



EUROPEAN CENTRAL BANK
BANKING SUPERVISION

Andrea Enria

Chair of the Supervisory Board

Mr Sven Giegold
Member of the European Parliament
European Parliament
60, rue Wiertz
B-1047 Brussels

Frankfurt am Main, 18 May 2021

Re: Your letter (QZ-026)

Honourable Member of the European Parliament, dear Mr Giegold,

Thank you for your letter on the treatment of cum-ex legal proceedings in fit and proper assessments, which was passed on to me by Ms Irene Tinagli, Chair of the Committee on Economic and Monetary Affairs, accompanied by a cover letter dated 20 April 2021.

Please note that the fit and proper assessment conducted by the European Central Bank (ECB) and the national competent authorities is prudential and preventive in nature and dependent on the information available at the point in time when the assessment is conducted. It is distinct from criminal or administrative infringement procedures.

Furthermore, it is the primary responsibility of credit institutions to ensure that the members of their management bodies are suitable at all times. The ECB only exercises its powers in order to prevent unsuitable candidates from taking up such positions or to remove members from the management body of credit institutions if they no longer fulfil the relevant suitability criteria.

Reputation is one of the criteria taken into account by the ECB in the context of fit and proper assessment of members of the management bodies of the credit institutions subject to its supervision. In particular, an appointee should be considered of good repute if there are no objective and demonstrable grounds to suggest otherwise. All relevant criminal or administrative records, including pending criminal and administrative proceedings, should be considered when assessing an appointee's reputation. The use of interviews has also proven a useful tool to probe the appointee in such cases.

Generally, in the case of ongoing legal proceedings, the ECB looks at the stage they are at (e.g. early investigation, trial) and whether the available facts have been reliably established in order to ascertain whether there are sufficient grounds to cast material doubts on an appointee's suitability.

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The above assessment practice also applies to the few cum-ex legal proceedings that have so far been brought to our attention within fit and proper processes. However, I cannot comment on these individual cases, as the ECB is subject to professional secrecy requirements as outlined in the Capital Requirements Directive (2013/36/EU).

Further details on the ECB's approach to the assessment of reputation can also be found in the ECB Guide to fit and proper assessments.¹

Moreover, the ECB will soon publish for consultation proposals to further enhance fit and proper assessments, which inter alia clarify the scope of reassessments in case of material findings and entail a closer look into individual accountability of board members.

Yours sincerely,

[signed]

Andrea Enria

¹ The ECB Guide to fit and proper assessments is available on the ECB's banking supervision website at: https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssm.fap_guide_201705_rev_201805.en.pdf?8f1918219aeae7a63d2ddbcd43bae958.