances not only include crisis situations related to the institution, but also circumstances that could unexpectedly affect time commitment (e.g. court cases).

The following additional information should be provided (in the light of individual circumstances and based on a proportionate approach):

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- whether the appointee is in full time occupation or not, providing the number of hours or days dedicated to each mandate or position;
  - whether any of the mandates have any additional responsibilities such as membership of committees (e.g. chair of the audit, risk, remuneration, and/or nomination committee);
  - whether the nature, type and size of the supervised entity will demand more time (e.g. the supervised entity is regulated, listed etc.);
  - confirmation that ongoing learning, development and crisis buffers have been provided for;
  - when mandates or positions are not counted because the organisations concerned do not pursue predominantly commercial objectives, a description of the objectives of the organisations, unless this is clear from public information;
  - where the number of directorships exempted from counting is high (e.g. the appointee is a member of the management body in numerous subsidiaries), an explanation of how synergies within the different mandates could reduce the time commitment, if applicable;
  - whether the experience of the appointee, either generally or with respect to the company, is such that the appointee could carry out his or her duties with greater familiarity and hence efficiency.
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## 4.5 Collective suitability

### Self-assessment and ongoing governance supervision

The supervised entity has the primary responsibility of identifying gaps in the collective suitability through the self-assessment of its management body, for example based on a suitability matrix. The supervised entity should report and discuss these to/with its Joint Supervisory Team (JST), as the supervision of the collective suitability of the management body is a matter of ongoing governance supervision. How an appointee will fit into the collective suitability is one of the criteria to assess at the time of his or her initial fit and proper assessment. The ongoing supervision by the JSTs will have an impact on these assessments.

## Motivation at time of appointment

The supervised entity should provide:

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- a description of the composition of the management body for which the appointee is being assessed;
  - a **short reasoned statement**<sup>25</sup> on how the appointee will contribute to its collective suitability needs;<sup>26</sup>
  - in the event that the JST has identified gaps in the collective suitability and wishes to discuss the topic, the result of the periodical self-assessment might also be requested by the JST.
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The reasoned statement ideally has two parts: first, an analysis of the status quo based on the most recent conclusions of the self-assessment, and second, an indication as to how the appointee would affect the status quo. That indication can be an explanation as to how the appointee will complement/contribute to the status quo, and/or how he or she will rely on the status quo for certain fields of knowledge, skills or experience.

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<sup>25</sup> For SIs under the CRD IV, this statement should be drafted with the involvement of the nomination committee, in line with the nomination committee's obligation as set out in Article 88(2)(c) of the CRD IV.

<sup>26</sup> This must be done for either the management body in its management function or the management body in its supervisory function. Any proposal for the appointee to be a member of one of the specialised committees in the management body should also be included in the statement.

## 5 Interviews

### 5.1 Purpose

Interviews are one of the ways in which information about the appointee can be collected and supplement the written information provided by the supervised entity and the appointee or any information about the appointee from any other source. Interviews are an opportunity to probe an appointee on his or her practical experience<sup>27</sup> or to test whether an appointee is well informed about the supervised entity and relevant market developments. Interviews can also be used to explore issues of integrity and propriety or to verify facts in order to gain more assurance about specific elements of his or her fitness and propriety.

For the competent authority, an interview also provides an opportunity to meet the appointee and to set out his or her expectations with regard to the engagement between the appointee, the supervised entity and him or herself.

### 5.2 Scope and types

The aim of the interview is to **complement and/or verify** (i) the documentation submitted by the appointee and/or supervised entity or (ii) information that has come to the knowledge of the competent authority by another means. Therefore, interviews are one of the tools used in the information gathering phase of the fit and proper assessment to determine the relevant facts.

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

Interviews will be conducted in the case of **new appointments** to CEO (or equivalent) and Chairman positions at stand-alone banks and the top banks of groups, as these entail the most risk. If the top entity in a group is a holding, this applies with respect to the largest bank in the group. In the case of cooperatives, the central body or central body association is considered the top entity. In duly justified cases, the ECB may decide that an interview is not necessary, namely where an appointee to the position of CEO is already one of the current members of the management body or has been recently interviewed.

In all other cases, interviews may also be used as a tool for fit and proper assessments (e.g. when a specific concern relating to an appointee's fitness or integrity/propriety has been identified).

An **informative interview** will cover all elements of suitability. If there are still concerns after this interview, **a second, specific interview** focusing on the facts that

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<sup>27</sup> See Chapter 4.1.



gave rise to the concerns may be conducted. The ECB may also decide to only hold a specific interview, e.g. if it is already clear from the written documentation that there is a specific concern regarding the fitness and propriety of the appointee.

