



# Consultation Paper on the assessment of members of the management body and key function holders

Public hearing 1 June 2012

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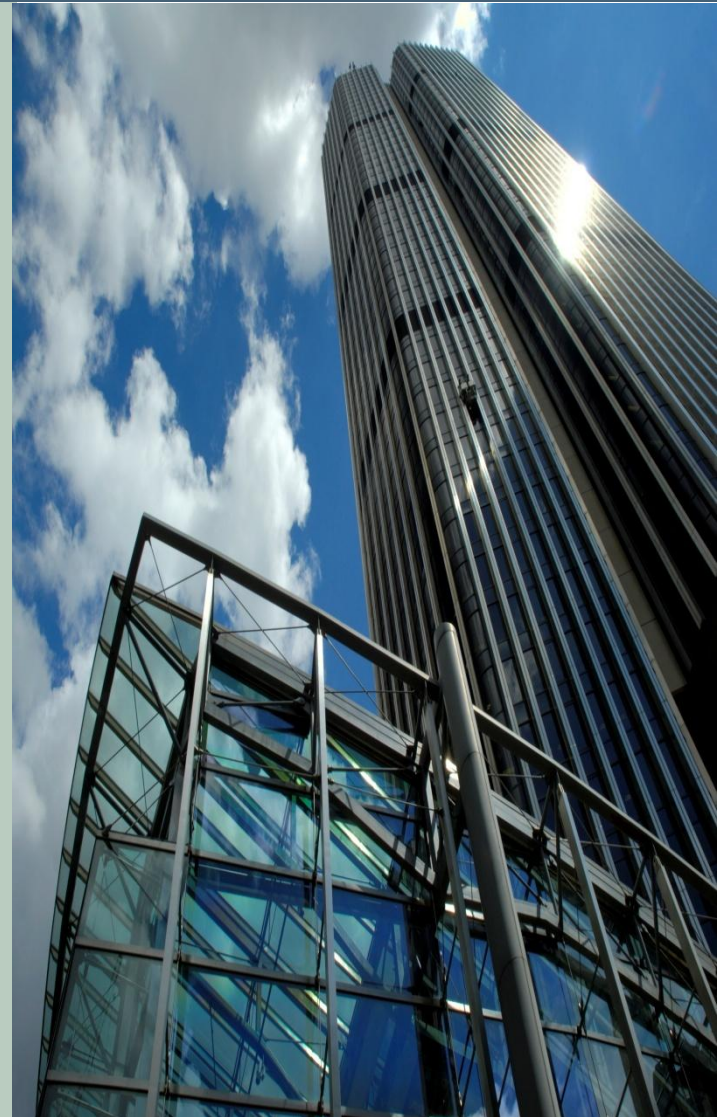
European  
Banking  
Authority

*European System of Financial Supervision*

# General introduction

## **European Banking Authority established 1 January 2011**

- Regulation (EU) No 1093/2010 of 24 November 2011
- the EBA assumes all of the tasks and competences of CEBS and additional tasks.
- Seat in London
- Accountable to the European Parliament and the Council



## Guidelines on fit and propriety

- On 18 April 2012 EBA published a Consultation Paper on draft Guidelines on the assessment of the suitability of members of the management body and key function holders
- Consultation period ends 18 July 2012
- Public hearing 1 June 2012 to get first views on the content of the Guidelines – participants may also hand in written comments within the above deadline

# Current national practices vs. the Guidelines

**Current national practices: very wide ranging**

Limited  
approaches

Extensive  
approaches

**EBA fit & proper guidelines**

discretion

Guidelines will:

- enhance level playing field within EU
- keep sufficient flexibility to consider national law
- be applied in a proportionate way

## Legal basis: Art 16 EBA Regulation

- The Authority shall, with a view to establishing consistent, efficient and effective supervisory practices within the ESFS, and to ensuring the common, uniform and consistent application of Union law, issue guidelines and recommendations addressed to competent authorities or financial institutions.
- The Authority shall, where appropriate, conduct open public consultations regarding the guidelines and recommendations and analyse the related potential costs and benefits...

