



NATIONAL RESEARCH UNIVERSITY  
HIGHER SCHOOL OF ECONOMICS

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**EBA Consultation Paper on draft Guidelines  
for assessing the suitability of members of  
the management body and key function  
holders of a credit institution**

POSITION PAPER

This Position Paper is an output of a research project implemented  
at the National Research University Higher School of Economics (HSE).

Any opinions or claims contained in this Position Paper do not necessarily reflect the views of HSE.



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European Banking Authority  
Email: [CP-2012-03@eba.europa.eu](mailto:CP-2012-03@eba.europa.eu)

Dear Sirs,

**EBA Consultation Paper on  
Draft Guidelines for assessing the suitability of members of the management body and key  
function holders of a credit institution**

On behalf of the National Research University Higher School of Economics (NRU HSE), and particularly the International Laboratory of Decision Choice and Analysis we would like to thank European Banking Authority for the opportunity to deliver our opinion on the Consultation Document 'Draft Guidelines for assessing the suitability of members of the management body and key function holders of a credit institution' published by the European Banking Authority on April 18, 2012 at <http://www.eba.europa.eu/Publications/Consultation-Papers/All-consultations/2012/EBA-CP-2012-03.aspx>.

The comments are presented in two parts:

- (a) 'Responses to Questions for Consultation';
- (b) 'Other Comments'.

We hope our comments would be of use for further development of the international regulatory framework.

In case of further questions, please, do not hesitate to get in touch through email ([dhm-econ@hse.ru](mailto:dhm-econ@hse.ru)), telephone (+7.495.621.13.42, ext. 2006) or fax (+7.495.772.95.90, ext. 2101).

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## Responses to Questions for Consultation

### Question 1:

While the principle of proportionality is a general principle within European legislation, it may be desirable to spell out this principle in more detail for the application of the Guidelines. Which criteria could be applied by institutions and competent authorities to differentiate the assessment process and the assessment criteria regarding the nature, scale and complexity of the business of the credit institution and how should such a differentiation look like?

To extend the BIPRU regulation logic on proportionality (cf. points 2.2.24-27; <https://fsahandbook.info/FSA/html/handbook/BIPRU/2/2>) it is proposed to use the following differentiating criteria:

Bank Criteria Group	Criteria Name Example	Qualification Criteria
Nature of business	Exposure amount and types	Different minimum number of years of work experience
Scale of business	Size of the bank	Knowledge of the respective regulation (e.g. on DSIBs / GSIBs / SIFIs)
Complexity	Geography	Knowledge of local peculiarities
		Knowledge of local macroeconomics and forecasts

### Question 2:

Should competent authorities be required by the Guidelines to assess the policies of institutions for assessing the suitability of key function holders aiming to ensure that institutions have appropriate policies in place ensuring that key function holders would fulfil the suitability requirements?

Yes, they should (during regular supervisory review of credit institutions corporate governance). Beforehand primarily requirements to policy or policy template based on the guidelines might be attached to current guidelines text (as EBA published a template on recovery plan at <http://www.eba.europa.eu/Publications/Discussion-Papers/Year/2012/EBA-DP-2012-2.aspx>).

## Other Comments

**p. 5 – “The Guidelines shall be implemented by competent authorities [4 months after publication] and credit institutions by [6 month after publication]”**

It is proposed to grant additional 6 months for credit institutions after the date of its implementation by competent authorities for banks to make a smooth revision and change of personnel if necessary to satisfy the requirements.

**p. 6 – III.1 – “at least two persons who effectively direct the business of a credit institution”.**

It is proposed to extend the criteria to three people as having two people even at different roles might not lead to a constructive solution if one is for and another is against. Then having three qualifying persons the bank is guaranteed to always take decision (supposing majority voting rule is used). The ability to take immediate solutions is vital especially at crisis times. Otherwise having only 1 qualifying person is expected to be better, than two.

**p. 8 – III.13 – “sufficient skills and knowledge, which cannot merely be expressed in terms of a period of duty in a certain position or a specific educational degree”**

Though the sufficiency cannot be expressed, the necessary minimum level is proposed to be mentioned.

Particularly consider the Supreme Court system as an example. In Russia to be a Supreme Court judge one needs to be older than 35 years old.

Thus minimum length of experience (e.g. 10 years including 5 at the managerial position) and educational level (at least M.A./M.Sc.) should be stated.

**p. 15 – IV, art. 8.2. – “If a credit institution’s assessment concludes that a person is not suitable to be appointed as a member of the management body in its supervisory function”**

It is proposed to switch from binary appraisal system (suitable/non-suitable) to the one used in BIS document on evaluation of effective banking supervision (cf. <http://www.bis.org/publ/bcbs213.htm>), i.e. to introduce 4 categories with the respective action to be taken:

<b>Category</b>	<b>Action to take</b>
Completely suitable	Appoint a person
Mostly suitable	Appoint and train a person
Mostly non-suitable	Might be appointed temporarily (for no more than 6 months), but need further dismissal
Completely non-suitable	Do not appoint a person

**p. 17 – IV, art. 11.2 – “competent authorities may use a selection of these criteria and accord them different weight”**

It is vitally important for the banking industry to have the weights explicitly announced before the start of formal assessment procedures.

p. 17 – IV, art. 11.4 – “The assessment under Article 3 (2a) and (2b) by the competent authority should be completed within good time”.

For the banking community to have the assessment process forecastable in terms of time needed it is recommended to put an exact length of the review discussed, i.e. no more than 1 month.