## 5.3 Interview process

The appointee and the supervised entity will be given adequate notice in writing of the date, time and place of the requested interview.

Where a specific interview is initiated because there is a specific concern regarding the fitness or propriety of an appointee, an outline of the issues to be discussed will be sent to the appointee and the supervised entity in advance.

The interview panel will generally consist of a minimum of two and generally no more than three people. The interview panel, and at least the chair, must have sufficient seniority. No member of the interview panel must have a conflict of interest or perceived conflict of interest or bias in relation to any appointee who is being interviewed.

The ECB will agree on the language the interview will be conducted in with the appointee. Where the supervised entity has agreed to English as the language in which it receives formal decisions by the ECB, the interview will be conducted in English unless the appointee chooses otherwise.

## 6 Assessment process

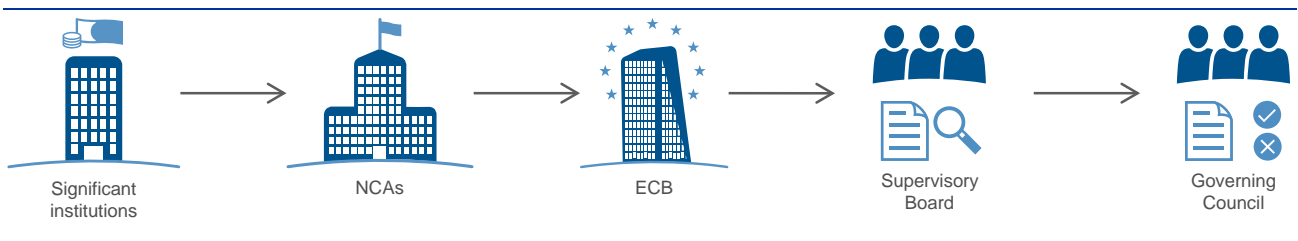
### Triggers

A fit and proper assessment can be triggered by:

- a new appointment, a change of role or a renewal<sup>28</sup>;
- new facts or any other issue<sup>29</sup>; or
- a licensing<sup>30</sup> or qualifying holding<sup>31</sup> procedure.

**Figure 2**

Involved stakeholders within the SSM



### 6.1 National competent authorities as entry point

Appointments are declared by the credit institutions (or exceptionally by the appointee) to the relevant NCA, using national notification forms<sup>32</sup> where available. The NCA then informs the ECB. Together they collect the necessary information, carry out the assessment and present a detailed proposal for a decision.

### 6.2 ECB as decision-maker

The ECB only takes decisions on appointments in significant credit institutions, except where appointments are part of licensing or qualifying holding procedures (these are common procedures for both SIs and LSIs).

<sup>28</sup> Article 93 of the SSM Framework Regulation.

<sup>29</sup> Article 94 of the SSM Framework Regulation.

<sup>30</sup> Article 78 of the SSM Framework Regulation.

<sup>31</sup> Article 86 of the SSM Framework Regulation.

<sup>32</sup> See footnote 7.

Within the ECB, fit and proper assessments are performed jointly by the Authorisation Division (AUT)<sup>33</sup> of Directorate General Microprudential Supervision IV (which is responsible for all of ECB Banking Supervision's horizontal functions), the JSTs and, where they exist, NCAs' horizontal divisions responsible for fit and proper assessments.

## 6.3 New appointments

### Standard procedure

The typical SSM internal process followed with respect to new appointments starts with notification of the NCA by the supervised entity of the (proposed) appointment of a new member of the management body in accordance with national law requirements. To do this, the supervised entity uses the forms and templates provided by the NCA. The NCA notifies the ECB and informs it of the time limit, if any, within which a decision has to be taken in accordance with the national law. The NCA and the ECB collect all the necessary documentation and carry out a joint assessment, while ensuring:

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

The assessment includes: examination of the documents received; consultation of local registers; consultation of the EBA database on administrative sanctions; contact with other national authorities, namely the authority responsible for financial conduct, if applicable, and local or foreign authorities responsible for the supervision of other financial entities in which the appointee works or has worked before, or in which he or she has been a member of the management body. The NCA and the ECB may request additional information in writing or in an interview, if needed.

The ECB prepares a decision, with the assistance of the NCA.. A proportionate approach is applied to most of the smaller entities falling under the direct supervision of the ECB and to changes in the management body and renewals. However, the assessment of whether all the fit and proper criteria are fulfilled remains the same.

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<sup>33</sup> The Authorisations Division ensures the correct application of SSM policies, practices and processes, compliance with the applicable legal requirements and consistency in the outcomes of ECB fit and proper decisions.