# Legal Basis: current CRD

## **Article 11 Directive 2006/48/EC as amended by CRD III**

- The competent authorities shall grant an authorisation to the credit institution only when there are at least two persons who effectively direct the business of the credit institution.
- They shall not grant authorisation if these persons are not of sufficiently good repute or lack sufficient experience to perform such duties.
- **The Committee of European Banking Supervisors shall ensure the existence of guidelines for the assessment of the suitability of the persons who effectively direct the business of the credit institution.**

# Legal Basis: current CRD

## **Article 135 Directive 2006/48/EC**

"The Member States shall require that persons who effectively direct the business of a financial holding company or a mixed financial holding company be of sufficiently good repute and have sufficient experience to perform those duties"

See also Article 22 (1) Directive 2006/48/EC

Home Member State competent authorities shall require that every credit institution have robust governance arrangements, which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks it is or might be exposed to, adequate internal control mechanisms, including sound administration and accounting procedures, and remuneration policies and practices that are consistent with and promote sound and effective risk management.

## Future legal basis: CRD IV Article 87

- (1) Members of the management body in its managerial function and member of the management in its supervisory function shall at all times be of sufficiently good repute, possess sufficient knowledge, skills and experience and commit sufficient time to perform their duties.



## CRD IV Article 87

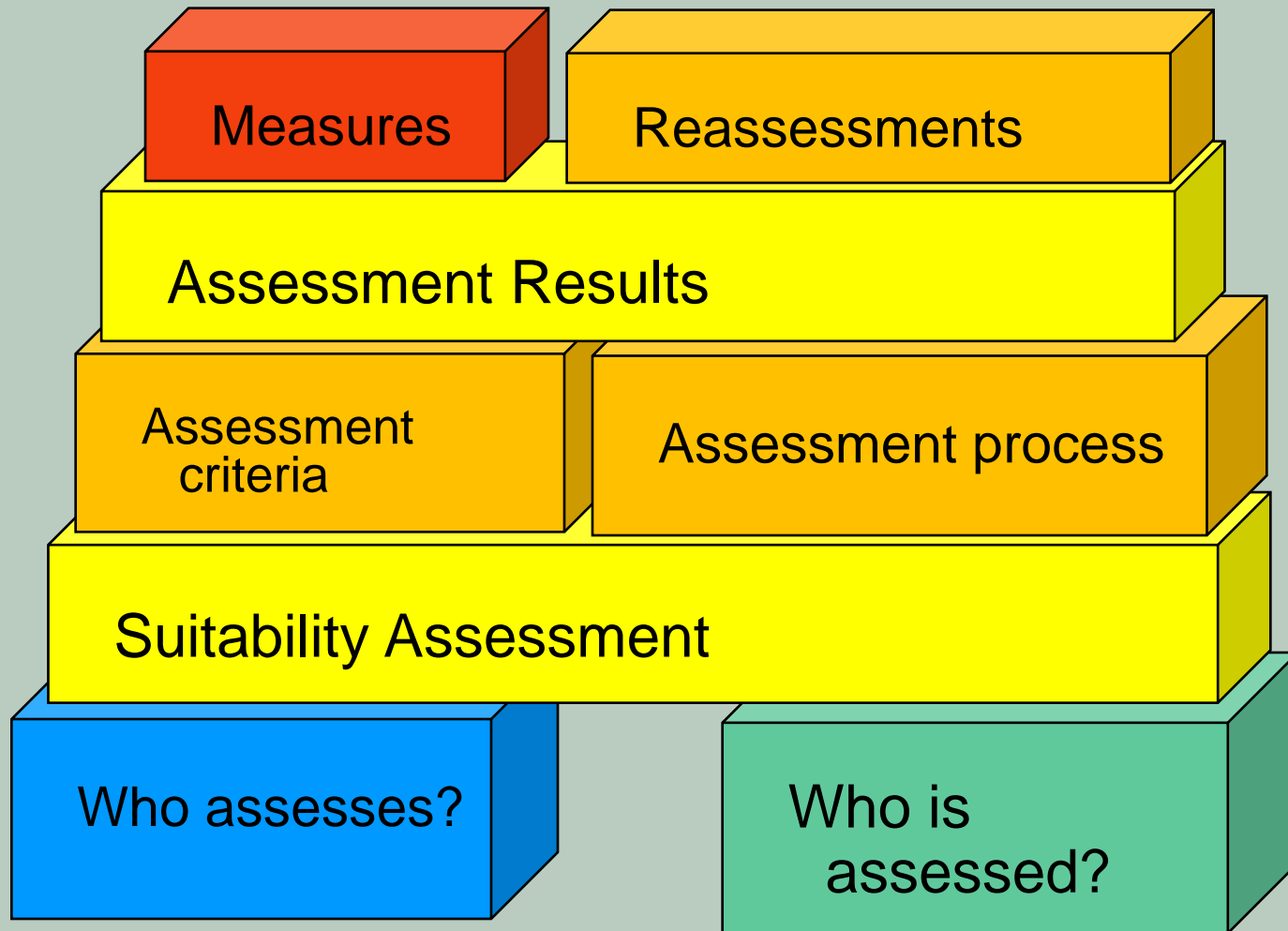
- (2b) The management body in its managerial function as well as management body in its supervisory function shall possess adequate collective knowledge, skills and experience to be able to understand the institution's activities, including the main risks.
- (2c) Each member of the management body in its supervisory as well as in its managerial function shall act with honesty, integrity and independence of mind to effectively challenge the decisions of the senior management where necessary and to effectively oversee and monitor management decision-making.