## 6.4 Renewals, changes of roles or resignations

Renewals and changes of roles may impact on the management body and, for that reason, they may trigger a new fit and proper assessment if required and as defined by national law.

For renewals, an appointee is deemed suitable if no new facts have arisen since the previous assessment (if there are new facts, see paragraph 6.5). A full reassessment covering all five fit and proper criteria will only be conducted if required by national law.

There is a “change of role” if:

- it is proposed that a non-executive member be appointed as executive director or vice versa;
- it is proposed that a member be appointed as Chairperson, Chairperson of one of the specialised committees in the management body or CEO.

The assessment of a change of role will be mainly focused on the individual's experience, as this criterion will be most affected. However, time commitment, conflicts of interest<sup>34</sup> and collective suitability may also be affected and therefore assessed.

The supervised entity has to notify the NCA of the change and a decision will be taken by the ECB. If no decision is required by national law, the supervised entity will simply have to notify the NCA of the change.

In case of a change of role, the supervised entity may need to provide additional information. For example, if a non-executive director is appointed as executive director, it has to be demonstrated that he/she possesses the relevant experience and adequate time commitment, as required.

A resignation will also lead to a change in the management body, but in this case no decision needs to be taken. However, the resignation may affect the collective suitability of the management body. An exit interview may be held with the individual concerned to better understand the circumstances in which he/she left the management body, as such information may be useful for the ongoing supervision of the institution.

## 6.5 New facts

New facts may become known to the ECB and NCA in different ways. Under Article 94(1) of the SSM Framework Regulation, supervised entities must notify the NCA of

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<sup>34</sup> This may notably be the case if the appointee holds other roles within the same group the institution is a part of. For example, if an appointee is proposed for the role of non-executive director in the parent undertaking, but he/she remains executive director at subsidiary level, this may give rise to a new conflict of interest.

any new fact or “any other issue” (hereafter “new fact”) that may affect the initial fit and proper assessment, without undue delay from the date they become known. The NCA and the ECB may also themselves become aware of new facts that may affect a previous assessment of the suitability of an appointee (e.g. report of a breach, information gathered through on-site inspection, facts alleged in newspapers).

On a case-by-case basis, the ECB and the NCA may decide to prompt a reassessment if the fact is material for one of the assessment criteria of the CRD IV.<sup>35</sup> If prompted, the reassessment will focus on the criteria which are affected by the new fact. The principle of due process (see Chapter 3) and the decision-making process, as described in Chapter 7, apply if a reassessment is conducted.

## 6.6 Licensing and qualifying holding procedures

In the case of the licensing of a credit institution, the fit and proper assessment is done as part of the licensing procedure.

In the case of a qualifying holding procedure, where the proposed acquirer is to appoint a member of a management body as a result of the proposed acquisition, the fit and proper assessment is done as part of the qualifying holding procedure.

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<sup>35</sup> Article 94(2) of the SSM Framework Regulation.

## 7 Decision

A formal ECB decision is taken after every fit and proper assessment within the deadline provided for by national law, if applicable.

### 7.1 Types of decisions

An appointee is either considered fit and proper or not. However, the ECB has the power to include recommendations, conditions or obligations in positive decisions. Where concerns cannot be adequately addressed by means of these tools, a negative decision will need to be taken.

Positive and negative decisions can include references to related ongoing supervisory work.

If the intended decision could adversely affect the rights of the appointees or the supervised entity<sup>36</sup>, some fundamental principles and rights have to be observed:

- The ECB shall base its decision only on objections on which the persons who are the subject of the proceedings (also called parties) are able to comment.<sup>37</sup>
- The ECB shall take into account all relevant circumstances<sup>38</sup> and may hear witnesses and experts if it deems it necessary and take evidence.<sup>39</sup>
- A party has the right to be heard<sup>40</sup>.
- A party has the rights which apply in general: the right to have legal representation<sup>41</sup>; the right of access to the ECB file<sup>42</sup>; and the right to a statement of reasons<sup>43</sup>.

### 7.2 Positive decisions

As explained before, the ECB can attach recommendations, conditions and obligations to a positive decision.

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<sup>36</sup> For example, in the case of a negative decision or a positive decision imposing ancillary provisions which have not been agreed on expressly and in writing by the appointee and the supervised entity.

<sup>37</sup> Article 22 of the SSM Regulation.

<sup>38</sup> Article 28 of the SSM Framework Regulation.

<sup>39</sup> Articles 29 and 30 of the SSM Framework Regulation.

<sup>40</sup> Article 31 of the SSM Framework Regulation. The hearing may take place in a meeting or in writing and shall be based on the draft decision. The draft decision is revised on the basis of the assessment of the hearing.