# Impact assessment

European Commission conducted an Impact Assessment for CDR IV – EBA used this as a major input for its impact assessment

- The measure will enhance the oversight function
- A harmonised assessment of the management body ensures that similar standards apply in all member states
- The number of suitable candidates will be reduced, but it can be assumed that there is a sufficient number of candidates
- The costs for the assessment are insignificant compared to the annual operating expenses
- There is no direct impact on the environment or third countries

# Building Blocks of the Guidelines



## Scope of the Guideline

- Credit institutions (Investment firms have similar requirements under the proposed MiFID, ESMA to develop Guidelines/BTS in consultation with EBA)
- Financial holding companies
- Assessment of
  - Management body; management and supervisory function
  - Key function holders

# Institutions responsibilities

## Institutions to assess

- Members of the management body
- Key function holders
- GL 44 on Internal Governance and additional criteria for the assessment within the GL to be considered within the assessment

## Assessment by Credit Institutions

- Institutions to enforce a policy on the assessment of members of the management body and key function holders
- If possible assessment before the appointment, otherwise in good time after the appointment (in particular relevant for supervisory function)
- Reassessment when circumstances change
  - Either within the institution
  - Or regarding the person
- If a nomination committee is established, it should actively contribute to the implementation of the policy and the assessment of persons

## Notification

- Competent authorities will set out a notification process applicable for appointments and re-appointments of members of the management body taking into account national company law.
- Documentation on the suitability shall be provided upon request
- A set of information to be provided for initial assessments is included Annex I of the GL
- Institution and the person to verify the information

# Assessment by Competent Authorities

- Competent authorities assess
  - Members of the management body
    - When an application to authorise an institution is received
    - When a notification regarding the appointment of a member is received
    - As appropriate regarding already appointed members
  - Assessment will be conducted in a proportionate way, taking into account the position in question and the overall composition of the management body
  - Competent authorities will published details about the used process
  - Competent authorities may assess key function holders



# Measures in case of insufficient suitability

- Institution

- Decision on appointment to be based on assessment results
- take appropriate measures re members of the management body to ensure suitability (in particular experience/knowledge), while such measures may be possible to tackle weaknesses in the experience/knowledge, insufficient reputation can not be mitigated
- Take appropriate measures re key function holders

- Competent authority

- Request of measures to ensure the suitability of persons
- Request to not appoint a person or dismiss a person
- Adopt appropriate measures if needed

## Assessment criteria - Reputation

- A person shall 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
- A person shall not be considered to be of good repute, if his or her personal or business conduct gives rise to any material doubt about his or her ability to ensure the sound and prudent management of the credit institution
- Competent authorities shall take into account at least the relevance of administrative and criminal records
- more detailed aspects are provided in the Guidelines

## Assessment criteria - experience

- The competent authority shall assess the experience of a person considering both, the theoretical experience gained by education and the managerial experience gained by previous occupations, taking into account the skills and knowledge acquired and demonstrated by the professional conduct of the person.
- A member of the management function should have sufficient practical experience in a managerial position in an credit institution or a firm with a scope of activities requiring skills which are comparable to the skills required in a managerial position in a credit institution.

## Assessment criteria - experience

- A member of the supervisory function of a credit institution should have sufficient experience to enable the person to engage with and provide constructive challenge to the decisions of the management function. This experience may be gained from managerial, academic, administrative or other activities related to the nature, size and complexity of the credit institution.
- A more detailed list of aspects to be considered is provided in the Guidelines

## Next Steps

- Public consultation ends 18 July 2012
- Review of the GL in Q3/2012 taking into account
  - Public hearing
  - Written comments
  - Changes of CRD IV text
  - Opinion of the Banking Stakeholder Group
- Publication in Q4/2012