<sup>41</sup> Article 27 of the SSM Framework Regulation.

<sup>42</sup> Article 32 of the SSM Framework Regulation.

<sup>43</sup> Article 33 of the SSM Framework Regulation.

## Positive decision with recommendation

Where all the fit and proper requirements have been met, but an issue has been identified and needs to be addressed, the ECB may include recommendations or set out expectations in the fit and proper decision itself. The use of such non-binding instruments is also meant to encourage best practices in the institutions and point to desirable improvements.

## Positive decision with condition

The ECB may also impose conditions. A condition is a requirement imposed on the supervised entity (while it may also have direct implications on the appointee) in place of what would otherwise be a negative decision. The ECB shall only impose a condition where this is necessary to ensure that the appointee satisfies the applicable fit and proper assessment criteria. Imposing a condition in such cases will be a more proportionate and less intrusive measure. The ECB may impose conditions only if:

- the ECB could adopt a negative decision but the shortcoming is easily remediable;
- the condition is well-defined and can be fulfilled in a well-defined and relatively short time frame;
- the content of the condition can be grounded on the basis of the assessment criteria established in applicable national law.

The most common conditions include:

- an undertaking to follow specified training;
- divestiture of an external directorship or other function;
- probationary period, for example in a position below the level of the management body.

Where a conditional decision is issued the supervised entity must report to the ECB, in a timely manner, on the fulfilment of the condition.

Unlike non-compliance with an obligation or recommendation, non-compliance with a condition will automatically affect the fitness and propriety of the appointee, as failure to comply with a condition means that the appointee does not satisfy the applicable fit and proper assessment criteria. Depending on the type of condition, the ECB decision never becomes valid or is no longer valid. The consequence is that the appointee has to resign from his/her position or cannot take up the position.

Where the appointee is already acting as a member of the management body and refuses to step down on his/her own initiative, the ECB can use supervisory powers

to remove him/her from the management body.<sup>44</sup> Such a removal measure requires a new specific ECB decision which will not, however, involve a new fit and proper assessment and for which the right to be heard will apply.

### Positive decision with obligation

The ECB decision can also include an obligation to provide specific types of information for the purposes of the ongoing fit and proper assessment or to take a specific action relating to fitness and propriety, affecting not the appointee but the whole supervised entity. Unlike a condition, non-compliance with an obligation will not automatically affect the fitness and propriety of the appointee.

The most common obligations include:

- reporting on pending legal proceedings;
- improvements required in written policies on conflicts of interest;
- improvements required in terms of collective suitability.

## 7.3 Communication of decision and appeal

The supervised entity (or exceptionally the appointee)<sup>45</sup> is notified of the decision taken by the ECB. The supervised entity and the appointee have to comply with any other requirements under national law, such as being registered in a national register, if applicable.

The appointee or the supervised entity has the option to request a review by the Administrative Board of Review or to challenge the decision directly before the Court of Justice of the European Union.<sup>46</sup>

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<sup>44</sup> Article 16(2)(m) of the SSM Regulation.

<sup>45</sup> The decision is notified to those who declared the appointment (see Chapter 6.1).

<sup>46</sup> For further explanation, see paragraphs 13-15 of the Guide to banking supervision available at <https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssmguidebankingsupervision201411.en.pdf>



## 8 Removal of members from the management body

Under Article 16(2)(m) of the SSM Regulation, the ECB has the power to remove at any time members from the management body of a significant supervised entity who do not fulfil the requirements set out in the acts referred to in the first sub-paragraph of Article 4(3) of the SSM Regulation.

## Abbreviations and terminology

|   |  |
|---|--|
| Appointee   | The person who is proposed for a position in the management body or who has been appointed to such position    |
| AUT   | Authorisation Division of the ECB  |
| CRD IV  | <a href="#">Capital Requirements Directive</a>   |
| Directorship  | The position of a member of the management body of a company   |
| EBA   | European Banking Authority   |
| <a href="#">EBA guidelines on Internal governance</a> |  |
| <a href="#">EBA guidelines on suitability</a>         | EBA Guidelines on the assessment of the suitability of members of the management body and key function holders |
| ECB   | European Central Bank  |
| ESMA  | European Securities and Markets Authority  |
| EU  | European Union   |
| JST   | Joint Supervisory Team   |
| Management body                                       | The management body in its supervisory function and in its management function                                 |
| NCA   | National competent authority   |
| SREP  | Supervisory Review and Evaluation Process  |
| SSM   | Single Supervisory Mechanism   |
| <a href="#">SSM Framework Regulation</a>              |  |
| <a href="#">SSM Regulation</a>                        |  |

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